

## FIRST DIVISION

[ G.R. No. 193914, November 26, 2014 ]

**SEVEN BROTHERS SHIPPING CORPORATION, PETITIONER, VS.  
DMC-CONSTRUCTION RESOURCES, INC., RESPONDENT.**

### D E C I S I O N

**SERENO, C.J.:**

This is a Rule 45 appeal<sup>[1]</sup> dated 18 November 2010 assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 69819, which affirmed with modifications the Decision<sup>[4]</sup> of the Regional Trial Court (RTC), Branch 132, Makati City in Civil Case No. 98-699, finding petitioner liable to respondent for damages.

Petitioner Seven Brothers Shipping Corporation is the owner of the cargo ship M/V "*Diamond Rabbit*," (vessel), while respondent DMC-Construction Resource, Inc. is the owner of coal-conveyor facility, which was destroyed when the vessel became uncontrollable and unmanueverable during a storm.<sup>[5]</sup>

We reproduce the narration of facts culled by the CA,<sup>[6]</sup> as follows:

On 23 February 1996, the cargo ship M/V "Diamond Rabbit" **(the Vessel)** owned and operated by defendant Seven Brothers Shipping Corporation **(Seven Brothers)**, was at the PICOP Pier in Mangagoy, Bislig, Surigao del Sur to dock there. According to the record, the weather that day was windy with a wind force of 10 to 20 knots, and the sea condition was rough, with waves 6 to 8 feet high. However, the parties also stipulated during pre-trial that prior to the occurrence of the incident, the vessel was anchored at the causeway of the port of Bislig, where it was safe from inclement weather.

According to the report of the Master, it heaved its anchor and left the causeway in order to dock at the PICOP Pier. A lifeboat pulled the vessel towards the Pier with a heaving line attached to the vessel's astern mooring rope, when suddenly, the heaving line broke loose, causing the astern mooring rope to drift freely. The mooring rope got entangled in the vessel's propeller, thereby choking and disabling it, and preventing the further use of its main engine for maneuvering.

In order to stop the vessel from further drifting and swinging, its Master dropped her starboard anchor. To help secure the vessel, its forward mooring rope was sent ashore and secured at the mooring fender. However, because of the strong winds and rough seas, the vessel's anchor and the mooring rope could not hold the vessel.

Under the influence of the wind and current, the dead weight of the vessel caused it to swung from side to side until the fender, where the mooring rope was attached, collapsed. The uncontrollable and unmaneuverable vessel drifted and dragged its anchor until it hit several structures at the Pier, including the coal conveyor facility owned by DMC Construction Equipment Resources, Inc. **(DMC)**. (Emphasis in the original)

On 5 March 1996, respondent sent a formal demand letter to petitioner, claiming the amount above-stated for the damages sustained by their vessel.<sup>[7]</sup>

When petitioner failed to pay, respondent filed with the RTC a Complaint for damages against respondent on 23 March 1998. Based on the pieces of evidence presented by both parties, the RTC ruled that as a result of the incident, the loading conveyor and related structures of respondent were indeed damaged.<sup>[8]</sup> In the course of the destruction, the RTC found that no *force majeure* existed, considering that petitioner's captain was well aware of the bad weather, and yet proceeded against the strong wind and rough seas, instead of staying at the causeway and waiting out the passage of the typhoon.<sup>[9]</sup> It further concluded that "there was negligence on the part of the captain; hence, defendant [petitioner] as his employer and owner of the vessel shall be liable for damages caused thereby."<sup>[10]</sup>

Regarding liability, the RTC awarded respondent **actual damages** in the amount of P3,523,175.92 plus legal interest of 6%, based on the testimony of respondent's engineer, Loreto Dalangin (Engr. Dalangin). The value represented 50% of the P7,046,351.84 claimed by the respondent as the fair and reasonable valuation of the structure at the time of the loss,<sup>[11]</sup> because as manifested by Engr. Dalangin at the time of the incident, the loading conveyor and related structures were almost five years old, with a normal useful life of 10 years.<sup>[12]</sup>

Thus, on 18 January 2001, the RTC issued a Decision<sup>[13]</sup> to wit:

WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff:

(a) Actual damages in the amount of P3,523,175.92 plus legal interest of 6% per annum from the date of the filing of this complaint until the same is fully paid; and

(b) Costs of suit.

