

THIRD DIVISION

[G.R. No. 140613, October 15, 2002]

**SEVEN BROTHERS SHIPPING CORPORATION, PETITIONER, VS.
ORIENTAL ASSURANCE CORPORATION, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

In this petition for review on certiorari,^[1] Seven Brothers Shipping Corporation (Seven Brothers) assails the Decision^[2] of the Court of Appeals dated July 19, 1999 in CA-G.R. SP No. 50262,^[3] the dispositive portion of which reads:

"WHEREFORE, the questioned orders of the public respondent (RTC-Manila) are hereby REVERSED and SET ASIDE for having been issued with grave abuse of discretion and absence of jurisdiction. Since petitioner (Oriental Assurance) is entitled to the immediate execution of this Court's final and executory decision, the lifted levy and quashed execution of the Regional Trial Court are reinstated. It is further ordered that the final and executory Judgment in CA-G.R. CV No. 42890 be forthwith executed pending any appeal, petition for review, or petition for certiorari against this decision which may be raised by the respondents to the Supreme Court.

"Costs against the private respondent.

"SO ORDERED."

Records show that on December 20, 1998, a charter party was executed between C. Alcantara & Sons, Inc. (Alcantara & Sons) and petitioner Seven Brothers, owner of the vessel M/V "Diamond Bear." The parties agreed, among others, that the vessel would load lauan logs at Surigao del Sur with Alcantara & Sons as consignee of the cargo.

Oriental Assurance Corporation (Oriental Assurance), respondent, insured the cargo consigned to Alcantara & Sons under a valued policy of Eight Million (P8,000,000.00) Pesos. On March 9, 1989, the cargo was shipped on board the vessel M/V "Diamond Bear" to be discharged in Davao City pursuant to the charter agreement.

On March 10, 1989, the entire cargo was lost when the vessel sank off the coast of Mati, Davao Oriental while *en route* to its destination. Alcantara & Sons then filed its claim for compensation for the loss against both Oriental Assurance and Seven Brothers. Since Seven Brothers denied liability, Oriental Assurance paid Alcantara & Sons P8,000,000.00 – the insured value of the cargo – as full settlement of the claim.

Subsequently, on January 29, 1990, Oriental Assurance, in its capacity as subrogee, filed a complaint with the Regional Trial Court (RTC), Branch 37, Manila, against Seven Brothers, in its capacity as owner and operator of M/V "Diamond Bear," for the recovery of the P8,000,000.00 it paid to Alcantara and Sons, plus legal interests, attorney's fees and litigation expenses, docketed as Civil Case No. 90-51833, *Oriental Assurance Corporation vs. Seven Brothers Shipping Corporation*. On January 13, 1993, the RTC dismissed the complaint and the counterclaim. Oriental Assurance's motion for reconsideration was likewise denied on June 1, 1993.

Oriental Assurance interposed an appeal to the Court of Appeals, docketed as CA-G.R. CV No. 42890. On September 17, 1996, the appellate court rendered its Decision reversing the RTC Decision, thus:

"To the mind of this Court, the loss was due, not to *force majeure*, but to the unseaworthiness of defendant's vessel. As correctly observed by the plaintiff, the vessel sank because she was not a tight, staunch and strong vessel. Hence defendant failed to exercise extraordinary diligence required of a common carrier. This being so, Article 841, not Article 840, of the Code of Commerce finds application in this case, in accordance with the pronouncement in *Tan Chiong Sian vs. Inchausti and Co.* (22 Phil. 152), thus:

'Treating of shipwrecks, article 840 of the Code of Commerce prescribes:

'The losses and damages suffered by a vessel and her cargo by reason of shipwreck or stranding shall be individually for the account of the owners, the part of the wreck which may be saved belonging to them in the same proportion.

'And Article 841 of the same Code reads:

'If the wreck or stranding should arise through malice, negligence, or lack of skill of the captain, or because the vessel put to sea insufficiently repaired and supplied, the owner or the freighters may demand indemnity of the captain for the damages caused to the vessel or cargo by the accident, in accordance with the provisions contained in articles 610, 612, 614 and 621.

'The general rule established in the first of the foregoing articles is that the loss of the vessel and of its cargo as the result of shipwreck, shall fall upon the respective owners thereof save for the exceptions specified in the second of the said articles.

'These legal provisions are in harmony with those of Articles 361 and 362 of the Code of Commerce, and are applicable whenever it is proved that the loss of or damage to the goods was the result of fortuitous event or of *force majeure*; but the carrier shall be liable for the loss or damage arising from the causes aforementioned if it shall have been proven that they

occurred through his own fault or negligence or by his failure to take the same precautions usually adopted by diligent and careful persons.' (emphasis added)

"It having been shown that defendant is liable for the loss of the shipment of logs as a result of the sinking of its vessel, the MV "Diamond Bear", on March 9, 1989, it is obliged to pay plaintiff as subrogee the amount of P8,000,000.00 which the latter paid to the consignee Alcantara and Sons, Inc., on the basis of the marine insurance policy covering said shipment. However, this Court finds no sufficient basis to award attorney's fees in plaintiff's favor.

"WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE and accordingly, another judgment is rendered ordering defendant to pay plaintiff the amount of P8,000,000.00, plus interest at the legal rate computed from January 11, 1990, the date the complaint was filed, until said sum shall have been fully paid.

"No pronouncement as to costs."

Seven Brothers filed a motion for reconsideration but was denied by the Court of Appeals on April 21, 1997.

Forthwith, Seven Brothers filed with this Court a petition for review on certiorari, docketed as G.R. No. 128982. On July 16, 1997, this Court issued a Resolution dismissing the petition for lack of a certification of non-forum shopping. On October 1, 1997, Seven Brothers' motion for reconsideration was denied with finality. On October 31, 1997, an Entry of Judgment was rendered.

On March 31, 1998, the RTC granted Oriental Assurance's urgent motion for issuance of a writ of execution in Civil Case No. 90-51833. The writ commanded the sheriff to satisfy, out of the goods and chattels of Seven Brothers, the sum of P8,000,000.00 with legal interest and the costs of suit in favor of Oriental Assurance. Thereupon, the sheriff levied on Seven Brothers' vessels, the M/V "Diamond Deer" and the M/V "Diamond Rabbit." The auction sale was set on April 17, 1998.

However, on April 14, 1998, Seven Brothers filed with the trial court a motion to quash the writ of execution and to lift the levy on its vessels. Seven Brothers contended that:

"a) The Sheriff's levy on M/V Diamond Deer was invalid because the vessel is not owned by Seven Brothers but by H. Superservice Shipping Corporation, ("H. Superservice") a Panama company;

"b) The levy on M/V Diamond Rabbit was in violation of the Rules of Court, Rule 39, Section 9(a) and (b) because Sheriff did not make a demand on the petitioner for payment of the judgment in cash, prior to levying on the vessel, as required by Rule 39, Section 9(a), nor allowed the petitioner to exercise the option granted to it under Section 9(b); and

"c) Their liability to Oriental Assurance had already been extinguished upon the sinking of the vessel M/V Diamond Bear, in accordance with the Limited Liability Rule in maritime law."