

## THIRD DIVISION

**[ G.R. No. 112287, December 12, 1997 ]**

**NATIONAL STEEL CORPORATION, PETITIONER, VS. COURT OF APPEALS AND VLASONS SHIPPING, INC., RESPONDENTS.**

**[G.R. NO. 112350. DECEMBER 12, 1997]**

**VLASONS SHIPPING, INC., PETITIONER, VS. COURT OF APPEALS AND NATIONAL STEEL CORPORATION, RESPONDENTS.**  
**D E C I S I O N**

**PANGANIBAN, J.:**

The Court finds occasion to apply the rules on the seaworthiness of a private carrier, its owner's responsibility for damage to the cargo and its liability for demurrage and attorney's fees. The Court also reiterates the well-known rule that findings of facts of trial courts, when affirmed by the Court of Appeals, are binding on this Court.

### The Case

Before us are two separate petitions for review filed by National Steel Corporation (NSC) and Vlasons Shipping, Inc. (VSI), both of which assail the August 12, 1993 Decision of the Court of Appeals. <sup>[1]</sup> The Court of Appeals modified the decision of the Regional Trial Court of Pasig, Metro Manila, Branch 163 in Civil Case No. 23317. The RTC disposed as follows:

"WHEREFORE, judgment is hereby rendered in favor of defendant and against the plaintiff dismissing the complaint with cost against plaintiff, and ordering plaintiff to pay the defendant on the counterclaim as follows:

1. The sum of P75,000.00 as unpaid freight and P88,000.00 as demurrage with interest at the legal rate on both amounts from April 7, 1976 until the same shall have been fully paid;
2. Attorney's fees and expenses of litigation in the sum of P100,000.00; and
3. Cost of suit.

SO ORDERED." <sup>[2]</sup>

On the other hand, the Court of Appeals ruled:

"WHEREFORE, premises considered, the decision appealed from is modified by reducing the award for demurrage to P44,000.00 and deleting the award for attorney's fees and expenses of litigation. Except as thus modified, the decision is AFFIRMED. There is no pronouncement as to costs.

SO ORDERED." [3]

### **The Facts**

The MV Vlasons I is a vessel which renders tramping service and, as such, does not transport cargo or shipment for the general public. Its services are available only to specific persons who enter into a special contract of charter party with its owner. It is undisputed that the ship is a private carrier. And it is in this capacity that its owner, Vlasons Shipping, Inc., entered into a contract of affreightment or contract of voyage charter hire with National Steel Corporation.

The facts as found by Respondent Court of Appeals are as follows:

"(1) On July 17, 1974, plaintiff National Steel Corporation (NSC) as Charterer and defendant Vlasons Shipping, Inc. (VSI) as Owner, entered into a Contract of Voyage Charter Hire (Exhibit 'B'; also Exhibit '1') whereby NSC hired VSI's vessel, the MV 'VLASONS I' to make one (1) voyage to load steel products at Iligan City and discharge them at North Harbor, Manila, under the following terms and conditions, viz:

'1. x x                      x x                      x x.

2. Cargo: Full cargo of steel products of not less than 2,500 MT, 10% more or less at Master's option.

3. x x      x x                      x x

4. Freight/Payment: P30.00 /metric ton, FIOST basis. Payment upon presentation of Bill of Lading within fifteen (15) days.

5. Laydays/Cancelling: July 26, 1974/Aug. 5, 1974.

6. Loading/Discharging Rate: 750 tons per WWDSHINC. (Weather Working Day of 24 consecutive hours, Sundays and Holidays Included).

7. Demurrage/Dispatch: P8,000.00/P4,000.00 per day.

8. x x      x x                      x x

9. Cargo Insurance: Charterer's and/or Shipper's must insure the cargoes. Shipowners not responsible for losses/damages except on proven willful negligence of the officers of the vessel.

10. Other terms:(a) All terms/conditions of NONYAZAI C/P [sic] or other

internationally recognized Charter Party Agreement shall form part of this Contract.

