

## THIRD DIVISION

[ G.R. No. 128661, August 08, 2000 ]

**PHILIPPINE NATIONAL BANK/NATIONAL INVESTMENT  
DEVELOPMENT CORPORATION, PETITIONERS, VS. THE COURT  
OF APPEALS, CHINA BANKING CORPORATION, RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioners seek the reversal of the 21 March 1997 decision<sup>[1]</sup> of the Court of Appeals in C.A.-G.R. No. CV-38131. The assailed decision set aside the Order<sup>[2]</sup> dated 4 March 1992 of the Regional Trial Court of Makati City, Branch 146 in Civil Case No. 7119 insofar as it dismissed the complaint-in-intervention of private respondent China Banking Corporation.

The facts of the case are as follows:

To finance the acquisition of seven (7) ocean-going vessels, namely M/V "Asean Liberty," M/V "Asean Independence," M/V "Asean Mission," M/V "Asean Knowledge," M/V "Asean Nations," M/V "Asean Greatness," and M/V "Asean Objectives," the Philippine International Shipping Corporation (hereinafter "PISC") applied for and was granted by petitioner National Investment and Development Corporation (hereinafter "NIDC") the following guaranty accommodations:

- a. US\$9.44 Million in favor of Ultrafin A.G. of Zurich, Switzerland as Agent for the banks/financial institutions as evidenced by and subject to the terms and conditions of a Guaranty Agreement dated December 7, 1978 to partly finance the acquisition of two (2) ocean-going vessels;
- b. US\$23.60 Million in favor of the Philippine National Bank (hereinafter "PNB" as evidenced by and subject to the terms and conditions of a Consolidated Amendatory Agreement dated January 25, 1979 to finance the acquisition cost of four (4) additional ocean-going vessels; and
- c. US\$1.291 Million in favor of PNB as evidenced by and subject to the terms and conditions of that Second Consolidated Amendatory Agreement dated July 17, 1979 to finance the additional acquisition cost of one (1) ocean-going vessel.<sup>[3]</sup>

As security for these guaranty accommodations, PISC executed in favor of petitioners the following mortgage documents:

- a. Deed of Chattel Mortgage dated September 14, 1979 constituted on M/V "Asean Liberty" and M/V "Asean Nation" and recorded on September 25, 1979 with the Philippine Coast Guard Headquarters;

- b. Supplemental Chattel Mortgage dated October 2, 1979 constituted on M/V "Asean Independence," M/V "Asean Mission," M/V "Asean Knowledge," and M/V "Asean Objectives" and recorded with the Philippine Coast Guard Headquarters on February 13, 1980; and
- c. Supplemental Chattel Mortgage constituted on M/V "Asean Greatness" and recorded with the Philippine Coast Guard Headquarters on February 3, 1981.<sup>[4]</sup>

Meanwhile, on March 12, 1979, PISC entered into a Contract Agreement with Hong Kong United Dockyards, Ltd. for the repair and conversion of the vessel M/V "Asean Liberty" at a contract price of HK\$2,200,000.00 variable as provided therein.<sup>[5]</sup>

On May 28, 1979, the Central Bank of the Philippines authorized PISC to open with private respondent China Banking Corporation (hereinafter "CBC") a standby letter of credit for US\$545,000.00 in favor of Citibank, N.A. (hereinafter "Citibank") to cover the repair and partial conversion of the vessel M/V "Asean Liberty". This was pursuant to the letter of the Central Bank of the Philippines dated May 28, 1979 as amended on June 20, 1979.<sup>[6]</sup>

On June 15, 1979, PISC executed an Application and Agreement for Commercial Letter of Credit for \$545,000.00 with private respondent CBC in favor of Citibank. Pursuant to this application and agreement, private respondent CBC issued on September 12, 1979 its Irrevocable Standby Letter of Credit No. 79/4174 for US\$545,000.00 in favor of Citibank for account of PISC.

