

## THIRD DIVISION

[ G.R. No. 179789, June 17, 2015 ]

**PINEWOOD MARINE (PHILS.), INC., PETITIONER, VS. EMCO  
PLYWOOD CORPORATION, EVER COMMERCIAL CO., LTD.,  
DALIAN OCEAN SHIPPING CO., AND SHENZHEN GUANGDA  
SHIPPING CO., RESPONDENTS.**

### RESOLUTION

**REYES, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated June 21, 2006 and Resolution<sup>[3]</sup> dated August 8, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 58909. The CA affirmed *in toto* the Decision<sup>[4]</sup> rendered on May 14, 1997 by the Regional Trial Court (RTC) of Butuan City, Branch 4 in Civil Case No. 4374, an action for replevin, attachment and damages. The dispositive portion of the RTC decision is quoted below:

WHEREFORE, decision is rendered in favor of plaintiff [EMCO Plywood Corporation (EMCO)] against defendant Ever Commercial Co., Ltd. [Ever] and [Ever] is ordered to pay [EMCO]:

- (a) the sum of Sixteen Million Six Hundred Eighty[-]Six Thousand Forty[-]Eight Pesos and Forty[-]Six Centavos (P16,686,048.46) representing damages plus Six Percent (6%) interest on said amount from the filing of the Complaint until [Ever] fully pays the same.

As to the cross [-] claim of defendant Ever, the Court finds defendants [Shenzhen Guangda Shipping Co. (Shenzhen)] and/or charterer/owner of the vessel "TAO HUA LING" and Pinewood Marine (Phils.)[, ] [Inc. (Pinewood)] to be jointly and severally liable to defendant Ever and are ordered to pay [Ever]:

- (a) the amount of Sixteen Million Six Hundred Eighty[-]Six Thousand Forty[-]Eight Pesos and Forty[-]Six Centavos (P16,686,048.46), plus six percent (6%) interest thereon from the filing of the complaint until full payment thereof, by way of reimbursement and indemnification;
- (b) the amount of Two Million Pesos (P2,000,000.00) as damages, plus Six Percent (6%) interest thereon; and
- (c) attorney's fees in the amount of One Hundred Seventy-Three Thousand [Six Hundred] Pesos (P173,600.00).<sup>[5]</sup>

SO ORDERED.<sup>[6]</sup>

**Antecedents**

The CA aptly summed up as follows the facts of the case leading to the rendition of the RTC decision:

On December 11, 1995, [EMCO] filed a Complaint for "Replevin, Attachment and Damages" impleading the following as defendants namely: [Shenzhen], Dalian Ocean Shipping Company x x x, [Pinewood], the vessel MV Tao Hua Ling, and its Unknown Owner and/or Demise Charterer and the Master of said vessel. In its Amended Complaint, EMCO impleaded, additionally, [Ever as the vessel's charterer].

EMCO is primarily engaged in the business of manufacturing plywood and the subject matter of its replevin action was its cargo of 2,638 pieces of PNG round logs fresh cut from Papua New Guinea, with a total invoice value of US \$691,898.62. EMCO had entered into a contract with [Ever] for the loading, transporting and unloading of the logs at Butuan City, Philippines. EMCO had paid [Ever] the full freight of its cargo in the amount of US \$241,223.04. [Ever] then chartered the vessel MV Tao Hua Ling from Kanetomi (HK) Ltd., which, in turn, chartered the said vessel from defendant [Shenzhen]. The local ship agent of the latter, [Pinewood], represents it in the Philippines.

The subject cargo was loaded on board the said vessel. Sometime thereafter, EMCO received a letter, dated December 5, 1995, from the law office of Sycip Salazar Hernandez [Gatmaitan &] Associates informing EMCO that their client, [Shenzhen], the "disponent owner" of the vessel Tao Hua Ling, was exercising its lien over the cargo of logs for unpaid demurrage, detention and deviation. The letter further advised EMCO that [Shenzhen] had instructed both the master of the vessel and its ship agent, [Pinewood], to exercise the shipowner's lien on the cargo. A similar letter was also sent to the Collector of Customs, Port of Masao, Butuan, Agusan del Norte, requesting the latter to withhold the discharge of the cargo for the said reason. Whereupon, the Bureau of Customs District II, sub-port of Nasipit, issued a memorandum directing the inspector of the vessel to withhold delivery of the cargo to EMCO.

