

THIRD DIVISION

[G.R. No. 188118, November 23, 2015]

**FEDERAL PHOENIX ASSURANCE CO., LTD., PETITIONER, VS.
FORTUNE SEA CARRIER, INC., RESPONDENT.**

DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated February 10, 2009 and Resolution^[3] dated May 12, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 88607. The assailed decision reversed and set aside the Decision^[4] dated May 4, 2006 and the Order^[5] dated October 26, 2006 of the Regional Trial Court (RTC) of Makati City, Branch 143 finding respondent Fortune Sea Carrier, Inc. (Fortune Sea) liable to pay P260,000.00 as actual damages, attorney's fees and cost of suit.

On March 9, 1994, Fortune Sea agreed to lease its vessel M/V Ricky Rey to Northern Mindanao Transport Co., Inc. (Northern Transport). The Time Charter Party agreement executed by the parties provides that the vessel shall be leased to Northern Transport for 90 days to carry bags of cement to different ports of destination. Later on, the parties extended the period of lease for another 90 days.^[6]

Sometime in June 1994, Northern Transport ordered 2,069 bales of abaca fibers to be shipped on board M/V Ricky Rey by shipper Manila Hemp Trading Corporation, for delivery to consignee Newtech Pulp Inc. (Newtech) in Iligan City. The shipment was covered by Bill of Lading No. 1 and was insured by petitioner Federal Phoenix Assurance Co., Ltd. (Federal Phoenix).^[7]

Upon arrival of M/V Ricky Rey at the Iligan City port on June 16, 1994, the stevedores started to discharge the abaca shipment the following day. At about 3:00 p.m., however, on June 18, 1994, the stevedores noticed smoke coming out of the cargo haul where the bales of abaca were located. Immediately, the fire was put off by the Iligan City Fire Department. Upon investigation, it was discovered that 60 bales of abaca were damaged.^[8]

As a result of the losses, Newtech filed an insurance claim for P260,000.00 with Federal Phoenix. After evaluation, Federal Phoenix paid Newtech P162,419.25 for the losses it incurred due to the damaged and undelivered bales of abaca. Upon payment, Federal Phoenix was subrogated to the rights of Newtech and pursued its claim against Fortune Sea. Despite several demands to Fortune Sea, however, Federal Phoenix's claims were not settled. As a result, Federal Phoenix filed a Complaint^[9] for Sum of Money against Fortune Sea before the RTC of Makati.^[10]

For its defense, Fortune Sea insisted that it was acting as a private carrier at the time the incident occurred. It alleged that the Time Charter Party agreement executed by the parties expressly provided that M/V Ricky Rey shall be under the orders and complete control of Northern Transport.^[11]

Ruling of the RTC

On May 4, 2006, the RTC rendered a Decision in favor of Federal Phoenix and ordered Fortune Sea to pay the amount of P260,000.00 as actual damages, attorney's fees and cost of suit. Fortune Sea filed a Motion for Reconsideration^[12] but was denied in an Order dated October 26, 2006.

Aggrieved, Fortune Sea appealed to the CA.

Ruling of the CA

On February 10, 2009, the CA issued a Decision reversing and setting aside the Decision dated May 4, 2006 of the RTC and ordered the dismissal of the complaint for sum of money filed by Federal Phoenix against Fortune Sea for lack of merit. According to the CA, although the agreement between Fortune Sea and Northern Transport was denominated as Time Charter Party, it found compelling reasons to hold that the contract was one of bareboat or demise. Hence, Federal Phoenix filed this instant petition.

Ruling of the Court

The main issue in this case is whether or not the CA erred in declaring that Fortune Sea was converted into a private carrier by virtue of the charter party agreement it entered into with Northern Transport.^[13]

Admittedly, Fortune Sea is a corporation engaged in the business of transporting cargo by water and for compensation, offering its services to the public. As such, it is without a doubt, a common carrier.

Fortune Sea, however, entered into a time-charter with Northern Transport. Now, had the time-charter converted Fortune Sea into a private carrier?

This Court rules in the affirmative.

Time and again, this Court have ruled that "[i]n determining the nature of a contract, courts are not bound by the title or name given by the parties. The decisive factor in evaluating an agreement is the intention of the parties, as shown, not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement."^[14]

As correctly observed by the CA, the Time Charter Party agreement executed by Fortune Sea and Northern Transport clearly shows that the charter includes both the vessel and its crew thereby making Northern Transport the owner *pro hac vice* of M/V Ricky Rey during the whole period of the voyage, to wit:

A perspicacious scrutiny of the *Time Charter Party* disclosed the following provisions evincing that Northern Transport became the owner *pro hac vice* of M/V Ricky Rey during the whole period of the voyage—

"VI. OTHER TERMS AND CONDITIONS:

F. Upon delivery of the vessel(s) and during the period of the charter, SECOND PARTY (Northern Transport) assumes operational control for the dispatch and direction of voyage of the vessel(s).

H. The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the vessel(s) crew. The Master to be under the orders of the SECOND PARTY (Northern Transport) as regards employment of the other arrangements.

N. The SECOND PARTY (Northern Transport) to furnish MASTER with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the SECOND PARTY (Northern Transport) or their Supercargo.

To Our mind, the *Time Charter Part[y]* unequivocally established that appellant Fortune Sea had completely and exclusively relinquished possession, command and navigation of M/V Ricky Rey to Northern Transport.^[15] (Citation omitted)

Conformably, M/V Ricky Rey was converted into a private carrier notwithstanding the existence of the Time Charter Party agreement with Northern Transport since the said agreement was not limited to the ship only but extends even to the control of its crew. Despite the denomination as Time Charter by the parties, their agreement undoubtedly reflected that their intention was to enter into a Bareboat Charter Agreement.

Moreover, the CA likewise correctly ruled that the testimony of Captain Alfredo Canon (Capt. Canon) of M/V Ricky Rey confirmed that when the whole vessel was leased to Northern Transport, the entire command and control over its navigation was likewise transferred to it, to wit:

Q: Mr. Witness, you said awhile ago that as far as you know, the purpose is to transport cement, now, you also mentioned that in two or three instances goods other than cement, abaca and fertilizer were transported during your watch. Now, you mentioned that this was [sic] happened sometime in 1994, my question was [sic], why did you transport abaca?

A I have [sic] received an order from [Northern Transport] through radio and through its representative which [sic] was on board our super cargo boat to proceed to Natu to load abaca fiber and bring it to the port of Iligan, sir.

Q You were ordered by [Northern Transport]?