

## THIRD DIVISION

[ G.R. No. 96453, August 04, 1999 ]

**NATIONAL FOOD AUTHORITY, ROSELINDA GERALDEZ, RAMON SARGAN AND ADELINA A. YAP, PETITIONERS, VS. THE HON. COURT OF APPEALS AND HONGFIL SHIPPING CORPORATION, RESPONDENTS.**

### DECISION

**PURISIMA, J.:**

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court of the Decision,<sup>[1]</sup> of the Court of Appeals which affirmed the decision of Branch 165 of the Regional Trial Court, Pasig City in Civil Case No. 55892, entitled "Hongfil Shipping Corporation vs. National Food Authority, Roselinda Geraldez, Ramon Sargan and Adelina A. Yap,"<sup>[2]</sup> ordering the National Food Authority to pay plaintiff's claim for demurrage and deadfreight.

The facts that matter are undisputed.

National Food Authority (NFA), thru its officers then, Emil Ong, Roselinda Geraldez, Ramon Sargan and Adelina A. Yap, entered into a "Letter of Agreement for Vessel /Barge Hire"<sup>[3]</sup> with Hongfil Shipping Corporation (Hongfil) for the shipment of 200,000 bags of corn grains from Cagayan de Oro City to Manila, under the following terms and conditions, to wit:

- |                                     |   |
|-------------------------------------|---|
| "1. Name of Vessel/Barge            | : MV CHARLIE/DIANE  |
| 2. Cargo                            | : Corn grains in bag  |
| 3. Quantity                         | : Two Hundred Thousand bags, more or less   |
| 4. Loading Port                     | : One Safe Berth at Cagayan de Oro Port   |
| 5. Discharging Port                 | : One Safe Berth at North Harbor, Manila  |
| 6. Laydays (Loading and Unloading): | : Customary Quick Dispatch (CQD)  |
| 7. Demurrage/Dispatch               | : None  |
| 8. Freight Rate                     | : Seven Pesos 30/100 (P7.30) per bar or a total of P1,460,000.00 based on out-turn weight at 50 kilos per bag   |
| 9. Payment of Freight               | : Loading - 25% upon completion of loading; 25% upon commence-ment of discharge and balance 15 days after presentation of complete billing documents subject to |

usual accounting auditing  
regulations and procedures."

NFA sent Hongfil a Letter of Advice that its (Hongfil) vessel should proceed to Cagayan de Oro City. On February 6, 1987, M/V DIANE/CHARLIE of Hongfil arrived in Cagayan de Oro City 1500 hours. Hongfil notified the Provincial Manager of NFA in Cagayan de Oro, Eduardo A. Mercado, of its said vessel's readiness to load and the latter received the said notification on February 9, 1987.<sup>[4]</sup>

A certification of charging rate was then issued by Gold City Integrated Port Services, Inc. (INPORT), the arrastre firm in Cagayan de Oro City, which certified that it would take them (INPORT) seven (7) days, eight (8) hours and forty-three (43) minutes<sup>[5]</sup> to load the 200,000 bags of NFA corn grains.

On February 10, 1987, loading on the vessel commenced and was terminated on March 4, 1987. As there was a strike staged by the arrastre workers and in view of the refusal of the striking stevedores to attend to their work, the loading of said corn grains took twenty-one (21) days, fifteen hours (15) and eighteen (18) minutes to finish.

On March 6, 1987, the NFA Provincial Manager allowed MV CHARLIE/DIANE to depart for the Port of Manila. On March 11, 1987, the vessel arrived at the Port of Manila and a certification of discharging rate was issued at the instance of Hongfil, stating that it would take twelve (12) days, six (6) hours and twenty-two (22) minutes to discharge the 200, 000 bags of corn grains.

Unfortunately, unloading only commenced on March 15, 1987 and was completed on April 7, 1987. It took a total period of twenty (20) days, fourteen (14) hours and thirty-three (33) minutes to finish the unloading, due to the unavailability of a berthing space for M/V CHARLIE/DIANE.

After the discharging was completed, NFA paid Hongfil the amount of P1,006,972.11 covering the shipment of corn grains. Thereafter, Hongfil sent its billing to NFA, claiming payment for freight covering the shut-out load or deadfreight as well as demurrage, allegedly sustained during the loading and unloading of subject shipment of corn grains.

When NFA refused to pay the amount reflected in the billing, Hongfil brought an action against NFA and its officers for recovery of deadfreight and demurrage, docketed as Civil Case No. 55892 before Branch 165 of the Regional Trial Court in Pasig City.

