

SECOND DIVISION

[G.R. No. 155014, November 11, 2005]

CRESCENT PETROLEUM, LTD., PETITIONER, VS. M/V "LOK MAHESHWARI," THE SHIPPING CORPORATION OF INDIA, AND PORTSERV LIMITED AND/OR TRANSMAR SHIPPING, INC., RESPONDENTS.

DECISION

PUNO, J.:

This petition for review on certiorari under Rule 45 seeks the (a) reversal of the November 28, 2001 Decision of the Court of Appeals in CA-G.R. No. CV-54920,^[1] which dismissed for "want of jurisdiction" the instant case, and the September 3, 2002 Resolution of the same appellate court,^[2] which denied petitioner's motion for reconsideration, and (b) reinstatement of the July 25, 1996 Decision^[3] of the Regional Trial Court (RTC) in Civil Case No. CEB-18679, which held that respondents were solidarily liable to pay petitioner the sum prayed for in the complaint.

The facts are as follows: Respondent M/V "Lok Maheshwari" (Vessel) is an oceangoing vessel of Indian registry that is owned by respondent Shipping Corporation of India (SCI), a corporation organized and existing under the laws of India and principally owned by the Government of India. It was time-chartered by respondent SCI to Halla Merchant Marine Co. Ltd. (Halla), a South Korean company. Halla, in turn, sub-chartered the Vessel through a time charter to Transmar Shipping, Inc. (Transmar). Transmar further sub-chartered the Vessel to Portserv Limited (Portserv). Both Transmar and Portserv are corporations organized and existing under the laws of Canada.

On or about November 1, 1995, Portserv requested petitioner Crescent Petroleum, Ltd. (Crescent), a corporation organized and existing under the laws of Canada that is engaged in the business of selling petroleum and oil products for the use and operation of oceangoing vessels, to deliver marine fuel oils (bunker fuels) to the Vessel. Petitioner Crescent granted and confirmed the request through an advice via facsimile dated November 2, 1995. As security for the payment of the bunker fuels and related services, petitioner Crescent received two (2) checks in the amounts of US\$100,000.00 and US\$200,000.00. Thus, petitioner Crescent contracted with its supplier, Marine Petrobulk Limited (Marine Petrobulk), another Canadian corporation, for the physical delivery of the bunker fuels to the Vessel.

On or about November 4, 1995, Marine Petrobulk delivered the bunker fuels amounting to US\$103,544 inclusive of barging and demurrage charges to the Vessel at the port of Pioneer Grain, Vancouver, Canada. The Chief Engineer Officer of the Vessel duly acknowledged and received the delivery receipt. Marine Petrobulk issued an invoice to petitioner Crescent for the US\$101,400.00 worth of the bunker fuels. Petitioner Crescent issued a check for the same amount in favor of Marine

Petrobulk, which check was duly encashed.

Having paid Marine Petrobulk, petitioner Crescent issued a revised invoice dated November 21, 1995 to "Portserv Limited, and/or the Master, and/or Owners, and/or Operators, and/or Charterers of M/V 'Lok Maheshwari'" in the amount of US\$103,544.00 with instruction to remit the amount on or before December 1, 1995. The period lapsed and several demands were made but no payment was received. Also, the checks issued to petitioner Crescent as security for the payment of the bunker fuels were dishonored for insufficiency of funds. As a consequence, petitioner Crescent incurred additional expenses of US\$8,572.61 for interest, tracking fees, and legal fees.

On May 2, 1996, while the Vessel was docked at the port of Cebu City, petitioner Crescent instituted before the RTC of Cebu City an action "for a sum of money with prayer for temporary restraining order and writ of preliminary attachment" against respondents Vessel and SCI, Portserv and/or Transmar. The case was raffled to Branch 10 and docketed as Civil Case No. CEB-18679.

On May 3, 1996, the trial court issued a writ of attachment against the Vessel with bond at P2,710,000.00. Petitioner Crescent withdrew its prayer for a temporary restraining order and posted the required bond.

