

## FIRST DIVISION

[ G.R. No. 119197, May 16, 1997 ]

**TABACALERA INSURANCE CO., PRUDENTIAL GUARANTEE &  
ASSURANCE, INC., AND NEW ZEALAND INSURANCE CO., LTD.,  
PETITIONERS, VS. NORTH FRONT SHIPPING SERVICES, INC.,  
AND COURT OF APPEALS, RESPONDENTS.  
D E C I S I O N**

**BELLOSILLO, J.:**

TABACALERA INSURANCE CO., Prudential Guarantee & Assurance, Inc., and New Zealand Insurance Co., Ltd., in this petition for review on certiorari, assail the 22 December 1994 decision of the Court of Appeals and its Resolution of 16 February 1995 which affirmed the 1 June 1993 decision of the Regional Trial Court dismissing their complaint for damages against North Front Shipping Services, Inc.

On 2 August 1990, 20,234 sacks of corn grains valued at P3,500,640.00 were shipped on board North Front 777, a vessel owned by North Front Shipping Services, Inc. The cargo was consigned to Republic Flour Mills Corporation in Manila under Bill of Lading No. 001<sup>[1]</sup> and insured with the herein mentioned insurance companies. The vessel was inspected prior to actual loading by representatives of the shipper and was found fit to carry the merchandise. The cargo was covered with tarpaulins and wooden boards. The hatches were sealed and could only be opened by representatives of Republic Flour Mills Corporation.

The vessel left Cagayan de Oro City on 2 August 1990 and arrived Manila on 16 August 1990. Republic Flour Mills Corporation was advised of its arrival but it did not immediately commence the unloading operations. There were days when unloading had to be stopped due to variable weather conditions and sometimes for no apparent reason at all. When the cargo was eventually unloaded there was a shortage of 26.333 metric tons. The remaining merchandise was already moldy, rancid and deteriorating. The unloading operations were completed on 5 September 1990 or twenty (20) days after the arrival of the barge at the wharf of Republic Flour Mills Corporation in Pasig City.

Precision Analytical Services, Inc., was hired to examine the corn grains and determine the cause of deterioration. A Certificate of Analysis was issued indicating that the corn grains had 18.56% moisture content and the wetting was due to contact with salt water. The mold growth was only incipient and not sufficient to make the corn grains toxic and unfit for consumption. In fact the mold growth could still be arrested by drying.

Republic Flour Mills Corporation rejected the entire cargo and formally demanded from North Front Shipping Services, Inc., payment for the damages suffered by it. The demands however were unheeded. The insurance companies were perforce obliged to pay Republic Flour Mills Corporation P2,189,433.40.

By virtue of the payment made by the insurance companies they were subrogated to the rights of Republic Flour Mills Corporation. Thusly, they lodged a complaint for damages against North Front Shipping Services, Inc., claiming that the loss was exclusively attributable to the fault and negligence of the carrier. The Marine Cargo Adjusters hired by the insurance companies conducted a survey and found cracks in the bodega of the barge and heavy concentration of molds on the tarpaulins and wooden boards. They did not notice any seals in the hatches. The tarpaulins were not brand new as there were patches on them, contrary to the claim of North Front Shipping Services, Inc., thus making it possible for water to seep in. They also discovered that the bulkhead of the barge was rusty.

North Front Shipping Services, Inc., averred in refutation that it could not be made culpable for the loss and deterioration of the cargo as it was never negligent. Captain Solomon Villanueva, master of the vessel, reiterated that the barge was inspected prior to the actual loading and was found adequate and seaworthy. In addition, they were issued a permit to sail by the Coast Guard. The tarpaulins were doubled and brand new and the hatches were properly sealed. They did not encounter big waves hence it was not possible for water to seep in. He further averred that the corn grains were farm wet and not properly dried when loaded.

The court below dismissed the complaint and ruled that the contract entered into between North Front Shipping Services, Inc., and Republic Flour Mills Corporation was a charter-party agreement. As such, only ordinary diligence in the care of goods was required of North Front Shipping Services, Inc. The inspection of the barge by the shipper and the representatives of the shipping company before actual loading, coupled with the Permit to Sail issued by the Coast Guard, sufficed to meet the degree of diligence required of the carrier.

On the other hand, the Court of Appeals ruled that as a common carrier required to observe a higher degree of diligence North Front 777 satisfactorily complied with all the requirements hence was issued a Permit to Sail after proper inspection. Consequently, the complaint was dismissed and the motion for reconsideration rejected.

The charter-party agreement between North Front Shipping Services, Inc., and Republic Flour Mills Corporation did not in any way convert the common carrier into a private carrier. We have already resolved this issue with finality in *Planters Products, Inc. v. Court of Appeals*<sup>[2]</sup> thus -

A 'charter-party' is defined as a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use; a contract of affreightment by which the owner of a ship or other vessel lets the whole or a part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight x x x x Contract of affreightment may either be time charter, wherein the vessel is leased to the charterer for a fixed period of time, or voyage charter, wherein the ship is leased for a single voyage. In both cases, the charter-party provides for the hire of the vessel only, either for a determinate period of time or for a single or consecutive voyage, the ship owner to supply the ship's store, pay for