On February 29, 1989, after trial, the Regional Trial Court handed down its decision<sup>[6]</sup> in favor of Hongfil and against NFA and its officers, disposing thus:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment in favor of plaintiff and against the defendants, ordering:

1. defendant National Food Authority, and the public defendants, to pay the plaintiff the following:
  - a) P242,367.30, in and as payment of the deadfreight or unloaded

cargo; and

B) P1,152,687.50, in and as payment as of demurrage claim;

2. defendants to pay plaintiff, jointly and severally the amount of P50,000.00, for and as attorney's fees; and

3. Expenses of litigation or the costs of this suit.

The counterclaim of defendants are hereby dismissed for lack of merit.

SO ORDERED."

On appeal, the Court of Appeals affirmed with modification the judgment by deleting therefrom the award of attorney's fees.

Undaunted, petitioners have come to this Court via the instant petition for review under Rule 45 of the Revised Rules of Court, raising as issues:

I

WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE FOR DEADFREIGHT;

II

WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE FOR DEMURRAGE; AND

III

WHETHER OR NOT PERSONAL CIVIL LIABILITY MAY ATTACH TO THE OFFICERS OF NFA.

It bears stressing that subject Letter of Agreement is considered a Charter Party. A charter party is classified into (1) "bareboat" or "demise" charter and (2) contract of affreightment. Subject contract is one of affreightment, whereby the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for special service to be rendered by the owner of the vessel. Under such contract the ship owner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire.<sup>[7]</sup>

Anent the first issue, petitioners contend that the respondent corporation is not entitled to deadfreight as the contract itself limited their liability. Section 7 of the "Letter Agreement for Vessel/Barge Hire" provided a freight rate of Seven and 30/100 (P7.30) Pesos per bag or a total of P1,460,000 based on out-turn weight of 50 kilos per bag.

The Court of Appeals, however, held that since the charter of MV CHARLIE/DIANE was for the whole vessel, and inasmuch as the vessel may no longer accept any other cargo without the consent of the charterer NFA, the latter is liable to pay the total amount of P1,460,000.00 based on 200,000 bags, at the rate of P7.30 per

bag; in accordance with the "Letter of Agreement for Vessel/Barge Hire" which stipulated:

"xxx xxx xxx

2. Cargo : Corn Grains in Bags

3. Quantity : Two Hundred Thousand Bags, more or less

xxx xxx xxx

7. Freight Rate : Seven Pesos 30/100 (P7.30) per bag or a total of P1,460,000.00 based on out-turn weight at 50 kilos per bag. (Exh. A)"

The submission of petitioners is unsustainable. They theorize that what should be paid for was what was actually unloaded and not the number of bags of corn grains NFA contracted to load.

Under the law, the cargo not loaded is considered as deadfreight. It is the amount paid by or recoverable from a charterer of a ship for the portion of the ship's capacity the latter contracted for but failed to occupy.<sup>[8]</sup> Explicit and succinct is the law that the liability for deadfreight is on the charterer. The law in point is Article 680 of the Code of Commerce, which provides:

"Art. 680. A charterer who does not complete the full cargo he bound himself to ship shall pay the freightage of the amount he fails to ship, if the captain does not take other freight to complete the load of the vessel, in which case the first charterer shall pay the difference, should there be any."

Petitioners anchor their stance on the phrase "200,000 bags, more or less," which, according to them, meant more than 200,000 or less than 200,000 bags. As what was actually unloaded was less than 200,000 bags, NFA should only to pay for the freight therefor and not for 200,000 bags; petitioners contend.

Petitioners' contention is untenable. The words "more or less" when used in relation to quantity or distance, are words of safety and caution, intended to cover some slight or unimportant inaccuracy. It allows an adjustment to the demands of circumstances which do not weaken or destroy the statements of distance and quantity when no other guides are available.<sup>[9]</sup>

In fact, it is further disclosed by the evidence that there was a communication from NFA Administrator Emil Ong to Oscar Sanchez, Manager of Hongfil Shipping Corporation, stating clearly that the vessel M/V CHARLIE/DIANE was chartered to **"load our 200,000 bags corn grains from Cagayan de Oro to Manila at P7.30 per 50 kg./bag."**<sup>[10]</sup> Therefrom, it can be gleaned unerringly that the charter party was to transport 200,000 bags of corn grains.

It is thus decisively clear that the letter of agreement covered 200,000 bags of corn grains but only 166,798 bags were unloaded at the Port of Manila. Consequently, shut-out load or deadfreight of 33,201 bags at P7.30 per bag or P242,367.30 should be paid by NFA to Hongfil Shipping Corporation.