

THIRD DIVISION

[G.R. No. 185565, November 26, 2014]

**LOADSTAR SHIPPING COMPANY, INCORPORATED AND
LOADSTAR INTERNATIONAL SHIPPING COMPANY,
INCORPORATED, PETITIONERS, VS. MALAYAN INSURANCE
COMPANY, INCORPORATED, RESPONDENT.**

DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*^[1] filed by Loadstar Shipping Company, Incorporated and Loadstar International Shipping Company, Incorporated (petitioners) against Malayan Insurance Company, Incorporated (Malayan) seeking to set aside the Decision^[2] dated April 14, 2008 and Resolution^[3] dated December 11, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 82758, which reversed and set aside the Decision^[4] dated March 31, 2004 of the Regional Trial Court of Manila, Branch 34, in Civil Case No. 01-101885.

The facts as found by the CA, are as follows:

Loadstar International Shipping, Inc. (Loadstar Shipping) and Philippine Associated Smelting and Refining Corporation (PASAR) entered into a Contract of Affreightment for domestic bulk transport of the latter's copper concentrates for a period of one year from November 1, 1998 to October 31, 1999. The contract was extended up to the end of October 2000.

On September 10, 2000, 5,065.47 wet metric tons (WMT) of copper concentrates were loaded in Cargo Hold Nos. 1 and 2 of MV "Bobcat", a marine vessel owned by Loadstar International Shipping Co., Inc. (Loadstar International) and operated by Loadstar Shipping under a charter party agreement. The shipper and consignee under the Bill of Lading are Philex Mining Corporation (Philex) and PASAR, respectively. The cargo was insured with Malayan Insurance Company, Inc. (Malayan) under Open Policy No. M/OP/2000/001-582. P & I Association is the third party liability insurer of Loadstar Shipping.

On said date (September 10, 2000), MV "Bobcat" sailed from Poro Point, San Fernando, La Union bound for Isabel, Leyte. On September 12, 2000, while in the vicinity of Cresta de Gallo, the vessel's chief officer on routine inspection found a crack on starboard side of the main deck which caused seawater to enter and wet the cargo inside Cargo Hold No. 2 forward/aft. The cracks at the top deck starboard side of Cargo Hold No. 2, measuring 1.21 meters long x 0.39 meters wide, and at top deck aft section starboard side on other point, measuring 0.82 meters long x

0.32 meters wide, were welded.

Immediately after the vessel arrived at Isabel, Leyte anchorage area, on September 13, 2000, PASAR and Philex's representatives boarded and inspected the vessel and undertook sampling of the copper concentrates. In its preliminary report dated September 15, 2000, the Elite Adjusters and Surveyor, Inc. (Elite Surveyor) confirmed that samples of copper concentrates from Cargo Hold No. 2 were contaminated by seawater. Consequently, PASAR rejected 750 MT of the 2,300 MT cargo discharged from Cargo Hold No. 2.

On November 6, 2000, PASAR sent a formal notice of claim in the amount of [P]37,477,361.31 to Loadstar Shipping. In its final report dated November 16, 2000, Elite Surveyor recommended payment to the assured the amount of [P]32,351,102.32 as adjusted. On the basis of such recommendation, Malayan paid PASAR the amount of [P]32,351,102.32.

Meanwhile, on November 24, 2000, Malayan wrote Loadstar Shipping informing the latter of a prospective buyer for the damaged copper concentrates and the opportunity to nominate/refer other salvage buyers to PASAR. On November 29, 2000, Malayan wrote Loadstar Shipping informing the latter of the acceptance of PASAR's proposal to take the damaged copper concentrates at a residual value of US\$90,000.00. On December 9, 2000, Loadstar Shipping wrote Malayan requesting for the reversal of its decision to accept PASAR's proposal and the conduct of a public bidding to allow Loadstar Shipping to match or top PASAR's bid by 10%.

On January 23, 2001, PASAR signed a subrogation receipt in favor of Malayan. To recover the amount paid and in the exercise of its right of subrogation, Malayan demanded reimbursement from Loadstar Shipping, which refused to comply. Consequently, on September 19, 2001, Malayan instituted with the RTC a complaint for damages. The complaint was later amended to include Loadstar International as party defendant.