On September 17, 1979, a Promissory note for US\$545,000.00 was executed by PISC in favor of Citibank pursuant to the Loan Agreement for US\$545,000.00 between PISC, as borrower, and Citibank, as lender.<sup>[7]</sup>

Upon failure of PISC to fulfill its obligations under the said promissory note, Citibank sent to private respondent CBC a letter dated March 25, 1983 drawing on Letter of Credit No. 79/4174. In this letter, Citibank certified that the draft attached thereto for US\$242,225.00 represented the principal balance due to Citibank as of March 17, 1983 under the promissory note executed by PISC, the proceeds of which were used for the repair and conversion of M/V Asean Liberty. Thus, on March 30, 1983, CBC instructed its correspondent Irving Trust Co., by cable, to pay to Citibank the amount of US\$242,225.00. On the same date, Irving Trust Co. advised private respondent CBC by mail that the amount of US\$242,225.00 had been debited against CBC's Account No. 8033278269 and remitted to Citibank.<sup>[8]</sup>

On May 10, 1983, for failure of PISC to settle its obligations in the amount of US\$64,789,470.96, petitioner PNB conducted, thru the Sheriff's Office, an auction sale of the mortgaged vessels, except for the vessel M/V "Asean Objective." Petitioner NIDC emerged as the highest bidder in these auctions.<sup>[9]</sup>

On May 27, 1983, claiming that the foreclosure sale of its mortgaged vessels was illegal, unjust, irregular, and oppressive, PISC instituted before the Regional Trial Court of Makati, a civil case<sup>[10]</sup> against petitioners for the annulment of the foreclosure and auction sale of its vessels and damages.

As accurately narrated in the trial court's Order and adopted by the Court of Appeals in its Decision of March 21, 1997, the following proceedings transpired in the lower court:

"Records show that on May 27, 1983, PISC (Philippine International Shipping Corporation) filed suit against National Investment and Development Corporation (NIDC, for short) and Philippine National Bank (PNB, for short) for annulment of foreclosure of mortgage and auction sale with damages vis-à-vis the sale on foreclosure of vessels Asean Mission, Asean Knowledge, Asean Nations and Asean Greatness (as well as Asean Liberty and Asean Independence). NIDC answered the complaint, and in an amended answer impleaded additional counterclaim defendants. In an Order dated September 29, 1984, then Judge Jose L. Coscolluela, Jr. dismissed the complaint as against PNB and the counterclaimed defendants. And under date of November 3, 1986, the complaint itself against and the NIDC counterclaims were dismissed with prejudice.

In the meantime, NIDC acquired the vessels as highest bidder in the foreclosure thereof initiated by PNB, NIDC having thereafter disposed of said vessels in favor of the National Steel Corporation (NSC).

Complaints in intervention were filed by and for Unitor Ships Services PTE, Ltd., IMO Industries AB, UDDVALLARVARVET AB, Hyundai, Shipyard Co., Lloyd's, China bank, Chiang Tung Enterprises Co., Ltd., Pan Asia, Inc., and HANMF Marine Service, Co., Ltd., for recovery upon maritime liens against the proceeds of the sale of the foreclosed vessels. The parties concerned, except for intervenors Lloyd's and China Bank, eventually submitted a Compromise Agreement dated July 12, 1989, and made the basis for the Decision of August 23, 1989.

As first stated, there now remain only Lloyd's and China Bank claims in intervention, recovery upon which is covered by a PNB bank guarantee therefor if found matters of entitlement (sic) by said intervenors.

Intervenor Lloyd's claim is for 'the service of herein intervenor Lloyd's Register of Shipping to class aforementioned vessels (M/V Asean Nations and Asean Greatness) during the period covering July 22, 1981 to July 14, 1983 and the cost for said maritime surveys in the sum of HK\$65,930.00, UK£10,363.45 and P9,653.00' said to have been unpaid by PISC despite demands. NIDC traversed the Lloyd's claim as not being preferred maritime liens and in any event inferior in nature.

Intervenor China Bank's claims are predicated on (i) a China Bank Standby Letter of Credit in favor of Citibank, N. A. purportedly to cover repair and partial conversion of M/V Asean Liberty, to the extent of US\$242,225.00 paid by China Bank to Citibank, and said to be now owing by PISC together with stipulated interest; (ii) a China Bank loan of US\$2,700,000.00 as evidenced by a promissory note, the loan proceeds said to have allowed PISC to reduce overhead expenses and afford it competitive advantage in overseas shipping, and to pay for bunker fuel, defray port expenses and storage, container rental and insurance, as well as salaries and wages of crew members; and (iii) a China bank commercial letter of credit to PISC in favor of Bank of America, particularly a BA Draft for US\$648,002.54 said to have been applied towards vessel repair and conversion by the China Shipbuilding Corporation of Taiwan, together with stipulated interests due from PISC.

China Bank's claims are premised on the above as being preferred maritime liens. NIDC rejects said claims as not being maritime liens, much less preferred maritime liens.

