809 Phil. 736

# SPECIAL THIRD DIVISION

# [ G.R. No. 185565, April 26, 2017 ]

## LOADSTAR SHIPPING COMPANY, INCORPORATED AND LOADSTAR INTERNATIONAL SHIPPING COMPANY, INCORPORATED, PETITIONERS, V. MALAYAN INSURANCE COMPANY, INCORPORATED, RESPONDENT.

## RESOLUTION

**REYES, J.:**

This resolves the Motion for Reconsideration[1] of the Decision[2] dated November 26, 2014 of the Court in the above-captioned case filed by respondent Malayan Insurance Company, Incorporated (Malayan). Malayan alleges that in ruling in favor of Loadstar Shipping Company, Incorporated and Loadstar International Shipping Company, Incorporated (petitioners), the Court disregarded the conclusion of the Court of Appeals that the petitioners acted as a common carrier; that there was a breach of the contract of affreightment; and that the petitioners failed to produce evidence of a calamity to be exculpated from liability.[3]

In their Comment,[4] the petitioners contend that the grounds raised by Malayan are no longer relevant because as found by the Court, Malayan did not adduce proof of pecuniary loss to the insured Philippine Associated Smelting and Refining Corporation (PASAR).[5] PASAR has not established by an iota of evidence the amount of loss or actual damage it suffered by reason of seawater wettage of the 777.29 metric tons of copper concentrates. In spite of no proof of loss, Malayan, with seeming hastiness paid the claim of PASAR in the amount of P33,934,948.75.[6] According to the petitioners, Malayan cannot make them answerable for its mistake in indemnifying PASAR.[7]

On June 10, 2015, Malayan filed a Motion to Refer the Case to the Court *en banc*[8] alleging that the Decision dated November 26, 2014 of the Third Division deviated from the doctrine enunciated in *Delsan Transport Lines, Inc., v. CA*.[9] Malayan contends that in *Delsan*, the Court held that upon payment by the insurance company of the insurance claim, the insurance company should be subrogated to the rights of the insured; it is not even necessary to present the insurance policy because subrogation is a matter of equity.[10]

### Ruling of the Court

The Court shall resolve the issues *seriatim*.

*Delsan* involved the sinking of a vessel which took down with it the entire cargo of fuel it was carrying. Hence, the fact of total loss was completely and undisputedly established. The burden of proof was upon the common carrier to prove that it was not liable for the loss, which it failed to discharge. It was only but logical for the

Court to hold the common carrier liable to the insurance company that paid the insured owner of the lost cargo as the latter's subrogee.

In comparison with *Delsan*, the facts of the instant case are not as straightforward. Here, the copper concentrates were delivered by the petitioners to the consignee PASAR although part thereof was contaminated with seawater. To be clear, PASAR did not simply reject the contaminated goods (on the basis that these were no longer fit for the intended purpose), claim the value thereof from Malayan and leave things at that - it bought back the goods which it had already rejected. Meanwhile, Malayan opted to cash in the situation by selling the contaminated copper concentrates to the very same consignee who already rejected the goods as total loss. After denying the petitioners of opportunity to participate in the disposal or sale of the goods,[11] Malayan sought to recover the total value of the wet copper concentrates from them. Malayan and PASAR's extraneous actuations are inconsistent with the alleged fact of total loss. Verily, *Delsan* cannot be applied given the contradistinctive circumstances obtaining in this case.

Next, Malayan argues that since the petitioners and PASAR agreed in their Contract of Affreightment that copper concentrates are easily contaminated with seawater, the contaminated parts should be considered as totally damaged;[12] and that when the petitioners failed to provide a seaworthy ship under 25 years of age as agreed upon, they should be held liable for damages.[13]

Again, the Court declares that it is iniquitous to consider the value of the contaminated copper concentrates as the amount of damages sustained by PASAR when there is no evidence to that effect. Notably, PASAR and Malayan were even able to come up and agree on a residual value. Needless to say, the mere fact that there was a residual value negates the verity of total loss sustained by PASAR. It is also inequitable to consider the purchase price of US$90,000.00 as the actual residual value of the copper concentrates since there is no showing that PASAR and Malayan objectively arrived at this amount. There is no explanation why Article 364 of the Code of Commerce which calls for the valuation of experts was not observed by Malayan and PASAR in fixing the residual value of the copper concentrates.

Neither can Malayan anchor its claim on the Evaluation Report presented by Elite Adjusters and Surveyors, Inc., assessing the loss as total in the amount of P32,351,102.32. Verily, Malayan paid PASAR using the said Evaluation Report as its basis, but ironically disputed this very same report in fixing a residual value with PASAR. True, if the subject copper concentrates were indeed not contaminated, Malayan and PASAR would not have fixed the residual value at only US$90,000.00. However, it does not escape the Court's notice that this price was derived through the exclusion of the petitioners in the valuation and sale of the wet copper concentrates, despite their manifestation of willingness to participate thereto.