In its amended complaint, Malayan mainly alleged that as a direct and natural consequence of the unseaworthiness of the vessel, PASAR suffered loss of the cargo. It prayed for the amount of [P]33,934,948.75, representing actual damages plus legal interest from date of filing of the complaint until fully paid, and attorney's fees in the amount of not less than [P]500,000.00. It also sought to declare the bill of lading as void since it violates the provisions of Articles 1734 and 1745 of the Civil Code.

On October 30, 2002, Loadstar Shipping and Loadstar International filed their answer with counterclaim, denying plaintiff-appellant's allegations and averring as follows: that they are not engaged in the business as common carriers but as private carriers; that the vessel was seaworthy and defendants-appellees exercised the required diligence under the law; that the entry of water into Cargo Hold No. 2 must have been caused by force *majeure* or heavy weather; that due to the inherent nature of the

cargo and the use of water in its production process, the same cannot be considered damaged or contaminated; that defendants-appellees were denied reasonable opportunity to participate in the salvage sale; that the claim had prescribed in accordance with the bill of lading provisions and the Code of Commerce; that plaintiff-appellant's claim is excessive, grossly overstated, unreasonable and unsubstantiated; that their liability, if any, should not exceed the *CIF* value of the lost/damaged cargo as set forth in the bill of lading, charter party or customary rules of trade; and that the arbitration clause in the contract of affreightment should be followed.

After trial, and considering that the bill of lading, which was marked as Exhibit "B", is unreadable, the RTC issued on February 17, 2004 an order directing the counsel for Malayan to furnish it with a clearer copy of the same within three (3) days from receipt of the order. On February 23, 2004, Malayan filed a compliance attaching thereto copy of the bill of lading.

On March 31, 2004, the RTC rendered a judgment dismissing the complaint as well as the counterclaim. The RTC was convinced that the vessel was seaworthy at the time of loading and that the damage was attributable to the perils of the sea (natural disaster) and not due to the fault or negligence of Loadstar Shipping.

The RTC found that although contaminated by seawater, the copper concentrates can still be used. It gave credence to the testimony of Francisco Esguerra, defendants-appellees' expert witness, that despite high chlorine content, the copper concentrates remain intact and will not lose their value. The gold and silver remain with the grains/concentrates even if soaked with seawater and does not melt. The RTC observed that the purchase agreement between PASAR and Philex contains a penalty clause and has no rejection clause. Despite this agreement, the parties failed to sit down and assess the penalty.

The RTC also found that defendants-appellees were not afforded the opportunity to object or participate or nominate a participant in the sale of the contaminated copper concentrates to lessen the damages to be paid. No record was presented to show that a public bidding was conducted. Malayan sold the contaminated copper concentrates to PASAR at a low price then paid PASAR the total value of the damaged concentrate without deducting anything from the claim.

Finally, the RTC denied the prayer to declare the Bill of Lading null and void for lack of basis because what was attached to Malayan's compliance was still an unreadable machine copy thereof.^[5] (Citations omitted)

Ruling of the CA

On April 14, 2008, the CA rendered its Decision,^[6] the dispositive portion of which reads:

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 31, 2004 of the RTC, Branch 34, Manila in Civil Case No. 01-101885, is **REVERSED and SET ASIDE**. In lieu thereof, a new judgment is entered, **ORDERING** defendants-appellees to pay plaintiff-appellant P33,934,948.75 as actual damages, plus legal interest at 6% annually from the date of the trial court's decision. Upon the finality of the decision, the total amount of the judgment shall earn annual interest at 12% until full payment.

SO ORDERED.^[7]

On December 11, 2008, the CA modified the above decision through a Resolution,^[8] the *fallo* thereof states:

WHEREFORE, the *Motion for Reconsideration* is **PARTLY GRANTED**. The decision of this Court dated April 14, 2008 is **PARTIALLY RECONSIDERED and MODIFIED**. Defendants-appellees are **ORDERED** to pay to plaintiff-appellant P33,934,948.74 as actual damages, less US\$90,000.00, computed at the exchange rate prevailing on November 29, 2000, plus legal interest at 6% annually from the date of the trial court's decision. Upon the finality of the decision, the total amount of the judgment shall earn annual interest at 12% until full payment.

