

## TWELFTH DIVISION

[ CA-G.R. CV. No. 95628, May 20, 2014 ]

**CGU INTERNATIONAL INSURANCE PLC., PLAINTIFF-APPELLEE,  
VS. CANDANO SHIPPING LINES, INC., DEFENDANT-APPELLEE,  
ALESON SHIPPING LINES, INC., DEFENDANT-APPELLANT.**

### D E C I S I O N

**ELBINIAS, J.:**

Subject of this Appeal<sup>[1]</sup> filed under Rule 41 of the Rules of Court is the Decision<sup>[2]</sup> dated May 17, 2010 of the Regional Trial Court of Makati City, Branch 149 ("lower court" for brevity) in Civil Case No. 03-804 for "Damages."<sup>[3]</sup>

The salient antecedents are those as stated in the lower court's Decision<sup>[4]</sup> dated May 17, 2010, as follows:

**"This is a case of collision of two vessels whereby the cargo cement in bags, being carried by the vessel of defendant Candano (*defendant-appellee here*), was insured with the plaintiff (*plaintiff-appellee here*), hence plaintiff paid the insured. After payment by the plaintiff to the insured of the value of the lost cargo, based on subrogation receipt plaintiff made a demand for reimbursement, still defendants refused to pay. Thus, plaintiff filed this complaint both against the two owners of the colliding vessels.**

**The complaint was filed on July 14, 2003,** and it summarized the collision incident as follows:

**1. The vessel of defendant Candano involved in the incident is named M/V 'Romeo'. On the other hand, the name of the vessel owned by defendant Aleson (*defendant-appellant here*) is M/V 'Aleson Carrier 5'.**

2. On May 28, 2002, a time charter party was executed between insured Apo Cement Corporation and defendant Candano over the M/V 'Romeo' within the Philippine waters.

3. The charter party stipulated that Candano shall have exclusive control and command of the vessel for its operation, navigation and management of the vessel M/V 'Romeo'.

4. From July 11, 2002 to July 14, 2002 M/V 'Romeo' berthed for loading purposes of cement at the Apo Cement pier Tinaan Naga, Cebu with a total 31,250 bags of cement or equivalent to 1.250 metric tons.

5. The cargo was insured with plaintiff under Open Policy No. PH-C0125 and Marine Cargo Certificates Schedule No. MC20104160.

6. After loading on July 14, 2002, M/V 'Romeo' left the insured's wharf and started its navigation to Legaspi City, Albay for delivery of the cement in bags to Apo Bicol warehouse.

**7. While M/V 'Romeo' was on her way out from the insured's pier, she collided with M/V 'Aleson Carrier 5'. 'M/V Aleson Carrier 5' was then approaching the pier of Apo Cement.**

**8. The collision caused the sinking of M/V 'Romeo' with the cargo cement in bags worth P3, 437,500.00, to the bottom of the sea.**

**9. The insured, Apo Cement Corporation made demands to the herein defendants to pay, but to no avail, hence it proceeded with the insurance policy issued by the plaintiff. Thus, plaintiff, after determining that the cause of the damage upon the insured cargo as compensable, plaintiff paid the insured."**<sup>[5]</sup> (*Emphasis supplied*)

On September 1, 2003, defendant-appellant Aleson Shipping Lines, Inc. ("defendant-appellant" for brevity) filed its Answer<sup>[6]</sup> to the Complaint, alleging that, among others:

"1. Venue is improperly laid. xxx

2. Plaintiff has no cause of action against answering defendant. The damages sustained by Apo Cement Corporation arose from the negligence of the captain and crew of MV 'Romeo' owned and operated by defendant Candano.

3. The officers and crew of answering defendant's vessel MV Aleson Carrier 5 exercised all diligence and care to avoid collision between the two vessels but which mishap occurred because of the wrongful maneuver and negligence only of the officers and crew of MV Romeo."<sup>[7]</sup>

For its part, defendant-appellee Candano Shipping Lines, Inc. (defendant-appellee" for brevity) filed its Answer<sup>[8]</sup> on January 7, 2005 stating that, among others:

"12. At all times material to the complaint the vessel MV 'ROMEO' was in all respects seaworthy and with full complement of fully competent officers and crew.

