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[G.R. No. 130068, October 01, 1998]

FAR EASTERN SHIPPING COMPANY, PETITIONER, VS. COURT OF APPELAS AND PHILIPPINE PORTS AUTHORITY, RESPONDENTS.

[G.R. NO. 130150. OCTOBER 1, 1998]

MANILA PILOTS ASSOCIATION, PETITIONER, VS. PHILIPPINE PORTS AUTHORITY AND FAR EASTERN SHIPPING COMPANY, RESPONDENTS.

D E C I S I O N

REGALADO, J.:

These consolidated petitions for review on certiorari seek in unison to annul and set aside the decision[1] of respondent Court of Appeals of November 15, 1996 and its resolution[2] dated July 31, 1997 in CA-G.R. CV No. 24072, entitled "Philippine Ports Authority, Plaintiff-Appellee vs. Far Eastern Shipping Company, Senen C. Gavino and Manila Pilots' Association. Defendants-Appellants," which affirmed with modification the judgment of the trial court holding the defendants-appellants therein solidarily liable for damages in favor of herein private respondent.

There is no dispute about the facts as found by the appellate court, thus --

> x x x On June 20, 1980, the M/V PAVLODAR, flying under the flagship of the USSR, owned and operated by the Far Eastern Shipping Company (FESC for brevity's sake), arrived at the Port of Manila from Vancouver, British Columbia at about 7:00 o'clock in the morning. The vessel was assigned Berth 4 of the Manila International Port, as its berthing space. Captain Roberto Abellana was tasked by the Philippine Port Authority to supervise the berthing of the vessel. Appellant Senen Gavino was assigned by the appellant Manila Pilot's Association (MPA for brevity's sake) to conduct docking maneuvers for the safe berthing of the vessel to Berth No. 4.
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> Gavino boarded the vessel at the quarantine anchorage and stationed himself in the bridge, with the master of the vessel, Victor Kavankov, beside him. After a briefing of Gavino by Kavankov of the particulars of the vessel and its cargo, the vessel lifted anchor from the quarantine anchorage and proceeded to the Manila International Port. The sea was calm and the wind was ideal for docking maneuvers.
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> When the vessel reached the landmark (the big church by the Tondo North Harbor) one-half mile from the pier, Gavino ordered the engine stopped. When the vessel was already about 2,000 feet from the pier,

> Gavino ordered the anchor dropped. Kavankov relayed the orders to the crew of the vessel on the bow. The left anchor, with two (2) shackles were dropped. However, the anchor did not take hold as expected. The speed of the vessel did not slacken. A commotion ensued between the crew members. A brief conference ensued between Kavankov and the crew members. When Gavino inquired what was all the commotion about, Kavankov assured Gavino that there was nothing of it.
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> After Gavino noticed that the anchor did not take hold, he ordered the engines half-astern. Abellana, who was then on the pier apron, noticed that the vessel was approaching the pier fast. Kavankov likewise noticed that the anchor did not take hold. Gavino thereafter gave the "full-astern" code. Before the right anchor and additional shackles could be dropped, the bow of the vessel rammed into the apron of the pier causing considerable damage to the pier. The vessel sustained damage too. (Exhibit "7-Far Eastern Shipping"). Kavankov filed his sea protest (Exhibit "1-Vessel"). Gavino submitted his report to the Chief Pilot (Exhibit "1-Pilot") who referred the report to the Philippine Ports Authority (Exhibit "2-Pilot") Abellana likewise submitted his report of the incident (Exhibit "B").
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> Per contract and supplemental contract of the Philippine Ports Authority and the contractor for the rehabilitation of the damaged pier, the same cost the Philippine Ports Authority the amount of P1,126,132.25 (Exhibits "D" and "E").[3]

On January 10, 1983, the Philippine Ports Authority (PPA, for brevity), through the Solicitor General, filed before the Regional Trial Court of Manila, Branch 39, a complaint for a sum of money against Far Eastern Shipping Co., Capt. Senen C. Gavino and the Manila Pilots' Association, docketed as Civil Case No. 83-14958,[4] praying that the defendants therein be held jointly and severally liable to pay the plaintiff actual and exemplary damages plus costs of suit. In a decision dated August 1, 1985, the trial court ordered the defendants therein jointly and severally to pay the PPA the amount of P1,053,300.00 representing actual damages and the cost of suit.[5]

The defendants appealed to the Court of Appeals and raised the following issues: (1) Is the pilot of a commercial vessel, under compulsory pilotage, solely liable for the damage caused by the vessel to the pier, at the port of destination, for his negligence? And (2) Would the owner of the vessel be liable likewise if the damage is caused by the concurrent negligence of the master of vessel and the pilot under a compulsory pilotage?