EMCO objected to the withholding of the cargo and assailed the lien as invalid. EMCO nonetheless offered a compromise with defendants and even declared its willingness to put up a bond in the amount of US \$300,000.00 for the release of the cargo. From [Ever], it demanded the immediate release of the logs. For its part, [Ever] took the initiative to effect the release of the logs to the extent of negotiating with the shipowner and other defendants. But all these were to no avail.

The day following the filing of EMCO's complaint, the [RTC] issued the writ of replevin. Whereupon, the logs were released and delivered to EMCO.

In its Amended Complaint, EMCO had also sought the attachment of the vessel MV Tao ITua Ling. Since the vessel had left [the] Philippine territory, EMCO did not pursue this relief.

In addition to replevin and attachment, EMCO sought to recover damages for the unwarranted refusal of defendants to release the cargo.

All the defendants, except [Ever], filed a motion to dismiss citing improper venue as their sole ground. The [RTC] denied the motion. **[Ever] filed its Answer with compulsory counterclaim and cross-claim. The rest of the defendants failed to answer and, upon motion, were declared in default pursuant to the [RTC's] Order dated June 17,1996.**<sup>[7]</sup> (Citations omitted and emphasis ours)

### **Ruling of the RTC**

Pre-trial and trial on the merits ensued. On May 14, 1997, the RTC rendered its decision directing Ever to pay EMCO damages and interests. The RTC also granted Ever's cross-claim against Shenzhen, Dalian Ocean Shipping Co. and Pinewood, who were ordered to reimburse Ever for its liability to EMCO and additionally, to pay damages, interests and attorney's fees.<sup>[8]</sup>

The RTC explained that Section 1505 of the Customs and Tariff Code exclusively enumerates the nature of the claims that give rise to a lien, to wit, (1) freight, (2) lighterage, or (3) general average. Since a lien anchored on claims for demurrage and detention is not included in the enumeration, the withholding of EMCO's cargo for delivery or release was unwarranted.<sup>[9]</sup>

The RTC further declared that EMCO is not privy to the charter party agreements executed among Shenzhen, Kanetomi (HK) Ltd. (Kanetomi) and Ever.<sup>[10]</sup>

The RTC likewise took note of the fact that apart from Ever, the rest of the defendants were declared in default and were unable to present evidence to prove their claims. EMCO and Ever, on the other hand, had amply established that the claims for demurrage, detention, and deviation were "baseless, excessive, unreasonable and invalid" and that the presence of defective vessel winches was due to the defendants' own fault and negligence.<sup>[11]</sup>

EMCO suffered damages by reason of the baseless withholding of delivery of the logs. Mr. Max Alcantara (Alcantara), Vice President, and Nelva G. Mandap (Mandap), a senior accounting staff, testified on the amount of damages suffered by EMCO.<sup>[12]</sup>

Alcantara testified that EMCO incurred operational losses at the rate of P1,500,000.00 per day due to the unavailability of the logs used as raw materials, which caused production delay and prevented the company from complying with contracts already entered into with buyers. Alcantara also stated that the value of the cargo depreciated at the rate of \$1 per cubic meter daily since the delay in the release of the logs affected their moisture content and other attributes.<sup>[13]</sup>

Alcantara likewise expressed that EMCO incurred expenses of P500,000.00 for attorney's fees and P450,000.00 for bond premium and other legal costs.<sup>[14]</sup>

Mandap, on her part, testified that EMCO's sales for the month of December in 1995 only amounted to P48,576,927.34, a 20% or about P17,000,000.00 drop from its

average monthly sales of P65,000,000.00. She also stated that EMCO registered a net loss of P10,686,924.05 for the month of December in 1995. While EMCO earns an average monthly income of P450,000.00, in the said month, a net loss was instead registered.<sup>[15]</sup>

Mandap further testified that the delay in the delivery of the logs caused EMCO to incur additional labor costs of P2,092,748.85 as its employees had to be paid their salaries even if no work was done due to the lack of raw materials. The deterioration cost of \$1 per cu m per day due to the exposure of the logs to the elements during the withholding of their delivery yielded the total sum of P2,956,372.56.<sup>[16]</sup>

