

## THIRD DIVISION

[ G.R. No. 171591, June 25, 2012 ]

### ACE NAVIGATION CO., INC., PETITIONER, VS. FGU INSURANCE CORPORATION AND PIONEER INSURANCE AND SURETY CORPORATION, RESPONDENTS.

#### DECISION

##### **PERLAS-BERNABE, J.:**

This is an appeal under Rule 45 of the Rules of Court seeking to reverse the June 22, 2004 Decision<sup>[1]</sup> and February 17, 2006 Resolution<sup>[2]</sup> of the Court of Appeals (CA) ordering petitioner Ace Navigation Co., Inc., jointly and severally with Cardia Limited, to pay respondents FGU Insurance Corp. and Pioneer Insurance and Surety Corp. the sum of P213,518.20 plus interest at the rate of six *per centum* (6%) from the filing of the complaint until paid.

##### **The Facts**

On July 19, 1990, Cardia Limited (CARDIA) shipped on board the vessel *M/V Pakarti Tiga* at Shanghai Port China, 8,260 metric tons or 165,200 bags of Grey Portland Cement to be discharged at the Port of Manila and delivered to its consignee, Heindrich Trading Corp. (HEINDRICH). The subject shipment was insured with respondents, FGU Insurance Corp. (FGU) and Pioneer Insurance and Surety Corp. (PIONEER), against all risks under Marine Open Policy No. 062890275 for the amount of P18,048,421.00.<sup>[3]</sup>

The subject vessel is owned by P.T. Pakarti Tata (PAKARTI) which it chartered to Shinwa Kaiun Kaisha Ltd. (SHINWA).<sup>[4]</sup> Representing itself as owner of the vessel, SHINWA entered into a charter party contract with Sky International, Inc. (SKY), an agent of Kee Yeh Maritime Co. (KEE YEH),<sup>[5]</sup> which further chartered it to Regency Express Lines S.A. (REGENCY). Thus, it was REGENCY that directly dealt with consignee HEINDRICH, and accordingly, issued Clean Bill of Lading No. SM-1.<sup>[6]</sup>

On July 23, 1990, the vessel arrived at the Port of Manila and the shipment was discharged. However, upon inspection of HEINDRICH and petitioner Ace Navigation Co., Inc. (ACENAV), agent of CARDIA, it was found that out of the 165,200 bags of cement, 43,905 bags were in bad order and condition. Unable to collect the sustained damages in the amount of P1,423,454.60 from the shipper, CARDIA, and the charterer, REGENCY, the respondents, as co-insurers of the cargo, each paid the consignee, HEINDRICH, the amounts of P427,036.40 and P284,690.94, respectively,<sup>[7]</sup> and consequently became subrogated to all the rights and causes of action accruing to HEINDRICH.

Thus, on August 8, 1991, respondents filed a complaint for damages against the

following defendants: "REGENCY EXPRESS LINES, S.A./ UNKNOWN CHARTERER OF THE VESSEL 'PAKARTI TIGA'/ UNKNOWN OWNER and/or DEMIFE (*sic*) CHARTERER OF THE VESSEL 'PAKARTI TIGA', SKY INTERNATIONAL, INC. and/or ACE NAVIGATION COMPANY, INC."<sup>[8]</sup> which was docketed as Civil Case No. 90-2016.

In their answer with counterclaim and cross-claim, PAKARTI and SHINWA alleged that the suits against them cannot prosper because they were not named as parties in the bill of lading.<sup>[9]</sup>

Similarly, ACENAV claimed that, not being privy to the bill of lading, it was not a real party-in-interest from whom the respondents can demand compensation. It further denied being the local ship agent of the vessel or REGENCY and claimed to be the agent of the shipper, CARDIA.<sup>[10]</sup>

For its part, SKY denied having acted as agent of the charterer, KEE YEH, which chartered the vessel from SHINWA, which originally chartered the vessel from PAKARTI. SKY also averred that it cannot be sued as an agent without impleading its alleged principal, KEE YEH.<sup>[11]</sup>

