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THIRD DIVISION

[G.R. No. 195661, March 11, 2015]

UNKNOWN OWNER OF THE VESSEL M/V CHINA JOY, SAMSUN SHIPPING LTD., AND INTER-ASIA MARINE TRANSPORT, INC., PETITIONERS, VS. ASIAN TERMINALS, INC., RESPONDENT.

RESOLUTION

REYES, J.:

The instant petition for review on *certiorari*[1] assails the Decision[2] dated November 10, 2010 and Resolution[3] dated February 14, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93164. The CA reversed and set aside the Decision[4] dated January 30, 2009 of the Regional Trial Court (RTC) of Manila, Branch 51, in Civil Case No. 99-93067, which dismissed for insufficiency of evidence the complaint for damages[5] filed by herein respondent Asian Terminals, Inc. (ATI) against Unknown Owner of the Vessel M/V China Joy (shipowner),[6] Samsun Shipping Ltd. (Samsun) and Inter-Asia Marine Transport, Inc. (Inter-Asia) (petitioners).

The CA aptly summed up the facts of the case as follows:

> On 25 January 1997, the cargo ship M/V "China Joy" (**the Vessel**) arrived at the Mariveles Grain Terminal Wharf, operated by plaintiff [**ATI**].
>
> According to the Berth Term *Grain Bills of Lading*, the Vessel carried soybean meal that had been shipped by ContiQuincyBunge L.L.C[.] (**ContiQuincyBunge**), an exporter of soybean meal and related products, in favor of several consignees in the Philippines.
>
> Under the *Charter Party Agreement* over M/V "China Joy," ContiQuincyBunge represented itself as the Charterer of the Vessel, with San Miguel Foods, Inc. as Co-Charterer, and defendant [**Samsun**] represented itself as the Agent of the Shipowners. Samsun is a foreign corporation not doing business in the Philippines.
>
> On 3 February 1997[,] ATI used its Siwertell Unloader No. 2 to unload the soybean meal from the Vessel's Hold No. 2. The Siwertell Unloader is a pneumatic vacubator that uses compressed gas to vertically move heavy bulk grain from within the hatch of the ship in order to unload it off the ship.
>
> The unloading operations were suddenly halted when the head of Unloader No. 2 hit a flat low-carbon or "mild" steel bar measuring around 8 to 10 inches in length, 4 inches in width, and 1 ¼ inch in thickness that

was in the middle of the mass of soybean meal. The flat steel bar lodged itself between the vertical screws of Unloader No. 2, causing portions of screw numbers 2 and 3 to crack and be sheared off under the torsional load.

According to the quotation of BMH Marine AB Sweden, the sole manufacturer of Siwertell unloaders, the replacement cost of each screw is US$12,395.00 or US$24,790.00 for the 2 screws plus freight. The labor cost to remove and re-assemble the screws is estimated at US$2,000.00.

On 4 February 1997, ATI sent a *Note of Protest* to the Master of the Vessel for the damages sustained by its unloading equipment as a result of encountering the flat steel bar among the soybean meal. However, the Vessel's Master wrote a note on the *Protest* stating that it is not responsible for the damage because the metal piece came from the cargo and not from the vessel itself.

On 5 March 1997, ATI sent a claim to defendant [**Inter-Asia**] for the amount of US$37,185.00 plus US$2,000.00 labor cost representing the damages sustained by its unloading equipment.

Inter-Asia rejected ATI's claim for the alleged reason that it is not the Shipowner's Agent. Inter-Asia informed ATI that its principal is Samsun. Moreover, according to Inter-Asia, the owner of the Vessel is Trans-Pacific Shipping Co., c/o Lasco Shipping Company. Inter-Asia, however, offered to relay ATI's claim to Trans-Pacific through Samsun.

As previously noted, the *Charter Party Agreement* states Samsun to be the Agent of the Shipowners, but since Samsun is a foreign corporation not licensed to do business in the Philippines, it transacted its business through Inter-Asia. Hence, Inter-Asia is the Agent of the Agent of the Shipowners.

When negotiations for settlement failed, ATI filed the instant *Complaint* for Damages against Samsun, Inter-Asia and the "Unknown Owner of the Vessel M/V 'China Joy'" on 9 March 1999.

In the joint *Answer*, Inter-Asia reiterated that it is not the Agent of the Shipowners. Defendants further averred that the soybean meal was shipped on board the M/V "China Joy" under a Free-In-and-Out-Stowed-and-Trimmed (FIOST) Clause, which supposedly means that the Shipper/Charterer itself (ContiQuincyBunge LLC) loaded the cargo on board the Vessel, and the latter and her complement had no participation therein except to provide the use of the Vessel's gear. Similarly, under the FIOST clause, the discharge of the cargo was to be done by the consignees' designated personnel without any participation of the Vessel and her complement.

Defendants argued that since the metal foreign object was found in the ***middle*** of the cargo, it could not have come from the ***bottom*** of the hatch because the hatch had been inspected and found clean prior to loading. Defendants further averred that neither could the metal bar have

been part of the Vessel that had broken off and fallen into the hatch because tests conducted on the metal piece revealed that said metal bar was not part of the Vessel.

