

## FIRST DIVISION

[ G.R. No. 103052, May 23, 1997 ]

**MOBIL OIL PHILIPPINES, INC., AND CALTEX (PHILS.), INC.,  
PETITIONERS, VS. HON. COURT OF APPEALS AND CONTINENTAL  
CEMENT CORPORATION, RESPONDENTS.**

### D E C I S I O N

**VITUG, J.:**

The petition for review on certiorari in the case at bar seeks the reversal of the decision of the Court of Appeals,<sup>[1]</sup> affirming that<sup>[2]</sup> of the Regional Trial Court ("RTC"), Branch 101, of Quezon City, which found herein petitioners Mobil Oil Philippines, Inc., and Caltex Philippines, Inc., jointly and severally liable to private respondent Continental Cement Corporation in the amount of eight million pesos (P8,000,000.00) for actual damages, plus ten per cent (10%) thereof by way of attorney's fees, for having delivered water-contaminated bunker fuel oil to the serious prejudice and damage of the cement firm.

Sometime in May 1982, petitioner Mobil Oil Philippines, Inc. ("MOPI"), a firm engaged in the marketing of petroleum products to industrial users, entered into a supply agreement with private respondent Continental Cement Corporation ("CCC"), a cement producer, under which the former would supply the latter's industrial fuel oil ("IFO") or bunker fuel oil ("BFO") requirements. MOPI extended to CCC an unsecured credit line of P2,000,000.00 against which CCC's purchases of oil could initially be charged.

MOPI had a "hauling contract" with Century Freight Services ("CFS") whereby CFS undertook the delivery of Mobil products to designated consignees of MOPI.

During the period starting from 12 July to 07 October 1982, MOPI made a total of sixty-seven deliveries of BFO, each delivery consisting of 20,000 liters, to CCC's cement factory in Norzagaray, Bulacan. On 08 October 1982, CCC discovered that what should have been MOPI's 20,000 BFO delivery to CCC's Norzagaray plant, through CFS's lorry truck, was, in fact, pure water. CCC at once informed MOPI of this anomaly and of its intention to meanwhile hold in abeyance all payments due to MOPI on its previous deliveries until such time as the parties would have ascertained that those deliveries were not themselves adulterated. CCC suggested that MOPI's storage tank in the Norzagaray plant be likewise investigated for possible contamination.

MOPI and CCC agreed to conduct an actual water content test. The water draining activity conducted on 22 October 1982 in the presence of representatives of both MOPI and CCC yielded the following findings:

"JOINT UNDERTAKING

## "WATER CONTENT STORAGE TANK MARKED MOBIL DELIVERIES

Content delivered by Mobil Oil Phils. Inc.

## Instead of Bunker Fuel Oil

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"WE, CONTINENTAL CEMENT CORPORATION, on this 19th day of November 1982, represented in this act by MESSRS. FEDERICO D. MEMBREBE, CORNELIO A. PAZ III, EDITH M. YAO in the presence of CIS TEODORO CARREON of Camp Olivas, San Fernando, Pampanga and Brgy. Captain DALMACIO LAPIG of Brgy. Bigte, Norzagaray, Bulacan, hereby undertake the continuation and final counting of water content on all bunker fuel oil delivered by Mobil Oil Phils., Inc. except those that have been already used in cement operation by Continental Cement Corporation; as a consequence of the water delivered by Mobil Oil Phils., Inc. lorry (Truck Plate No. 794) instead of bunker fuel oil dated October 8, 1982.

"That this continuation and final counting was made in the presence of the aforecited national and local authority in the absence of Mobil Oil Phils., Inc. representative who continuously and wantonly refused to continue on witnessing and attesting to their water deliveries instead of bunker fuel oil inspite of the three (3) letters advising them of the counting dated October 26, 1982 duly receipted by Mobil Oil Phils., Inc. on October 27, 1982; October 30, 1982 duly receipted November 2, 1982 and November 11, 1982 duly receipted November 12, 1982 with the following results as follows:

### "A. STORAGE TANK ASSIGNED TO MOBIL

NO. OF DRUMS	LTS/DRUM	TOTAL QUANTITY IN LITERS
<b>1</b>	210	210 — a mixture of 30% Bunker Oil and 70% Water

### "B. MOBIL LORRY (TRUCK PLATE NO. 794)

NO. OF DRUMS	LTS/DRUM	TOTAL QUANTITY IN LITERS
<b>Back Compartment</b>	210	9,450
<b>45</b>		
<b>Front Compartment</b>		
<b>40</b>	210	<u>8,400</u>
<b>Total 85</b>		<u>17,850</u>

"WE, FEDERICO D. MEMBREBE, Head, Quality Control; CORNELIO A. PAZ, III Plant Accountant; MRS. EDITH YAO, Warehouse Supervisor, representing CONTINENTAL CEMENT CORPORATION in this act, and CIS TEODORO CARREON, Camp Olivas, San

Fernando, Pampanga and DALMACIO LAPIG, Brgy. Captain of Brgy. Bigte, Norzagaray, Bulacan, jointly subscribed and attested to the accuracy and correctness of the second and final counting in terms of liters water content of all bunker oil delivered by Mobil Oil Phils., Inc. to CONTINENTAL CEMENT CORPORATION, except those that have been already used in the cement operation by said Continental Cement Corporation.

"FURTHER, we certify that the drums used in counting the water content has a net capacity of 210 liters. This joint undertaking has been executed for all legal purposes it will be used."<sup>[5]</sup>

Like the first "joint undertaking," this document was notarized.