Ever, having breached its contractual obligation to immediately deliver and cause the discharge of the logs from the vessel, was thus ordered by the RTC to pay EMCO the following:

Operational Losses (Net Loss)	P10,686,924.05
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Labor cost -----	
-----	P 2,092,748.85
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Deterioration cost-----	P 2,956,375.56
-----	
Attorney's fees---	
-----	P 500,000.00
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Miscellaneous Expenses-----	P 450,000.00
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	-
Total-----	
-----	P16,686,048.46 <sup>[17]</sup>
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However, the RTC found that Ever did not directly participate in the unjustified withholding of the logs and even negotiated for the prompt release thereof. On the other hand, Shenzhen and/or the charterer/owner of Tao Hua Ling, the vessel's master and the local ship agent, Pinewood, acted in bad faith in recklessly withholding the logs causing Ever to breach its obligation to EMCO. Hence, Ever has a right to seek for reimbursement and indemnification from Kanetomi. Moreover, the incident also strained Ever's business relationship with EMCO and tarnished the former's reputation. Consequently, the RTC also directed Shenzhen and/or the charterer/owner of Tao Hua Ling to pay Ever the amounts of (1) P2,000,000.00 as a reasonable estimate of the profits Ever would be deprived of as a result of the incident, and (2) P173,600.00 as attorney's fees. The RTC declared as well that under the Code of Commerce, Pinewood is solidarily liable with Shenzhen and/or charterer/owner of Tao Hua Ling in reimbursing and indemnifying Ever.<sup>[18]</sup>

### **The Proceedings After the Rendition of the RTC Decision**

On June 28, 1997, V.E. Del Rosario & Partners (Del Rosario) entered its appearance

as counsel and filed a notice of appeal in behalf of Shenzhen, Pinewood and Dalian.  
[19]

On January 18, 1999, Del Rosario manifested before the CA that since the law office received no instructions from Shenzhen and Pinewood, the appeal undertaken was *solely in behalf of Dalian*. [20]

On February 17, 2000, the CA issued a Resolution [21] declaring *the appeal of Shenzhen and Pinewood as abandoned and dismissed* due to nonpayment of docket fees and non-filing of the appellants' briefs.

### **The CA's Disquisition**

In resolving Dalian's appeal, [22] the CA affirmed *in toto* the RTC ruling and Dalian to be solidarily liable with Shenzhen and Pinewood to pay Ever its cross-claim. The CA explained that:

[Dalian] may, however, be reminded that it had been declared in default for its failure to file answer, x x x:

xxxx

It bears reiterating that the serious or adverse consequence of a default declaration is that it paves the way for the rendition by the court of a judgment by default, and such a judgment may be rendered even *without any evidentiary hearing* and may grant plaintiff such relief *as his pleading may warrant*. This is in consonance with the very nature of default: a defaulting party has foiled to utilize the opportunity under the Rules to deny the allegations in the complaint, x x x In the case at bench, among the matters deemed admitted is that [Dalian] is the registered owner of the vessel, xxx.

Moreover, [the CA] cannot turn a blind eye to the fact that this appeal is suffused with admissions that [Dalian] is indeed the owner of the vessel MV Tao Hua Ling. Principal among these are [Dalian's] Notice of Appeal xxx, [Dalian's] counsel's formal appearance x x x, and Manifestation xxx, all of which refer to [Dalian] as "owner of the vessel 'Tao Hua Ling'". Under the circumstances of the case, the parenthetical phrase "as owner of the vessel 'Tao Hua Ling'" was entirely unnecessary to establish [Dalian's] credentials as appellant, xxx.

xxx [T]he appeal was being undertaken x x x by [Dalian which], not being directly mentioned in the *corpus* of the decision nor in its *fallo*, really did not need to appeal. For if, indeed, [Dalian] was not the owner of the subject vessel, it had no reason to be concerned about being held liable under the [RTC] decision, x x x If [Dalian] were not the owner/charterer, its concern would be utterly baseless.

x x x x

Possession, command and navigational control are natural attributes of