As stated at the outset, respondent appellate court affirmed the findings of the court *a quo* except that it found no employer-employee relationship existing between herein private respondents Manila Pilots' Association (MPA, for short) and Capt. Gavino.[6] This being so, it ruled instead that the liability of MPA is anchored, not on Article 2180 of the Civil Code, but on the provisions of Customs Administrative Order No. 15-65,[7] and accordingly modified said decision of the trial court by holding MPA, along with its co-defendants therein, still solidarily liable to PPA but entitled MPA to reimbursement from Capt. Gavino for such amount of the adjudged

pecuniary liability in excess of the amount equivalent to seventy-five percent (75%) of its prescribed reserve fund.[8]

Neither Far Eastern Shipping Co. (briefly, FESC) nor MPA was happy with the decision of the Court of Appeals and both of them elevated their respective plaints to us via separate petitions for review on certiorari.

In G.R. No. 130068, which was assigned to the Second Division of this Court, FESC imputed that the Court of Appeals seriously erred:

> 1. in not holding Senen C. Gavino and the Manila Pilots' Association as the parties solely responsible for the resulting damages sustained by the pier deliberately ignoring the established jurisprudence on the matter.
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> 2. in holding that the master had not exercised the required diligence demanded from him by the circumstances at the time the incident happened;
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> 3. in affirming the amount of damages sustained by the respondent Philippine Ports Authority despite a strong and convincing evidence that the amount is clearly exorbitant and unreasonable;
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> 4. in not awarding any amount of counterclaim prayed for by the petitioner in its answer; and
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> 5. in not granting herein petitioner's claim against pilot Senen C. Gavino and Manila Pilots' Association in the event that it be held liable.[9]

Petitioner asserts that since the MV PAVLODAR was under compulsory pilotage at the time of the incident, it was a compulsory pilot, Capt. Gavino, who was in command and had complete control in the navigation and docking of the vessel. It is the pilot who supersedes the master for the time being in the command and navigation of a ship and his orders must be obeyed in all respects connected with her navigation. Consequently, he was solely responsible for the damage caused upon the pier apron, and not the owners of the vessel. It claims that the master of the boat did not commit any act of negligence when he failed to countermand or overrule the orders of the pilot because he did not see any justifiable reason to do so. In other words, the master cannot be faulted for relying absolutely on the competence of the compulsory pilot. If the master does not observe that a compulsory pilot is incompetent or physically incapacitated, the master is justified in relying on the pilot.[10]

Respondent PPA, in its comment, predictably in full agreement with the ruling of respondent court on the solidary liability of FESC, MPA and Capt. Gavino, stresses the concurrent negligence of Capt. Gavino, the harbor pilot, and Capt. Viktor Kabankov,* shipmaster of MV Pavlodar, as the basis of their solidary liability for damages sustained by PPA. It posits that the vessel was being piloted by Capt. Gavino with Capt. Kabankov beside him all the while on the bridge of the vessel, as the former took over the helm of MV Pavlodar when it rammed and damaged the apron of the pier of Berth No. 4 of the Manila International Port. Their concurrent negligence was the immediate and proximate cause of the collision between the vessel and the pier - Capt. Gavino, for his negligence in the conduct of docking

maneuvers for the safe berthing of the vessel; and Capt. Kabankov, for failing to countermand the orders of the harbor pilot and to take over and steer the vessel himself in the face of imminent danger, as well as for merely relying on Capt. Gavino during the berthing procedure.[11]