Aggrieved, petitioner appealed via a Notice of Appeal on 5 February 2001.<sup>[14]</sup> The appeal was dismissed by the CA in a Decision dated 30 April 2010,<sup>[15]</sup> the dispositive portion of which is quoted herein:

**WHEREFORE**, the appeal is **DISMISSED**, and the *Decision* dated 18 January 2001 of the Regional Trial Court, Branch 132, Makati City in Civil Case No. 98-699, is **AFFIRMED** with modification in that Seven Brothers Shipping Corporation is found liable to DMC Construction Equipment Resources, Inc. for **nominal damages** in the amount of P3,523,175.92 due to the destruction of the latter's coal conveyor post and terminal by the cargo ship M/V "Diamond Rabbit." (Emphasis in the original)

The CA affirmed the RTC's Decision with respect to the finding of negligence on the part of the vessel's captain. However, the appellate court modified the nature of damages awarded (from actual to nominal), on the premise that actual damages had not been proved. Respondent merely relied on estimates to prove the cost of replacing the structures destroyed by the vessel, as no actual receipt was presented.  
[16]

On 19 May 2010, petitioner filed a Motion for Partial Reconsideration.<sup>[17]</sup> Respondent filed a Comment on the Motion on 22 June 2010,<sup>[18]</sup> and the former, a Reply on 29 June 2010.<sup>[19]</sup> In a Resolution promulgated on 24 September 2010,<sup>[20]</sup> the CA denied petitioner's Motion.

Hence, the instant Petition.

This Court noted respondent's Comment dated 27 April 2011;<sup>[21]</sup> respondent's Manifestation dated 4 May 2011;<sup>[22]</sup> and petitioner's Reply dated 2 June 2011.<sup>[23]</sup>

### **ISSUE**

From the foregoing, the sole issue proffered to us by petitioner is whether or not the CA erred in awarding nominal damages to respondent after having ruled that the actual damages awarded by the RTC was unfounded.

### **THE COURT'S RULING**

Petitioner argues that under Articles 2221 and 2223 of the Civil Code,<sup>[24]</sup> nominal damages are only awarded to vindicate or recognize a right that has been violated, and not to indemnify a party for any loss suffered by the latter. They are not awarded as a simple replacement for actual damages that were not duly proven during trial.<sup>[25]</sup> Assuming further that nominal damages were properly awarded by the CA, petitioner is of the belief that the amount thereof must be equal or at least commensurate to the injury sustained by the claimant, as ruled in *PNOC Shipping and Transportation Corp. v. Court of Appeals (PNOC)*.<sup>[26]</sup> Considering that respondent allegedly failed to substantiate its actual loss, it was therefore improper for the CA to award nominal damages of P3,523,175.92, which was based on respondent's "highly speculative claims."<sup>[27]</sup>

Respondent, on the other hand, alleges that nominal damages were rightly assessed, since there was a categorical finding that its "property right was indubitably invaded and violated when damage to its conveyor and port equipment due to petitioner's negligence,"<sup>[28]</sup> was inflicted. Nominal damages are recoverable

where some injury has been done, but the evidence fails to show the corresponding amount thereof. Accordingly, the assessment of damages is left to the discretion of the court.<sup>[29]</sup> Respondent asserts that the CA's award of P3,523,175.92 is not unreasonable, following the amounts awarded in *PNOC*.

**We rule that temperate, and not nominal, damages should be awarded to respondent in the amount of P3,523,175.92.**

***Factual findings of appellate and trial courts are entitled to great weight and respect on appeal, especially when established by unrebutted testimonial and documentary evidence.***

To resolve the issue at hand, we must first determine whether there was indeed a violation of petitioner's right. In this light, we are inclined to adopt the factual findings of the RTC and the CA as "[t]his Court has repeatedly held that petitions for review under Rule 45 of the Rules of Court may be brought only on questions of law, not on questions of fact. Moreover, the factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by unrebutted testimonial and documentary evidence. And the findings of facts of the Court of Appeals are conclusive and binding on the Supreme Court except when they conflict with the findings of the trial court."<sup>[30]</sup>

In this case, two facts have been established by the appellate and trial courts: that respondent suffered a loss caused by petitioner; and that respondent failed to sufficiently establish the amount due to him, as no actual receipt was presented.

***Temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.***

Under the Civil Code, when an injury has been sustained, actual damages may be awarded under the following condition:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages. (Emphasis ours)

As we have stated in *Dee Hua Liong Electrical Equipment Corp., v. Reyes*,<sup>[31]</sup> "[a]ctual or compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty. A court cannot rely on