13. Defendant Candano Shipping Lines, Inc. and the officers and crew of the MV 'ROMEO' exercised extraordinary diligence in the care and custody of the cargo and in the navigation and operation of the vessel.

**14. The collision between the MV 'ROMEO' and the MV 'ALESON CARRIER 5' was due to the fault and negligence of defendant Aleson Shipping Lines, Inc., the erroneous and careless maneuvers and operation of the vessel MV 'ALESON CARRIER 5' and the careless and faulty instructions or directions of Apo Cement Corp. to the vessels.**

15. **As a result of the collision the MV 'ROMEO' sank and was lost. Consequently, defendant Candano Shipping Lines, Inc.'s liability, if any, for the lost cargo of Apo Cement Corp., is, by law, extinguished in accordance with law and jurisprudence, including Articles 587 and 837 of the Code of Commerce.**

16. **Defendant Candano Shipping Lines, Inc. exercised extraordinary diligence in the selection and supervision of the officers and crew of the MV 'ROMEO'.**"<sup>[9]</sup> (*Emphasis supplied*)

Afterwards, the lower court rendered the Decision<sup>[10]</sup> dated May 17, 2010 finding defendant-appellant liable to pay Damages to plaintiff-appellee CGU International Insurance PLC ("plaintiff-appellee" for brevity). The lower court likewise dismissed defendant-appellant's Cross-Claim against defendant-appellee. The dispositive portion of the Decision decreed:

**"WHEREFORE**, in view of the foregoing considerations, this Court hereby FINDS in favor of the plaintiff against the defendant ALESON, hence it hereby ORDERS defendant ALESON, to pay plaintiff the sum of Philippine Pesos: THREE MILLION THREE HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED FIFTY (P3,368,750.00) with interest at 6% percent per annum from date hereof until the finality of this decision and 12% per annum from finality of this decision until fully paid and attorney's fee of P50,000.00 plus cost of suit.

The complaint against Candano is hereby DISMISSED in accordance with the provision of Article 826 of the Code of Commerce. It states: 'If a vessel should collide with another through the fault, negligence or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after expert appraisal' (Attys. Rufus Bautista Rodriguez and Jesus Puntay Casila. The Law on Transportation, 1979 Edition, pages 166-167).

Finally, the counterclaims filed by defendant Aleson against defendant Candano are hereby DISMISSED for insufficiency of evidence.

**SO ORDERED.**"<sup>[11]</sup> (*Emphasis was made in the original*)

Defendant-appellant then filed the Appeal<sup>[12]</sup> at bench, praying that:

"WHEREFORE, foregoing premises considered, it is most respectfully prayed of the Honorable Court to REVERSE and SET ASIDE the Decision dated May 17, 2010 of the Regional Trial Court of Makati City, Branch 149 in Civil Case No. 03-804, and in its stead render a Decision dismissing the complaint.

In the alternative, defendant-appellant prays that the Honorable Court render a decision finding the defendant Candano Shipping Lines, Inc. solely liable to pay plaintiff the sum of Three Million Three Hundred Sixty Eight Thousand Seven Hundred Fifty (P3,368,750.00) with interest at 6% percent (sic) per annum from finality of this decision until fully paid and attorney's fee of P50,000.00 plus cost of suit.

Defendant Appellant Aleson Shipping Lines, Inc. prays for other relief just and equitable in the premises.”<sup>[13]</sup>

The Appeal raised the following errors:

**“I. The trial court grossly erred in finding that MV Aleson Con-Carrier V was the vessel solely at fault in the collision.**

**II. The trial court committed grave reversible error in relying on hearsay testimony and a misplaced and erroneous application of the res gestae rule to justify second-hand information gathered by witnesses rendered incompetent to testify on the circumstances leading to the collision of MV Romeo and MV Aleson Con-Carrier V.**

