

SECOND DIVISION

[G.R. No. 165647, March 26, 2009]

PHILIPPINES FIRST INSURANCE CO., INC., PETITIONER, VS. WALLEM PHILS. SHIPPING, INC., UNKNOWN OWNER AND/OR PROMULGATED: UNKNOWN CHARTERER OF THE VESSEL M/S "OFFSHORE MASTER" AND "SHANGHAI FAREAST SHIP BUSINESS COMPANY," RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before us is a Rule 45 petition^[1] which seeks the reversal of the Decision^[2] and Resolution^[3] of the Court of Appeals in CA-G.R. No. 61885. The Court of Appeals reversed the Decision^[4] of the Regional Trial Court (RTC) of Manila, Branch 55 in Civil Case No. 96-80298, dismissing the complaint for sum of money.

The facts of the case follow.^[5]

On or about 2 October 1995, Anhui Chemicals Import & Export Corporation loaded on board *M/S Offshore Master* a shipment consisting of 10,000 bags of sodium sulphate anhydrous 99 PCT Min. (shipment), complete and in good order for transportation to and delivery at the port of Manila for consignee, L.G. Atkinson Import-Export, Inc. (consignee), covered by a Clean Bill of Lading. The Bill of Lading reflects the gross weight of the total cargo at 500,200 kilograms.^[6] The Owner and/or Charterer of *M/V Offshore Master* is unknown while the shipper of the shipment is Shanghai Fareast Ship Business Company. Both are foreign firms doing business in the Philippines, thru its local ship agent, respondent Wallem Philippines Shipping, Inc. (Wallem).^[7]

On or about 16 October 1995, the shipment arrived at the port of Manila on board the vessel *M/S Offshore Master* from which it was subsequently discharged. It was disclosed during the discharge of the shipment from the carrier that 2,426 poly bags (bags) were in bad order and condition, having sustained *various degrees of spillages and losses*. This is evidenced by the Turn Over Survey of Bad Order Cargoes (turn-over survey) of the arrastre operator, Asian Terminals, Inc. (arrastre operator).^[8] The *bad state of the bags* is also evinced by the arrastre operator's Request for Bad Order Survey.^[9]

Asia Star Freight Services, Inc. undertook the delivery of the subject shipment from the pier to the consignee's warehouse in Quezon City,^[10] while the final inspection was conducted jointly by the consignee's representative and the cargo surveyor. During the unloading, it was found and noted that the bags had been discharged in damaged and bad order condition. Upon inspection, it was discovered that 63,065.00 kilograms of the shipment had sustained unrecovered spillages, while

58,235.00 kilograms had been exposed and contaminated, resulting in losses due to depreciation and downgrading.^[11]

On 29 April 1996, the consignee filed a formal claim with Wallem for the value of the damaged shipment, to no avail. Since the shipment was insured with petitioner Philippines First Insurance Co., Inc. against all risks in the amount of P2,470,213.50,^[12] the consignee filed a formal claim^[13] with petitioner for the damage and losses sustained by the shipment. After evaluating the invoices, the turn-over survey, the bad order certificate and other documents,^[14] petitioner found the claim to be in order and compensable under the marine insurance policy. Consequently, petitioner paid the consignee the sum of P397,879.69 and the latter signed a subrogation receipt.

Petitioner, in the exercise of its right of subrogation, sent a demand letter to Wallem for the recovery of the amount paid by petitioner to the consignee. However, despite receipt of the letter, Wallem did not settle nor even send a response to petitioner's claim.^[15]

Consequently, petitioner instituted an action before the RTC for damages against respondents for the recovery of P397,879.69 representing the actual damages suffered by petitioner plus legal interest thereon computed from the time of the filing of the complaint until fully paid and attorney's fees equivalent to 25% of the principal claim plus costs of suit.

In a decision^[16] dated 3 November 1998, the RTC ordered respondents to pay petitioner P397,879.69 with 6% interest plus attorney's fees and costs of the suit. It attributed the damage and losses sustained by the shipment to the arrastre operator's mishandling in the discharge of the shipment. Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,^[17] the RTC held the shipping company and the arrastre operator solidarily liable since both the arrastre operator and the carrier are charged with and obligated to deliver the goods in good order condition to the consignee. It also ruled that the ship functioned as a common carrier and was obliged to observe the degree of care required of a common carrier in handling cargoes. Further, it held that a notice of loss or damage in writing is not required in this case because said goods already underwent a joint inspection or survey at the time of receipt thereof by the consignee, which dispensed with the notice requirement.