On May 18, 1996, summonses were served to respondents Vessel and SCI, and Portserv and/or Transmar through the Master of the Vessel. On May 28, 1996, respondents Vessel and SCI, through Pioneer Insurance and Surety Corporation (Pioneer), filed an urgent ex-parte motion to approve Pioneer's letter of undertaking, to consider it as counter-bond and to discharge the attachment. On May 29, 1996, the trial court granted the motion; thus, the letter of undertaking was approved as counter-bond to discharge the attachment.

For failing to file their respective answers and upon motion of petitioner Crescent, the trial court declared respondents Vessel and SCI, Portserv and/or Transmar in default. Petitioner Crescent was allowed to present its evidence ex-parte.

On July 25, 1996, the trial court rendered its decision in favor of petitioner Crescent, thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff [Crescent] and against the defendants [Vessel, SCI, Portserv and/or Transmar].

Consequently, the latter are hereby ordered to pay plaintiff jointly and solidarily, the following:

- (a) the sum of US\$103,544.00, representing the outstanding obligation;
- (b) interest of US\$10,978.50 as of July 3, 1996, plus additional interest at 18% per annum for the period thereafter, until the principal account is fully paid;
- (c) attorney's fees of P300,000.00; and

(d) P200,000.00 as litigation expenses.

SO ORDERED.

On August 19, 1996, respondents Vessel and SCI appealed to the Court of Appeals. They attached copies of the charter parties between respondent SCI and Halla, between Halla and Transmar, and between Transmar and Portserv. They pointed out that Portserv was a time charterer and that there is a clause in the time charters between respondent SCI and Halla, and between Halla and Transmar, which states that "the Charterers shall provide and pay for all the fuel except as otherwise agreed." They submitted a copy of Part II of the Bunker Fuel Agreement between petitioner Crescent and Portserv containing a stipulation that New York law governs the "construction, validity and performance" of the contract. They likewise submitted certified copies of the Commercial Instruments and Maritime Lien Act of the United States (U.S.), some U.S. cases, and some Canadian cases to support their defense.

On November 28, 2001, the Court of Appeals issued its assailed Decision, which reversed that of the trial court, viz:

WHEREFORE, premises considered, the Decision dated July 25, 1996, issued by the Regional Trial Court of Cebu City, Branch 10, is hereby REVERSED and SET ASIDE, and a new one is entered DISMISSING the instant case for want of jurisdiction.

The appellate court denied petitioner Crescent's motion for reconsideration explaining that it "dismissed the instant action primarily on the ground of *forum non conveniens* considering that the parties are foreign corporations which are not doing business in the Philippines."

Hence, this petition submitting the following issues for resolution, viz:

1. Philippine courts have jurisdiction over a foreign vessel found inside Philippine waters for the enforcement of a maritime lien against said vessel and/or its owners and operators;
2. The principle of *forum non conveniens* is inapplicable to the instant case;
3. The trial court acquired jurisdiction over the subject matter of the instant case, as well as over the res and over the persons of the parties;
4. The enforcement of a maritime lien on the subject vessel is expressly granted by law. The Ship Mortgage Acts as well as the Code of Commerce provides for relief to petitioner for its unpaid claim;
5. The arbitration clause in the contract was not rigid or inflexible but expressly allowed petitioner to enforce its maritime lien in Philippine courts provided the vessel was in the Philippines;

6. The law of the state of New York is inapplicable to the present controversy as the same has not been properly pleaded and proved;
7. Petitioner has legal capacity to sue before Philippine courts as it is suing upon an isolated business transaction;
8. Respondents were duly served summons although service of summons upon respondents is not a jurisdictional requirement, the action being a *suit quasi in rem*;
9. The trial court's decision has factual and legal bases; and,
10. The respondents should be held jointly and solidarily liable.