On September 30, 1991, HEINDRICH filed a similar complaint against the same parties and Commercial Union Assurance Co. (COMMERCIAL), docketed as Civil Case No. 91-2415, which was later consolidated with Civil Case No. 91-2016. However, the suit against COMMERCIAL was subsequently dismissed on joint motion by the respondents and COMMERCIAL.<sup>[12]</sup>

### **Proceedings Before the RTC and the CA**

In its November 26, 2001 Decision,<sup>[13]</sup> the RTC dismissed the complaint, the *fallo* of which reads:

WHEREFORE, premises considered, plaintiffs' complaint is DISMISSED. Defendants' counter-claim against the plaintiffs are likewise dismissed, it appearing that plaintiff[s] did not act in evident bad faith in filing the present complaint against them.

Defendant Pakarti and Shinwa's cross-claims against their co-defendants are likewise dismissed for lack of sufficient evidence.

No costs.

SO ORDERED.

Dissatisfied, the respondents appealed to the CA which, in its assailed June 22, 2004 Decision,<sup>[14]</sup> found PAKARTI, SHINWA, KEE YEH and its agent, SKY, solidarity liable for 70% of the respondents' claim, with the remaining 30% to be shouldered solidarity by CARDIA and its agent, ACENAV,thus:

WHEREFORE, premises considered, the Decision dated November 26, 2001 is hereby MODIFIED in the sense that:

a) defendant-appellees P.T. Pakarti Tata, Shinwa Kaiun Kaisha, Ltd., Kee Yeh Maritime Co., Ltd. and the latter's agent Sky International, Inc. are hereby declared jointly and severally liable, and are DIRECTED to pay FGU Insurance Corporation the amount of Two Hundred Ninety Eight Thousand Nine Hundred Twenty Five and 45/100 (P298,925.45) Pesos and Pioneer Insurance and Surety Corp. the sum of One Hundred Ninety Nine Thousand Two Hundred Eighty Three and 66/100 (P199,283.66) Pesos representing Seventy (70%) per centum of their respective claims as actual damages plus interest at the rate of six (6%) per centum from the date of the filing of the complaint; and

b) defendant Cardia Ltd. and defendant-appellee Ace Navigation Co., Inc. are DECLARED jointly and severally liable and are hereby DIRECTED to pay FGU Insurance Corporation One Hundred Twenty Eight Thousand One Hundred Ten and 92/100 (P128,110.92) Pesos and Pioneer Insurance and Surety Corp. Eighty Five Thousand Four Hundred Seven and 28/100 (P85,407.28) Pesos representing thirty (30%) per centum of their respective claims as actual damages, plus interest at the rate of six (6%) per centum from the date of the filing of the complaint.

SO ORDERED.

Finding that the parties entered into a time charter party, not a demise or bareboat charter where the owner completely and exclusively relinquishes possession, command and navigation to the charterer, the CA held PAKARTI, SHINWA, KEE YEH and its agent, SKY, solidarity liable for 70% of the damages sustained by the cargo. This solidarity liability was borne by their failure to prove that they exercised extraordinary diligence in the vigilance over the bags of cement entrusted to them for transport. On the other hand, the CA passed on the remaining 30% of the amount claimed to the shipper, CARDIA, and its agent, ACENAV, upon a finding that the damage was partly due to the cargo's inferior packing.

With respect to REGENCY, the CA affirmed the findings of the RTC that it did not acquire jurisdiction over its person for defective service of summons.

PAKARTI's, SHINWA's, SKY's and ACENAV's respective motions for reconsideration were subsequently denied in the CA's assailed February 17, 2006 Resolution.

### **Issues Before the Court**

PAKARTI, SHINWA, SKY and ACENAV filed separate petitions for review on certiorari before the Court, docketed as G.R. Nos. 171591, 171614, and 171663, which were ordered consolidated in the Court's Resolution dated July 31, 2006.<sup>[15]</sup>

On April 21, 2006, SKY manifested<sup>[16]</sup> that it will no longer pursue its petition in G.R. No. 171614 and has preferred to await the resolution in G.R. No. 171663 filed by PAKARTI and SHINWA. Accordingly, an entry of judgment<sup>[17]</sup> against it was made