On the other hand, in G.R. No. 130150, originally assigned to the Court's First Division and later transferred to the Third Division, MPA, now as petitioner in this case, avers the respondent court's errors consisted in disregarding and misinterpreting Customs Administrative Order No. 15-65 which limits the liability of MPA. Said pilots' association asseverates that it should not be held solidarily liable with Capt. Gavino who, as held by respondent court, is only a member, not an employee, thereof. There being no employer-employee relationship, neither can MPA be held liable for any vicarious liability for the respective exercise of profession by its members nor be considered a joint tortfeasor as to be held jointly and severally liable.[12] It further argues that there was erroneous reliance on Customs Administrative Order No. 15-65 and the constitution and by-laws of MPA, instead of the provisions of the Civil Code on damages which, being a substantive law, is higher in category than the aforesaid constitution and by-laws of a professional organization or an administrative order which bears no provision classifying the nature of the liability of MPA for the negligence its member pilots.[13]

As for Capt. Gavino, counsel for MPA states that the former had retired from active pilotage services since July 28, 1994 and has ceased to be a member of petitioner pilots' association. He is not joined as a petitioner in this case since his whereabouts are unknown.[14]

FESC's comment thereto relied on the competence of the Court of Appeals in construing provisions of law or administrative orders as basis for ascertaining the liability of MPA, and expressed full accord with the appellate court's holding of solidary liability among itself, MPA and Capt. Gavino. It further avers that the disputed provisions of Customs Administrative Order No. 15-65 clearly established MPA's solidary liability.[15]

On the other hand, public respondent PPA, likewise through representations by the Solicitor General, assumes the same supportive stance it took in G.R. No. 130068 in declaring its total accord with the ruling of the Court of Appeals that MPA is solidarily liable with Capt. Gavino and FESC for damages, and in its application to the fullest extent of the provisions of Customs Administrative Order No. 15-65 in relation to MPA's constitution and by-laws which spell out the conditions of and govern their respective liabilities. These provisions are clear and ambiguous as regards MPA's liability without need for interpretation or construction. Although Customs Administrative Order No. 15-65 is a mere regulation issued by an administrative agency pursuant to delegated legislative authority to fix details to implement the law, it is legally binding and has the same statutory force as any valid statute.[16]

Upon motion[17] by FESC dated April 24, 1998 in G.R. No. 130150, said case was consolidated with G.R. No. 130068.[18]

Prefatorily, on matters of compliance with procedural requirements, it must be mentioned that the conduct of the respective counsel for FESC and PPA leaves much

to be desired, to the displeasure and disappointment of this Court.

Section 2, Rule 42 of the 1997 Rules of Civil Procedure[19] incorporates the former Circular No. 28-91 which provided for what has come to be known as the certification against forum shopping as an additional requisite for petitions filed with the Supreme Court and the Court of Appeals, aside from the other requirements contained in pertinent provisions of the Rules of Court therefor, with the end in view of preventing the filing of multiple complaints involving the same issues in the Supreme Court, Court of Appeals or different divisions thereof or any other tribunal or agency.

More particularly, the second paragraph of Section 2, Rule 42 provides:

> x x x x x x x x x
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> The petitioner shall also submit together with the petition a certification under oath that he has not therefore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; *if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.* (Italics supplied.)

For petitions for review filed before the Supreme Court, Section 4(e), Rule 45 specifically requires that such petition shall contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

The records show that the law firm of Del Rosario and Del Rosario through its associate, Atty. Herbert A. Tria, is the counsel of record for FESC in both G.R. No. 130068 and G.R. No. 130150.

G.R. No. 130068, which is assigned to the Court's Second Division, commenced with the filing by FESC through counsel on August 22, 1997 of a verified motion for extension of time to file its petition for thirty (30) days from August 28, 1997 or until September 27, 1997.[20] Said motion contained the following certification against forum shopping[21] signed by Atty. Herbert A. Tria as affiant:

> **CERTIFICATION**
> **AGAINST FORUM SHOPPING**
>
> I/we hereby certify that I/we have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that to the best of my own knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that if I/we should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I/we undertake to report that fact within five (5) days therefrom to this Honorable Court.