

FIRST DIVISION

[G.R. NO. 146426, June 27, 2006]

**CARGOLIFT SHIPPING, INC. PETITIONER, VS. L. ACUARIO
MARKETING CORP. AND SKYLAND BROKERAGE, INC.,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review on certiorari of the July 6, 2000 Decision^[1] of the Court of Appeals in CA-G.R. CV No. 55664, which affirmed the judgment^[2] of the Regional Trial Court of Caloocan City, Branch 121, in Civil Case No. C-16120 in so far as it found petitioner Cargolift Shipping, Inc. ("Cargolift") liable, as third-party defendant, for actual damages in the sum of P97,021.20, as well as the November 28, 2000 Resolution^[3] denying the motion for reconsideration.

The antecedent facts of the case are as follows:

Sometime in March 1993, respondent L. Acuario Marketing Corp., ("Acuario") and respondent Skyland Brokerage, Inc., ("Skyland") entered into a time charter agreement^[4] whereby Acuario leased to Skyland its L. Acuario II barge for use by the latter in transporting electrical posts from Manila to Limay, Bataan. At the same time, Skyland also entered into a separate contract^[5] with petitioner Cargolift, for the latter's tugboats to tow the aforesaid barge.

In accordance with the foregoing contracts, petitioner's tugboat M/T Beejay left the Manila South Harbor on April 1, 1993 with Acuario's barge in tow. It reached the port of Limay, Bataan on April 3, 1993, whereupon M/T Beejay disengaged and once again set sail for Manila. Petitioner's other tugboat, the M/T Count, remained in Bataan to secure the barge for unloading.

Off-loading operations went underway until April 7, 1993, when operations were interrupted for the next two days to give way to the observance of the lenten season. The unloading of the cargo was concluded on April 12, 1993, by which time M/T Beejay had gone back to Bataan for the return trip. The M/T Beejay and the barge returned to the port of Manila on April 13, 1993.

On the same day, the barge was brought to Acuario's shipyard where it was allegedly discovered by Acuario's dry-docking officer, Guillermo Nacu, Jr., that the barge was listing due to a leak in its hull. According to Nacu, he was informed by the skipper of the tugboat that the damage was sustained in Bataan. To confirm the same, Nacu ordered an underwater survey of the barge and prepared a damage report dated April 14, 1993. No representative of Skyland was present during the inspection although it was furnished with a copy of the said report.

The barge was consequently dry-docked for repairs at the Western Shipyard from April 16 to April 26, 1993. Acuario spent the total sum of P97,021.20 for the repairs.
[6]

Pursuant to its contract with Skyland which provided that "(a)ny damage or loss on the barge due to the fault or negligence of charterers shall be the responsibility of the (c)harterer or his representative,"[7] Acuario wrote Skyland seeking reimbursement of its repair costs, failing which, it filed a complaint for damages against Skyland before the Regional Trial Court of Caloocan City, where the case was docketed as Civil Case No. C-16120 and raffled to Branch 121.

Skyland, in turn, filed a third-party complaint[8] against petitioner alleging that it was responsible for the damage sustained by the barge.

According to Acuario and its witnesses, the weather in Bataan shifted drastically at dawn of April 7, 1993 while the barge was docked at the Limay port eight meters away from the stone wall. Due to strong winds and large waves, the barge repeatedly hit its hull on the wall, thus prompting the barge patron to alert the tugboat captain of the M/T Count to tow the barge farther out to sea. However, the tugboat failed to pull the barge to a safer distance due to engine malfunction, thereby causing the barge to sustain a hole in its hull. Fortunately, no part of the cargo was lost even if only half of it had been unloaded at that time.[9]

On the other hand, petitioner and Skyland denied that the barge had been damaged. One of its witnesses, Salvador D. Ocampo, claimed that he was involved in all aspects of the operation and that no accident of any sort was brought to his knowledge. He alleged that the barge patron and tug master made no mention of any maritime casualty during the clearing of the vessels at the Philippine Ports Authority in Limay, Bataan. The barge was in good condition and was not damaged when it was turned over to Acuario on April 13, 1993.[10]

In due course, the trial court promulgated its decision dated June 10, 1996, the dispositive part of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering the defendant Skyland Brokerage to pay to the plaintiff L. Acuario Marketing Corporation the cost of repairs of the barge L. Acuario II in the amount of P97,021.20 and to seek reimbursement from the third-party defendant Cargolift Shipping;
2. Ordering the defendant to pay attorney's fees in the amount of P24,255.30 and to seek reimbursement thereof from the third-party defendant; and
3. Ordering the defendant to pay the costs of suit subject to reimbursement from the third-party defendant.

SO ORDERED.[11]

The trial court gave credence to the testimonies of Acuario's witnesses that the barge sustained damage while it was being chartered by Skyland. It held that the positive testimonies of Acuario's witnesses, coupled with documentary evidence detailing the nature and extent of the damage as well as the repairs done on the barge, should prevail over the bare denials of Skyland and petitioner. It also noted that two of the latter's three witnesses were not in Limay, Bataan when the incident happened.

The trial court further held that Skyland was liable under its time charter agreement with Acuario pursuant to Article 1159 of the Civil Code which states that "contracts have the force of law between the contracting parties." Skyland must bear the consequences of the tugboat's incapacity to respond to the barge's request for assistance because Acuario had no control in the selection of the tugboats used by Skyland. But since the ultimate fault lies with petitioner, justice demands that the latter reimburse Skyland for whatever it may be adjudged to pay Acuario.^[12]

Both Skyland and petitioner elevated the matter to the Court of Appeals which, on July 6, 2000, rendered the assailed Decision affirming the trial court, but deleting the award of attorney's fees. Upon denial of its motion for reconsideration,^[13] petitioner brought the instant petition raising the following issues:

I

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT L. ACUARIO II SUSTAINED DAMAGE AND THAT IT WAS SUSTAINED DURING ITS CHARTER TO RESPONDENT SKYLAND.

II

ASSUMING THAT L. ACUARIO II SUFFERED DAMAGE, WHETHER THE COURT OF APPEALS ERRED IN UPHOLDING THE TRIAL COURT DECISION HOLDING PETITIONER LIABLE THEREFOR.^[14]

The petition lacks merit.

On the first assigned error, petitioner is asking this Court to resolve factual issues that have already been settled by the courts below. The question of whether the barge had been damaged during its charter to Skyland is a factual matter, the determination of which may not be generally disturbed on appeal. Questions of fact are not reviewable by this Court except under certain exceptional circumstances.^[15] No such exceptional circumstance exists in the case at bar.

On the contrary, the factual conclusions reached by the courts below are consistent with the evidence on record. Acuario's witnesses testified that strong winds and waves caused the barge to bump into the walls of the pier where it was berthed for unloading. Petitioner's tugboat failed to tow it farther away due to engine breakdown, thus causing the barge to sustain a hole in its hull. These testimonies were duly supported and corroborated by documentary evidence detailing the damage and repairs done on the barge.^[16]