The Court of Appeals reversed and set aside the RTC's decision.^[18] According to the appellate court, there is no solidary liability between the carrier and the arrastre operator because it was clearly established by the court *a quo* that the damage and losses of the shipment were attributed to the mishandling by the arrastre operator in the discharge of the shipment. The appellate court ruled that the instant case falls under an exception recognized in *Eastern*

Shipping Lines.^[19] Hence, the arrastre operator was held solely liable to the consignee.

Petitioner raises the following issues:

1. Whether or not the Court of Appeals erred in not holding that as a common carrier, the carrier's duties extend to the obligation to safely discharge the cargo from the vessel;
2. Whether or not the carrier should be held liable for the cost of the damaged shipment;
3. Whether or not Wallem's failure to answer the extra judicial demand by petitioner for the cost of the lost/damaged shipment is an implied admission of the former's liability for said goods;
4. Whether or not the courts below erred in giving credence to the testimony of Mr. Talens.

It is beyond question that respondent's vessel is a common carrier.^[20] Thus, the standards for determining the existence or absence of the respondent's liability will be gauged on the degree of diligence required of a common carrier. Moreover, as the shipment was an exercise of international trade, the provisions of the Carriage of Goods by Sea Act^[21] (COGSA), together with the Civil Code and the Code of Commerce, shall apply.^[22]

The first and second issues raised in the petition will be resolved concurrently since they are interrelated.

It is undisputed that the shipment was damaged prior to its receipt by the insured consignee. The *damage to the shipment was documented* by the turn-over survey^[23] and Request for Bad Order Survey.^[24] The turn-over survey, in particular, expressly stipulates that 2,426 bags of the shipment were received by the arrastre operator in damaged condition. With these documents, petitioner insists that the shipment incurred damage or losses while still in the care and responsibility of Wallem and before it was turned over and delivered to the arrastre operator.

The trial court, however, found through the testimony of Mr. Maximino Velasquez Talens, a cargo surveyor of Oceanica Cargo Marine Surveyors Corporation, that the losses and damage to the cargo were caused by the mishandling of the arrastre operator. Specifically, that the torn cargo bags resulted from the use of steel hooks/spikes in piling the cargo bags to the pallet board and in pushing the bags by the stevedores of the arrastre operator to the tug boats then to the ports.^[25] The appellate court affirmed the finding of mishandling in the discharge of cargo and it served as its basis for exculpating respondents from liability, rationalizing that with the fault of the arrastre operator in the unloading of the cargo established it should bear sole liability for the cost of the damaged/lost cargo.

While it is established that damage or losses were incurred by the shipment *during* the unloading, it is disputed who should be liable for the damage incurred at that point of transport. To address this issue, the pertinent laws and jurisprudence are examined.

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them.^[26] Subject to certain exceptions enumerated under Article

1734^[27] of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.^[28]

For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo*,^[29] the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the ship owner.

Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act.^[30] Section 3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

The above doctrines are in fact expressly incorporated in the bill of lading between the shipper Shanghai Fareast Business Co., and the consignee, to wit:

4. PERIOD OF RESPONSIBILITY. The responsibility of the carrier shall commence from the time when the goods are loaded on board the vessel and shall cease when they are discharged from the vessel.

The Carrier shall not be liable of loss of or damage to the goods before loading and after discharging from the vessel, howsoever such loss or damage arises.^[31]

On the other hand, the functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle.^[32] Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.^[33]

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.^[34]

In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*^[35] the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote:

The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee

and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. **Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.**(Emphasis supplied) (Citations omitted)

The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals*^[36] with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

Thus, in this case the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The aforementioned Section 3(2) of the COGSA states that among the carriers' responsibilities are to properly and carefully load, care for and discharge the goods carried. The bill of lading covering the subject shipment likewise stipulates that the carrier's liability for loss or damage to the goods ceases after its discharge from the vessel. Article 619 of the Code of Commerce holds a ship captain liable for the cargo from the time it is turned over to him until its delivery at the port of unloading.

In a case decided by a U.S. Circuit Court, *Nichimen Company v. M./V. Farland*,^[37] it was ruled that like the duty of seaworthiness, the duty of care of the cargo is non-delegable,^[38] and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee, and there is an implied obligation that this shall be accomplished with sound machinery, competent hands, and in such manner that no unnecessary injury shall be done thereto.^[39] And the fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading.^[40]

The exercise of the carrier's custody and responsibility over the subject shipment during the unloading actually transpired in the instant case during the unloading of the shipment as testified by Mr. Talens, the cargo surveyor, to quote:

Atty. Repol:

- Do you agree with me that Wallem Philippines is a shipping [company]?

A Yes, sir.

Q And, who hired the services of the stevedores?

A The checker of the vessel of Wallem, sir.^[41]

x x x

Q Mr. Witness, during the discharging operation of this cargo, where was the master of the vessel?