**III. The trial court committed grave reversible error in ascribing liability upon defendant-appellant Aleson even though the record is replete with undisputed evidence proving that the crew of defendant-appellant Aleson who exerted extraordinary diligence and care to avoid the collision between MV Romeo and MV Aleson Con-Carrier V on July 14, 2002, but which mishap occurred because of the wrongful maneuver and negligence only of the officers and crew of MV Romeo.**

**IV. The trial court committed grave reversible error in dismissing defendant appellant Aleson's cross-claim against defendant Candano.”<sup>[14]</sup> (*Emphasis supplied in the original*)**

Contrary to defendant-appellant's arguments in its *assigned errors I and III*, defendant-appellant was solely liable for the collision between M/V Aleson Carrier V and M/V Romeo, which collision in turn, resulted to the loss of the bags of cement of Apo Cement Corporation.

Defendant-appellant had argued as follows:

**“However, the trial court erroneously ascribes fault to defendant-appellant Aleson making it appear that the appellant's vessel entered the Apocemco pier despite knowledge of the presence of MV Romeo. The trial court conveniently neglected the fact that the management of who goes in and out of the loading area is a function of the Apocemco port personnel and that the witness Cabeltes had no reason to doubt the radio message relayed to him by his crew, since in the eight (8) that he's been loading cargo at the Apocemco pier in Naga, Cebu, the radio message from the Apocemco port operation personnel has always meant a notice to proceed to the loading bay.**

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**Navigating with caution, MV Aleson Con-Carrier V proceeded towards Apocemco pier's Berth No. 1 at slow speed of two knots. MV Romeo on the other hand was navigating the same waters at full speed.**

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Clearly then, **since the point of collision happened after the last buoy, then the trial court had no basis for concluding that defendant-appellant Aleson was reckless because of its failure to wait until MV Romeo has exited the last buoy. If the trial court's conclusion was true, then the point of collision would have been before and not after last buoy.**

The trial court's conclusion that defendant-appellant 'failed to observe precaution and vigilance' at the time when the collision occurred has no basis in fact.

**The records of the case, particularly the testimony of witness Ramil Cabeltes consistently show that MV Aleson Con-Carrier V had exerted all efforts to avoid the collision, but it was MV Romeo that failed to maneuver its vessel properly causing it to hit MV Aleson Con-Carrier V.**

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**The trial court also erroneously finds fault to defendant Aleson's alleged failure to sound its horn, even when the evidence on record shows that there was no need to blow MV Aleson's horn to warn MV Romeo since both ships have in fact established contact and had explicitly agreed to execute a port to port passing to avoid a collision."**<sup>[15]</sup> (*Emphasis supplied*)

Defeating defendant-appellant's arguments however, is that defendant-appellant, as a common carrier, failed to exercise extra-ordinary diligence that would have prevented the collision between between M/V Aleson Carrier V and M/V Romeo.<sup>[16]</sup>

Here, as the records revealed, the collision between M/V Aleson Carrier V and M/V Romeo was due to the fault of M/V Aleson Carrier V's Capt. Ramil Cabeltes ("Capt. Cabeltes" for brevity). The reason is that Capt. Cabeltes of M/V Aleson Carrier V, despite having been informed that a vessel, M/V Romeo, was loading cement at the pier, still proceeded for M/V Aleson Carrier V to enter the channel towards the pier. Capt. Cabeltes likewise failed to send sound signals in order to alert M/V Romeo that M/V Aleson Carrier V was moving towards the direction of M/V Romeo.

All of these matters were as also found by the lower court, to wit:

**"Thus, based on these established and proven facts (sic) will allow this court to conclude that M/V 'Aleson Carrier 5' was recklessly piloted hence the pilot of M/V 'Aleson Carrier 5' was imprudent. xxx**

XXX

**It is hereby also concluded that the Master of M/V 'Aleson 5' failed to wait until M/V 'Romeo' has exited from the last buoy hence said Master is hereby held reckless and committed imprudence in the piloting of M/V 'Aleson Carrier 5' during the collision that happened on July 14, 2002 at the Apo pier, Naga,**