Shortly after the undersigned penning Judge assumed his duties in this Court, Lloyd's and China Bank were enjoined to furnish opposite counsel with copies of the documentation of their respective claims, to obviate the necessity of adducing evidence in point on matters capable of stipulation. Thus, failing formulation of any amicable settlement in the manner arrived at by all other intervenors, pre-trial proceedings for the subject last remaining claims in intervention by and for Lloyd's and China Bank resulted in an August 9, 1991 Pre-Trial Order which set forth-

#### 'A. NATURE OF THE CASE

Claimant-intervenor Lloyd's Register of Shipping seeks recovery as unpaid creditor of HK\$65,930., UK Pounds C10,363.45 and P9,653.00 as being in the nature of preferred maritime liens on the vessels M/V "ASEAN NATIONS" and "ASEAN GREATNESS", representing costs for maritime services rendered for said vessels for the period July 22, 1981 to July 14, 1983.

Intervenor-claimant China Banking Corporation seeks recovery, as being in the nature of a preferred maritime lien, of the sum of US\$3,890,227.53, representing the totality of loans extended by said intervenor-claimant said to have been expended in financing repair and conversion costs, for expenses and storage container rentals and insurance premium paid out by it.

Plaintiffs admit the recoverability of said claims as being in the nature of preferred maritime liens, whereas PNB-NIDC contests the said claims.

#### B. STIPULATIONS AND ADMISSIONS.

Plaintiffs, PNB-NIDC and intervenor-claimant Lloyd's Register of Shipping stipulate and admit that the totality of its claims as fully supported by documentation already verified by the parties are in the sums of HK\$65,930,00, UKC10,363.45 and P9,653.00.

Plaintiffs, PNB-NIDC and intervenor-claimant China Banking Corporation stipulate and admit that the totality of its claim is in the sum of US\$3,870,227.53 as fortified by documentation already verified in point.

#### C. ISSUES.

The parties have agreed to limit the resolution of the last two remaining claims in intervention aforementioned to the following legal questions:

- i. Whether or not said claims, in the context in which they sought to be recovered, are preferred maritime lien as would entitle said claims to recover, and
- ii. Whether or not assuming recoverability thereon as being in the nature of maritime liens, such recovery may be allowed in relation with PNB's being the mortgagee of the assets from which recovery is sought.

Considering that the issues to be addressed are purely legal in nature, presentation of evidence and/or witnesses in point is unnecessary.”<sup>[11]</sup>

After the parties submitted their respective memoranda, the trial court issued on March 4, 1992 an Order dismissing the complaint-in-intervention filed by private respondent CBC for lack of merit. In dismissing the complaint-in-intervention, the trial court ruled that the claim of private respondent CBC was not a preferred maritime lien but was merely a loan extended to PISC by CBC.

Private respondent CBC appealed the Order of the trial court to the Court of Appeals. In its appeal, private respondent CBC imputed the following errors allegedly committed by the trial court:

- a. the trial court erred in holding that the loans extended by China Banking Corporation to the Philippine International Shipping Corporation did not create maritime liens.
- b. assuming that the loans are not themselves maritime liens, the trial court erred in holding that the China Banking Corporation did not acquire the maritime liens of Philippine International Shipping Corporation's creditors by subrogation.

For its part, herein petitioners PNB/NIDC raised as an issue in its Appellee's Brief before the Court of Appeals the lack of jurisdiction of the appellate court to entertain and pass upon the appeal interposed by CBC on the ground that the issues raised therein were purely legal; and that the appeal of CBC should have been lodged with the Supreme Court by petition for review on certiorari.<sup>[12]</sup>

On March 21, 1997, the Court of Appeals promulgated its questioned decision, the dispositive portion of which states:

“WHEREFORE, insofar as the appellant CBC is concerned, the appealed Order is hereby SET ASIDE and judgment is rendered:

(a) Directing the appellee Philippine National Bank/National Investment and Development Corporation to pay the appellant China Banking Corporation from the proceeds of the foreclosure sale of M/V Asean Liberty the amount of US\$242,225.00 or its Philippine Peso Equivalent at the time of payment, with interest thereon at the legal rate from November 7, 1984, the date of filing of CBC's complaint-in-intervention, until fully paid; and

(b) Ordering the appellee Philippine International Shipping Corporation to pay the same CBC the amounts of US\$648,002.54 and US\$2.7 Million