The terms 'F.I.O.S.T.' which is used in the shipping business is a standard provision in the NANYOZAI Charter Party which stands for 'Freight In and Out including Stevedoring and Trading', which means that the handling, loading and unloading of the cargoes are the responsibility of the Charterer. Under Paragraph 5 of the NANYOZAI Charter Party, it states, 'Charterers to load, stow and discharge the cargo free of risk and expenses to owners. x x x' (Underscoring supplied).

Under paragraph 10 thereof, it is provided that '(o)wners shall, before and at the beginning of the voyage, exercise due diligence to make the vessel seaworthy and properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which cargo is carried, fit and safe for its reception, carriage and preservation. Owners shall not be liable for loss of or damage of the cargo arising or resulting from: unseaworthiness unless caused by want of due diligence on the part of the owners to make the vessel seaworthy, and to secure that the vessel is properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which cargo is carried, fit and safe for its reception, carriage and preservation; xxx; perils, dangers and accidents of the sea or other navigable waters; xxx; wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the cargo; insufficiency of packing; xxx; latent defects not discoverable by due diligence; any other cause arising without the actual fault or privity of Owners or without the fault of the agents or servants of owners.'

Paragraph 12 of said NANYOZAI Charter Party also provides that '(o)wners shall not be responsible for split, chafing and/or any damage unless caused by the negligence or default of the master and crew.'

(2) On August 6, 7 and 8, 1974, in accordance with the Contract of Voyage Charter Hire, the MV 'VLASONS I' loaded at plaintiff's pier at Iligan City, the NSC's shipment of 1,677 skids of tinplates and 92 packages of hot rolled sheets or a total of 1,769 packages with a total weight of about 2,481.19 metric tons for carriage to Manila. The shipment was placed in the three (3) hatches of the ship. Chief Mate Gonzalo Sabando, acting as agent of the vessel[, ] acknowledged receipt of the cargo on board and signed the corresponding bill of lading, B.L.P.P. No. 0233 (Exhibit 'D') on August 8, 1974.

(3) The vessel arrived with the cargo at Pier 12, North Harbor, Manila, on August 12, 1974. The following day, August 13, 1974, when the vessel's three (3) hatches containing the shipment were opened by plaintiff's agents, nearly all the skids of tinplates and hot rolled sheets were allegedly found to be wet and rusty. The cargo was discharged and unloaded by stevedores hired by the Charterer. Unloading was completed only on August 24, 1974 after incurring a delay of eleven (11) days due to the heavy rain which interrupted the unloading operations. (Exhibit 'E')

(4) To determine the nature and extent of the wetting and rusting, NSC called for a survey of the shipment by the Manila Adjusters and Surveyors Company (MASCO). In a letter to the NSC dated March 17, 1975 (Exhibit 'G'), MASCO made a report of its ocular inspection conducted on the cargo, both while it was still on board the vessel and later at the NDC warehouse in Pureza St., Sta. Mesa, Manila where the cargo was taken and stored. MASCO reported that it found wetting and rusting of the packages of hot rolled sheets and metal covers of the tinplates; that tarpaulin hatch covers were noted torn at various extents; that container/metal casings of the skids were rusting all over. MASCO ventured the opinion that 'rusting of the tinplates was caused by contact with SEA WATER sustained while still on board the vessel as a consequence of the heavy weather and rough seas encountered while en route to destination (Exhibit 'F'). It was also reported that MASCO's surveyors drew at random samples of bad order packing materials of the tinplates and delivered the same to the M.I.T. Testing Laboratories for analysis. On August 31, 1974, the M.I.T. Testing Laboratories issued Report No. 1770 (Exhibit 'I') which in part, states, 'The analysis of bad order samples of packing materials xxx shows that wetting was caused by contact with SEA WATER'.

(5) On September 6, 1974, on the basis of the aforesaid Report No. 1770, plaintiff filed with the defendant its claim for damages suffered due to the downgrading of the damaged tinplates in the amount of P941,145.18. Then on October 3, 1974, plaintiff formally demanded payment of said claim but defendant VSI refused and failed to pay. Plaintiff filed its complaint against defendant on April 21, 1976 which was docketed as Civil Case No. 23317, CFI, Rizal.