At the pain of being repetitive, the Court reiterates the principle that actual damages are not presumed; it cannot be anchored on mere surmises, speculations or conjectures.[14] As the Court discussed in the Decision dated November 26, 2014, Malayan was not able to prove the pecuniary loss suffered by PASAR for which the latter was indemnified. This is in line with the principle that a subrogee steps into the shoes of the insured and can recover only if the insured likewise could have recovered.[15]

Nonetheless, the Court notes that the petitioners failed to comply with some of the terms of their contract of affreightment with PASAR. It was stipulated that the vessel to be used must not exceed 25 years of age, yet the vessel, MV Bobcat, was more than that age when the subject copper concentrates were transported. Additionally, the petitioners failed to keep the cargo holds and hatches of MV Bobcat clean and fully secured as agreed upon, which resulted in the wettage of the cargo.

As common carriers, the petitioners are bound to observe *extraordinary* diligence in their vigilance over the goods they transport, as required by the nature of their business and for reasons of public policy.[16] "Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights."[17] When the copper concentrates delivered were contaminated with seawater, the petitioners have failed to exercise extraordinary diligence in the carriage thereof.

In view of the foregoing, the Court deems it proper to award nominal damages to Malayan. This is in recognition of the breach of contract committed by the petitioners. "So long as there is a violation of the right of the plaintiff—whether based on law, contract or other sources of obligations—an award of nominal damages is proper."[18] Articles 2221 and 2222 of the Civil Code provide:

> Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.
>
> Article 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

"Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown."[19] "The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances."[20] To the mind of the Court, the amount of P1,769,374.725, which is equivalent to six percent (6%) of the sum being claimed by Malayan less the residual value of the copper concentrates, is sufficient as damages. Thus, the amount of nominal damages is computed as follows:

| | | |
|---|---|---|
| | P33,934,948.75 | (amount claimed by Malayan) |
| Less | P4,445,370.00 | (US$90,000 residual value x 49.393[21]) |
| | P29,489,578.75 | |
| | x 6% | |
| | P1,769,374.725 | |

Finally, the Court also takes the opportunity to make it clear that this disposition does not in any way undermine the principle of subrogation; rather, the Court takes into consideration all the circumstances in this case, inasmuch as Malayan and PASAR's dealings post-delivery of the copper concentrates were unwarranted. While the breach of contract committed by the petitioners should not be tolerated, the undue haste, as well as the other doubtful circumstances under which the sale of the wet copper concentrates was made, is not lost on the Court.

**WHEREFORE**, the motion for reconsideration is **PARTLY GRANTED**. The Decision dated November 26, 2014 of the Court is hereby **MODIFIED** in that nominal damages in the amount of P1,769,374.725 is awarded to Malayan Insurance Company, Incorporated, with legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.

**SO ORDERED.**

*Velasco, (Chairperson), Jardeleza*, and *Caguioa, JJ.*, concur.
*Peralta, J.*, see concurring and dissenting opinion.

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June 15, 2017

**NOTICE OF JUDGMENT**

Sirs / Mesdames:

Please take notice that on **April 26, 2017** a Resolution, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on June 15, 2017 at 2:00 p.m.

Very truly yours,

**(SGD) WILFREDO V. LAPITAN**
*Division Clerk of Court*

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[1] *Rollo*, pp. 586-597.

[2] Id. at 573-584.

[3] Id. at 587-588.

[4] Id. at 607-615.

[5] Id. at 609.

[6] The amount of P32,351,102.32 was indicated in the petitioners' Comment (id. at 611). However, Malayan paid PASAR the total amount of P33,934,948.75; id at 213

[7] Id. at 611.

[8] Id. at 616-622.

[9] 420 Phil. 824 (2001).

[10] *Rollo*, p. 617.

[11] Id. at 241-242.

[12] Id. at 590.

[13] Id. at 592.

[14] Id. at 582.

[15] *Lorenzo Shipping Corp. v. Chubb and Sons, Inc*., 475 Phil. 169, 182 (2004).

[16] *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc*., 508 Phil. 656, 664 (2005).

[17] *National Trucking and Forwarding Corp. v. Lorenzo Shipping Corp.*, 491 Phil. 151, 156 (2005).

[18] *Pryce Properties Corporation v. Spouses Sotore Octobre, Jr. and Henrissa A. Octobre and China Banking Corporation*, G.R. No. 186976, December 7, 2016. (Citations omitted)

[19] *Cathay Pacific Airways v. Reyes, et al*., 712 Phil. 398, 418 (2013).

[20] *Savellano v. Northwest Airlines*, 453 Phil. 342, 360 (2003).

[21] Exchange rate of US Dollar to Philippine Peso as of November 29, 2000 (when the sale was made, *rollo*, p. 78) based on the Bangko Sentral ng Pilipinas Treasury Department Reference Exchange Rate Bulletin < http://www.bsp.gov.ph/dbank_reports/ExchangeRates_2rpt.asp?freq=D&datefrom=11%2F29%2F2000 > visited last March 13, 2017.

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**CONCURRING AND DISSENTING OPINION**

**PERALTA, *J.*:**

Respondent has filed the instant Motion for Reconsideration of the Decision dated November 26, 2014, granting the petition, on the following grounds, to wit:

> The conclusion of the Court of Appeals that Petitioners Loadstar was acting as a common carrier has been ignored
>
> The factual finding of the Court of Appeals that there was a breach of the Contract of Affreightment was ignored.
>
> The factual finding of the Court of Appeals that Petitioners Loadstar failed to produce evidence of a calamity was ignored.[1]

In essence, respondent posits the view that petitioners should be made liable to pay it (*respondent*) the actual damages it seeks to recover as subrogee to the rights of