In a nutshell, this case is for the satisfaction of unpaid supplies furnished by a foreign supplier in a foreign port to a vessel of foreign registry that is owned, chartered and sub-chartered by foreign entities.

Under Batas Pambansa Bilang 129, as amended by Republic Act No. 7691, RTCs exercise exclusive original jurisdiction "(i)n all actions in admiralty and maritime where the demand or claim exceeds two hundred thousand pesos (P200,000) or in Metro Manila, where such demand or claim exceeds four hundred thousand pesos (P400,000)." Two (2) tests have been used to determine whether a case involving a contract comes within the admiralty and maritime jurisdiction of a court - the **locational test** and the **subject matter test**. The English rule follows the locational test wherein maritime and admiralty jurisdiction, with a few exceptions, is exercised only on contracts made upon the sea and to be executed thereon. This is totally rejected under the American rule where the criterion in determining whether a contract is maritime depends on the nature and subject matter of the contract, having reference to maritime service and transactions.^[4] **In International Harvester Company of the Philippines v. Aragon,**^[5] we adopted the American rule and held that "(w)hether or not a contract is maritime depends not on the place where the contract is made and is to be executed, making the locality the test, but on the subject matter of the contract, making the true criterion a maritime service or a maritime transaction."

A contract for furnishing supplies like the one involved in this case is maritime and within the jurisdiction of admiralty.^[6] It may be invoked before our courts through an action *in rem* or *quasi in rem* or an action *in personam*. Thus: ^[7]

x x x

"Articles 579 and 584 [of the Code of Commerce] provide a method of collecting or enforcing not only the liens created under Section 580 but also for the collection of any kind of lien whatsoever."^[8] In the Philippines, we have a complete legislation, both substantive and adjective, under which to bring an action *in rem* against a vessel for the purpose of enforcing liens. The substantive law is found in Article 580 of the Code of Commerce. The procedural law is to be found in Article 584 of the same Code. The result is, therefore, that in the Philippines any

vessel – even though it be a foreign vessel – found in any port of this Archipelago may be attached and sold under the substantive law which defines the right, and the procedural law contained in the Code of Commerce by which this right is to be enforced.^[9] x x x. But where neither the law nor the contract between the parties creates any lien or charge upon the vessel, the only way in which it can be seized before judgment is by pursuing the remedy relating to attachment under Rule 59 [now Rule 57] of the Rules of Court.^[10]

But, is petitioner Crescent entitled to a maritime lien under our laws? Petitioner Crescent bases its claim of a maritime lien on **Sections 21, 22 and 23 of Presidential Decree No. 1521** (P.D. No. 1521), also known as the **Ship Mortgage Decree of 1978**, viz:

Sec. 21. Maritime Lien for Necessaries; persons entitled to such lien. - Any person furnishing repairs, supplies, towage, use of dry dock or maritime railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*, and it shall be necessary to allege or prove that credit was given to the vessel.

Sec. 22. Persons Authorized to Procure Repairs, Supplies and Necessaries. - The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessities for the vessel: The managing owner, ship's husband, master or any person to whom the management of the vessel at the port of supply is entrusted. No person tortuously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Sec. 23. Notice to Person Furnishing Repairs, Supplies and Necessaries. - The officers and agents of a vessel specified in Section 22 of this Decree shall be taken to include such officers and agents when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel; but nothing in this Decree shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.

Petitioner Crescent submits that these provisions apply to both domestic and foreign vessels, as well as domestic and foreign suppliers of necessities. It contends that the use of the term "any person" in Section 21 implies that the law is not restricted to domestic suppliers but also includes all persons who supply provisions and necessities to a vessel, whether foreign or domestic. It points out further that the law does not indicate that the supplies or necessities must be furnished in the Philippines in order to give petitioner the right to seek enforcement of the lien with a Philippine court.^[11]

Respondents Vessel and SCI, on the other hand, maintain that Section 21 of the P.D.