SO ORDERED.^[9]

The CA discussed that the amount of US\$90,000.00 should have been deducted from Malayan's claim against the petitioners in order to prevent undue enrichment on the part of Malayan. Otherwise, Malayan would recover from the petitioners not merely the entire amount of P33,934,948.74 as actual damages, but would also end up unjustly enriching itself in the amount of US\$90,000.00 – the residual value of the subject copper concentrates it sold to Philippine Associated Smelting and Refining Corporation (PASAR) on November 29, 2000.^[10]

Issues

In sum, the grounds presented by the petitioners for the Court's consideration are the following:

I.

THE [CA] HAS NO BASIS IN REVERSING THE DECISION OF THE TRIAL COURT. THERE IS NOTHING IN THE DECISION OF THE HONORABLE COURT THAT REVERSED THE FACTUAL FINDINGS AND CONCLUSIONS OF THE TRIAL COURT, THAT THERE WAS NO ACTUAL LOSS OR DAMAGE TO THE CARGO OF COPPER CONCENTRATES WHICH WOULD MAKE LOADSTAR AS THE SHIPOWNER LIABLE FOR A CARGO CLAIM. CONSEQUENTLY, THERE IS NO BASIS FOR THE COURT TO ORDER LOADSTAR TO PAY ACTUAL DAMAGES IN THE AMOUNT OF PHP33 MILLION.^[11]

II.

M/V BOBCAT IS A PRIVATE CARRIER, THE HONORABLE COURT HAD NO BASIS IN RULING THAT IT IS A COMMON CARRIER. THE DECISION OF THE TRIAL COURT IS BEREFT OF ANY CATEGORICAL FINDING THAT M/V BOBCAT IS A COMMON CARRIER.^[12]

III.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT RESPONDENT'S PAYMENT TO PASAR, ON THE BASIS OF THE LATTER'S FRAUDULENT CLAIM, ENTITLED RESPONDENT AUTOMATIC RIGHT OF RECOVERY BY VIRTUE OF SUBROGATION.^[13]

Ruling of the Court

I. Proof of actual damages

It is not disputed that the copper concentrates carried by M/V Bobcat from Poro Point, La Union to Isabel, Leyte were indeed contaminated with seawater. The issue lies on whether such contamination resulted to damage, and the costs thereof, if any, incurred by the insured PASAR.

The petitioners argued that the copper concentrates, despite being dampened with seawater, is neither subject to penalty nor rejection. Under the Philex Mining Corporation (Philex)-PASAR Purchase Contract Agreement, there is no rejection clause. Instead, there is a pre-agreed formula for the imposition of penalty in case other elements exceeding the provided minimum level would be found on the concentrates.^[14] Since the chlorine content on the copper concentrates is still below the minimum level provided under the Philex-PASAR purchase contract, no penalty may be imposed against the petitioners.^[15]

Malayan opposed the petitioners' invocation of the Philex-PASAR purchase agreement, stating that the contract involved in this case is a contract of affreightment between the petitioners and PASAR, not the agreement between Philex and PASAR, which was a contract for the sale of copper concentrates.^[16]

On this score, the Court agrees with Malayan that contrary to the trial court's disquisition, the petitioners cannot validly invoke the penalty clause under the Philex-PASAR purchase agreement, where penalties are to be imposed by the buyer PASAR against the seller Philex if some elements exceeding the agreed limitations are found on the copper concentrates upon delivery. The petitioners are not privy to the contract of sale of the copper concentrates. The contract between PASAR and the petitioners is a contract of carriage of goods and not a contract of sale. Therefore, the petitioners and PASAR are bound by the laws on transportation of goods and their contract of affreightment. Since the Contract of Affreightment^[17] between the petitioners and PASAR is silent as regards the computation of damages, whereas the bill of lading presented before the trial court is undecipherable, the New Civil Code and the Code of Commerce shall govern the contract between the parties.

Malayan paid PASAR the amount of P32,351,102.32 covering the latter's claim of damage to the cargo.^[18] This is based on the recommendation of Elite Adjustors