Alleging in the complaint it ultimately filed with the RTC that its factory equipment broke down from 19 to 22 September 1982 due to the utilization of the water-contaminated BFO supplied by MOPI; that on 23 September 1982, its plant operations had to be stopped completely; and that it was able to resume operations only after essential repairs had been undertaken on 02 October 1982; CCC sought to recover consequential damages from MOPI. In answer, MOPI averred that CCC had accepted each delivery of BFO in accordance with the procedure for testing and acceptance of BFO deliveries; that it was only on 08 October 1982 that CCC brought to its attention the alleged anomalous delivery of 20,000 liters of BFO under invoice No. 47587 through Mariano Rivera's lorry truck; that when the delivery was being inspected by CCC's representatives, the truck driver and helper fled; that Rivera acknowledged full liability for such delivery; that Rivera promised to pay the amount of P42,730.00 for the 20,000 liters of BFO delivered; and that MOPI agreed to the water draining activity solely for the purpose of maintaining good business relations with CCC but not to admit any liability therefor.<sup>[6]</sup> In its compulsory counterclaim, MOPI claimed that CCC had an outstanding obligation to it, as of 30 November 1982, in the amount of P1,096,238.51, and that as a consequence of the "frivolous and malicious suit" which besmirched MOPI's reputation, it suffered moral damages of not less than P10,000,000.00, exemplary damages of the same amount, and the incurrence of attorney's fees.

On 23 August 1983, Caltex (Philippines) Inc., through its president, Amaury R. Gutierrez, informed CCC that it would be the new owner of MOPI, effective 01 September 1983, and that Caltex would "assume all the rights and obligations of MOPI under all its existing contracts with its consumers and dealers."<sup>[7]</sup> Disturbed somehow by the news, CCC filed an ex-parte urgent motion for the issuance of a writ of attachment.<sup>[8]</sup> The RTC issued the writ on 13 September 1983 conditioned on the filing by CCC of a bond in the amount of P5,000,000.00.<sup>[9]</sup>

Considering that, prior to the transfer of MOPI's controlling interest to Caltex, a subsidiary of MOPI, named International Filters Corporation, was renamed Mobil Philippines, Inc. ("MPI"), with MOPI's officers as incorporators, CCC filed a motion to amend the complaint as to so implead both Caltex and MPI party-defendants.<sup>[10]</sup> The amended complaint was filed with the motion.<sup>[11]</sup> MOPI, MPI and Caltex thereupon filed an amended answer.<sup>[12]</sup>

On 28 November 1984, upon motion of defendants, the RTC lifted the writ of

attachment it had issued on condition that MPI would keep and maintain on deposit with the Security Bank and Trust Company, an amount of P10,000,000.00.<sup>[13]</sup> The depository bank was later changed to Citibank NT & SA.<sup>[14]</sup>

In due course, the RTC rendered a decision resolving the following issues agreed upon by the parties at the pre-trial conference; to wit:

1. Whether or not there were deliveries of BFO (or IFO) mixed with water before October 8, 1982;
2. Whether or not the defendants were liable for the contamination of the IFO notwithstanding that, although defendant MOPI contracted the carrier of the IFO, both MOPI and CCC had agreed upon the personnel of the carrier; and
3. Whether or not the BFO mixed with water resulted in damage to CCC's machinery and loss of production/income.

The RTC found that there were deliveries of adulterated IFO even prior to 08 October 1982 based on the results of the draining activity conducted on 22 October 1982 and on 19 November 1982.<sup>[15]</sup> The findings showed that the adulteration of the IFO was "well over the tolerable water contents as stated in the Petron Basic Line (Exhibit `V') which should only be 0.1% (Exhibit `V-3-a')."<sup>[16]</sup> Although the tests did not include deliveries before October 1982, it was safe to say, the court observed, that the residue in the storage tank would be "plain water which would be in big volume" considering that the draining pipe in CCC's storage tank for MOPI's IFO was eight (8) inches above the bottom of the huge storage tank.<sup>[17]</sup>

Relative to the second issue, the RTC held that the allegation of the defendants that the carrier was chosen by CCC was a lame excuse. It noted that it was MOPI itself which entered into the hauling contract with CFS, and that there was, in fact, a "tacit admission" of liability on the part of the oil companies when they replaced the 20,000 liters of "mostly water" delivered on 08 October 1982 by an "agent or surrogate" of defendants. No fraud on the part of defendants, nevertheless, was seen to have attended the deliveries of contaminated oil which could warrant an award of damages outside of actual damages.

On the third issue, the lower court, noting the testimonies of the plant manager, Ricardo de Silva, and of Engineer Filomeno L. Villaluz, concluded that the lowered temperature resulting from the water-contaminated BFO caused the loosening of the magneton bricks lining the rotary kiln used in the clinkering process in cement production. The actual damage caused amounted, as prayed for and as testified to by CCC's vice-resident Urbano Cruz, to P8,000,000.00.

The defendants appealed to the Court of Appeals. On 19 September 1991, the appellate court rendered judgment affirming the decision of the RTC.

On the contention that the RTC erred in finding that BFO deliveries prior to 08 October 1982 were contaminated with water and that no Mobil BFO deliveries remained unused as of 22 October 1982 when the first water-draining was conducted, the Court of Appeals held that appellants hardly could espouse this view considering that MOPI had participated in the water-draining activity on 22 October