(6) In its complaint, plaintiff claimed that it sustained losses in the aforesaid amount of P941,145.18 as a result of the act, neglect and default of the master and crew in the management of the vessel as well as the want of due diligence on the part of the defendant to make the vessel seaworthy and to make the holds and all other parts of the vessel in which the cargo was carried, fit and safe for its reception, carriage and preservation -- all in violation of defendant's undertaking under their Contract of Voyage Charter Hire.

(7) In its answer, defendant denied liability for the alleged damage claiming that the MV 'VLASONS I' was seaworthy in all respects for the carriage of plaintiff's cargo; that said vessel was not a 'common carrier' inasmuch as she was under voyage charter contract with the plaintiff as charterer under the charter party; that in the course of the voyage from Iligan City to Manila, the MV 'VLASONS I' encountered very rough seas, strong winds and adverse weather condition, causing strong winds and big waves to continuously pound against the vessel and seawater to overflow on its deck and hatch covers; that under the Contract of Voyage Charter Hire, defendant shall not be responsible for losses/damages except on proven willful negligence of the officers of the vessel, that the officers of said MV 'VLASONS I' exercised due diligence and proper seamanship and were not willfully negligent; that furthermore the Voyage Charter Party provides that loading and discharging of the cargo was on

FIOST terms which means that the vessel was free of risk and expense in connection with the loading and discharging of the cargo; that the damage, if any, was due to the inherent defect, quality or vice of the cargo or to the insufficient packing thereof or to latent defect of the cargo not discoverable by due diligence or to any other cause arising without the actual fault or privity of defendant and without the fault of the agents or servants of defendant; consequently, defendant is not liable; that the stevedores of plaintiff who discharged the cargo in Manila were negligent and did not exercise due care in the discharge of the cargo; and that the cargo was exposed to rain and seawater spray while on the pier or in transit from the pier to plaintiff's warehouse after discharge from the vessel; and that plaintiff's claim was highly speculative and grossly exaggerated and that the small stain marks or sweat marks on the edges of the tinplates were magnified and considered total loss of the cargo. Finally, defendant claimed that it had complied with all its duties and obligations under the Voyage Charter Hire Contract and had no responsibility whatsoever to plaintiff. In turn, it alleged the following counterclaim:

(a) That despite the full and proper performance by defendant of its obligations under the Voyage Charter Hire Contract, plaintiff failed and refused to pay the agreed charter hire of P75,000.00 despite demands made by defendant;

(b) That under their Voyage Charter Hire Contract, plaintiff had agreed to pay defendant the sum of P8,000.00 per day for demurrage. The vessel was on demurrage for eleven (11) days in Manila waiting for plaintiff to discharge its cargo from the vessel. Thus, plaintiff was liable to pay defendant demurrage in the total amount of P88,000.00.

(c) For filing a clearly unfounded civil action against defendant, plaintiff should be ordered to pay defendant attorney's fees and all expenses of litigation in the amount of not less than P100,000.00.

(8) From the evidence presented by both parties, the trial court came out with the following findings which were set forth in its decision:

(a) The MV 'VLASONS I' is a vessel of Philippine registry engaged in the tramping service and is available for hire only under special contracts of charter party as in this particular case.

(b) That for purposes of the voyage covered by the Contract of Voyage Charter Hire (Exh. '1'), the MV 'VLASONS I' was covered by the required seaworthiness certificates including the Certification of Classification issued by an international classification society, the NIPPON KAIJI KYOKAI (Exh. '4'); Coastwise License from the Board of Transportation (Exh. '5'); International Loadline Certificate from the Philippine Coast Guard (Exh. '6'); Cargo Ship Safety Equipment Certificate also from the Philippine Coast Guard (Exh. '7'); Ship Radio Station License (Exh. '8'); Certificate of Inspection by the Philippine Coast Guard (Exh. '12'); and Certificate of Approval for Conversion issued by the Bureau of Customs (Exh. '9'). That being a vessel engaged in both overseas and coastwise trade, the MV 'VLASONS I' has a higher degree of seaworthiness and safety.