Defendants concluded that the metal bar could only have been already co-mingled with the soybean meal upon loading by ContiQuincyBunge at loadport, and, therefore, defendants are not liable for the damages sustained by the unloader of ATI.[7] (Citations omitted)

Rulings of the RTC and CA

On January 30, 2009, the RTC rendered a Decision[8] dismissing ATI's complaint for insufficiency of evidence. The RTC explained that while the damage to ATI's Siwertell Unloader No. 2 was proven, "[t]he *Court is at a quandary as to who caused the piece of metal to [co-mingle] with the shipment*."[9]

ATI thereafter filed an appeal,[10] which the CA granted through the herein assailed decision, the dispositive portion of which partially states:

> ***WHEREFORE,*** the appeal is ***GRANTED***, x x x. Defendants-appellees are found jointly and severally liable to [ATI] for the amount of US$30,300.00 with interest thereon at 6% per annum from the filing of the *Complaint* on 9 March 1999 until the judgment becomes final and executory. Thereafter, an interest rate of 12% per annum shall be imposed until the amount is fully and actually paid.
>
> ***SO ORDERED.***[11]

The CA explained its ruling, *viz*:

> As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established ***without direct proof*** and furnishes a substitute for specific proof of negligence.
>
> x x x x
>
> We find the application of the doctrine of *res ipsa loquitur* to be appropriate in the case at bar.
>
> *First.* Since the cargo to be unloaded was free-flowing soybean meal in bulk, ATI correctly used a pneumatic vacubator unloader to extract the soybean meal from the holds. Under normal unloading procedures of bulk grain, it is not expected that a metal foreign object would be among the grain to be unloaded. x x x.
>
> Such an accident does not occur in the ordinary course of things, unless the loading of the soybean meal at loadport was mismanaged in some way that allowed a metal foreign object to be co-mingled with the soybean meal cargo.
>
> *Second.* The damage to the vertical screws of ATI's unloader was caused

by the presence of the metal bar among the soybean meal in Hold No. 2 of the ship: an instrumentality within the exclusive control of the shipowner.

x x x According to defendants, "*the vessel and her complement had no participation in the loading and discharge of said bulk cargo except to provide use of the vessel's gear*."

Defendants' argument is neither accurate nor meritorious. In the first place, the terms of the Charter Party in this case was not Free-In-and-Out-***Stowed-and-Trimmed*** [FIOST] but Free-In-and-***Spout-Trimmed***-and-Free-Out [FISTFO].

x x x x

x x x [I]t appears that the FIOST clause in a Charter Party Agreement speaks of who is to bear the ***cost*** or ***expense*** of loading, spout trimming and unloading the cargo. "Free In and Out" means that the shipowner is free from such expenses. This becomes clearer when the FIOST clause is stipulated as an adjunct to the terms of payment of the freight rate.

x x x x

Being a provision for the apportionment of ***expense*** (as an exclusion from the rate of freight to be paid), the interpretation of the FIOST clause should not be extended to mean an apportionment of ***liability***, unless specified in clear and unambiguous terms.

While there are instances where a Charter Party Agreement clearly states that the Charterer will be liable to third parties for damages caused by its cargo (as in the case of spills of petroleum oil cargo, or of damage to third parties caused by toxic cargo), there is no such provision in this case. Therefore, liability or non-liability for such damage cannot be presumed from the FIOST clause alone, and the *Charter Party Agreement* must be closely scrutinized for the parties' intention on liability.

Clause 22 of the *Charter Party Agreement* states:

> "At loadport, the stevedores[,] although arranged by charterers, shippers, or their agents[, are] to be ***under the direction and control of the Master***. All claims for damage allegedly caused by stevedores [are] to be settled between stevedores and Owners. Charterers shall render assistance to Owners to settle such damage in case of need."

x x x Clause 22 clearly states that ***loading shall be done under the direction and control of the Master***. Hence, if the metal bar that damaged ATI's unloader was inadvertently mixed into the soybean meal during loading, by express provision of the *Charter Party Agreement*, the cost of the damage should be borne by the shipowner because the loading was done under the supervision and control of the Master of the Vessel.

Hence, not only did defendants have ***presumed*** exclusive control of the Vessel during the loading of the soybean meal by reason of them being the owners or agents of the owners thereof, they also had ***actual*** exclusive control thereof by express stipulation in the *Charter Party Agreement* that the loading of the cargo shall be under the direction and control of the Master of the Vessel.

This is as it should be, considering that the charter in this case is a ***contract of affreightment*** by which the owner of a ship lets the whole or part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. The Supreme Court has held that if the charter is a contract of affreightment, ***the rights and the responsibilities of ownership rest on the owner***. The charterer is free from liability to third persons in respect of the ship.

Third. There is neither allegation nor evidence in the record that ATI's negligence contributed to the damage of its unloader.

All 3 requisites of *res ipsa loquitur* being present, the presumption or inference arises that defendants' negligence was the proximate cause of the damage to ATI's unloader. The burden of evidence shifted to defendants to prove otherwise. Th[e] defendants failed to do so.

x x x x

Defendants' testimonial evidence consisted of the sole testimony of the former Operations Manager of Inter-Asia, who x x x on cross-examination, x x x admitted that he was not present at the loading of the cargo and, therefore, did not actually see that the soybean meal was free of any foreign metal object.

Defendants' evidence, which heavily relies on (1) their erroneous interpretation of the FIOST clause in the *Charter Party Agreement*; (2) the Master's unsupported allegation written on the *Note of Protest* that the metal bar did not come from the vessel; and (3) their witness' dubious interpretation that the notation "loaded clean" on the *Berth Term[ ]Grain Bills of Lading* means that the soybean meal had no foreign material included therein, does not present a satisfactory answer to the question: ***How did the metal bar get co-mingled with the soybean meal, and what did the Master of the Vessel do to prevent such an occurrence?*** x x x.

By their failure to explain the circumstances that attended the accident, when knowledge of such circumstances is accessible only to them, defendants failed to overcome the *prima facie* presumption that the accident arose from or was caused by their negligence or want of care.

The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either ***knows the cause of the accident*** or ***has the best opportunity of***