

EN BANC

[G.R. Nos. 180880-81, September 18, 2012]

**KEPPEL CEBU SHIPYARD, INC., PETITIONER, VS. PIONEER
INSURANCE AND SURETY CORPORATION, RESPONDENT.**

[G.R. NOS. 180896-97]

**PIONEER INSURANCE AND SURETY CORPORATION, PETITIONER,
VS. KEPPEL CEBU SHIPYARD, INC., RESPONDENT.**

R E S O L U T I O N

MENDOZA, J.:

On June 7, 2011, the Court *En Banc*, acting on the referral by the Second Division, issued a Resolution^[1] accepting these cases which stemmed from the *Motion to Re-Open Proceedings and Motion to Refer to the Court En Banc* filed by Keppel Cebu Shipyard, Inc. (KCSI) on the ground that “there are serious allegations in the petition that if the decision of the Court is not vacated, there is a far-reaching effect on similar cases already decided by the Court.”^[2]

Pioneer Insurance and Surety Corporation (*Pioneer*) sought reconsideration of the June 7, 2011 Resolution to re-open, but its motion was denied by the Court in its Resolution,^[3]
dated December 6, 2011.

Brief Statement of the Antecedents

On January 26, 2000, KCSI and WG&A Jebsens Shipmanagement, Inc. (WG&A) entered into, and executed, a Shiprepair Agreement^[4] wherein KCSI agreed to carry out renovation and reconstruction of M/V Superferry 3 (*Superferry 3*), owned by WG&A, using its (KCSI’s) dry docking facilities. Among others, the Shiprepair Agreement provided the following terms and conditions:

We, WG & A JEBSENS SHIPMGMT. Owner/Operator of M/V “SUPERFERRY 3” and KEPPEL CEBU SHIPYARD, INC. (KCSI) enter into an agreement that the Drydocking and Repair of the above-named vessel ordered by the Owner's Authorized Representative shall be carried out under the Keppel Cebu Shipyard Standard Conditions of Contract for Shiprepair, guidelines and regulations on safety and security issued by Keppel Cebu Shipyard. Among the provisions agreed upon by the parties are the following:

x x x x

3. Owner's sub-contractors or workers are not permitted to work in the yard without written approval of the Vice-President-Operations.

4. In consideration of Keppel Cebu Shipyard allowing Owner to carry out own repairs onboard the vessel, the Owner shall indemnify and hold Keppel Cebu Shipyard harmless from all claims, damages, or liabilities arising from death or bodily injuries to Owner's workers, or damages to the vessel or other property however caused.

x x x x

12. The Owner and Keppel Cebu Shipyard shall endeavor to settle amicably any dispute that may arise under this Agreement. Should all efforts for an amicable settlement fail, the disputes shall be submitted for arbitration in Metro Manila in accordance with provisions of Executive Order No. 1008 under the auspices of the Philippine Arbitration Commission.

The Shiprepair Agreement also contained KCSI's "Standard Conditions of Contract for Shiprepair," which provided, among others, the following:

x x x x

7. The Contractor shall perform the work in accordance with the usual practice at the Contractor's shipyard but shall comply with the Customer's reasonable requests regarding materials and execution of the order insofar as such requests fall within the scope of the Work specified in the contractual specifications, and are made prior to the commencement of the work.

x x x x

20. The Contractor shall not be under any liability to the Customer either in contract or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, except:

(a) The total liability of the Contractor to the Customer (including the **liability** to replace under Clause 17) or of any Sub-Contractor shall be limited in respect of any and/or defect(s) or event(s) to the sum of Pesos Philippine Currency **Fifty Million** Only.

x x x x

22. (a) The Customer shall keep the vessel adequately insured for the vessel's hull and machinery, her crew and the equipment on board and on other goods owned or held by the Customer against any and all risks and liabilities and ensure that such insurance policies shall include the Contractor as a co-assured.

x x x. [Emphases supplied]

Prior to the execution of the Shiprepair Agreement, Superferry 3 was already insured by WG&A with Pioneer for US\$8,472,581.78.

On February 8, 2000, while undergoing repair, Superferry 3 was gutted by fire. WG&A declared the vessel's damage as a "total constructive loss" and filed an insurance claim with Pioneer.

On June 16, 2000, Pioneer paid the insurance claim of WG&A in the amount of US\$8,472,581.78. In exchange, WG&A executed a Loss and Subrogation Receipt in favor of Pioneer.

Believing that KCSI was solely responsible for the loss of Superferry 3, Pioneer tried to collect the amount of US\$8,472,581.78 from KCSI but it was frustrated. Thus, Pioneer sought arbitration with the Construction Industry Arbitration Commission (CIAC) pursuant to the arbitration clause in the Shiprepair Agreement.

During the arbitration proceedings, an amicable settlement was forged between KCSI and WG&A. Pioneer, thus, stayed on as the remaining claimant.

On October 28, 2002, the CIAC rendered its Decision^[5] finding that both WG&A and KCSI were **equally guilty of negligence** which resulted in the fire and loss of Superferry 3. The CIAC also ruled that the liability of KCSI was limited to the amount of P50,000,000.00 pursuant to Clause 20 of the Shiprepair Agreement.

Accordingly, the CIAC ordered KCSI to pay Pioneer the amount of P25,000,000.00, with interest at 6% per annum from the time of the filing of the case up to the time the decision was promulgated, and 12% interest per annum added to the award, or any balance thereof, after it would become final and executory. The CIAC further ordered that the arbitration costs be imposed on both parties on a *pro rata* basis.^[6]

Both parties appealed to the Court of Appeals (CA). In its final disposition of the cases, the CA, through its Amended Decision,^[7] **affirmed the decision of the CIAC** but deleted its order that KCSI pay legal interest on the amount due to Pioneer.

Again, both parties appealed to this Court.

In its Decision,^[8] dated September 25, 2009, the *Third Division*^[9] of the Court partially granted the appeals of both parties. In granting the petition of Pioneer, the Court found that KCSI was solely liable for the loss of the vessel and that WG&A properly declared the loss of the vessel as constructive total loss. The Court also declared that Clause 20 of the Shiprepair Agreement which limited KCSI's liability to the amount of P50,000,000.00 was invalid. As for the petition of KCSI, the Court found merit in KCSI's assertion that the salvage recovery value of the vessel amounting to P30,252,648.09 must be considered and deducted from the amount KCSI was liable to Pioneer. Thus, the Court disposed:

WHEREFORE, the Petition of Pioneer Insurance and Surety Corporation in G.R. No. 180896-97 and the Petition of Keppel Cebu Shipyard, Inc. in G.R. No. 180880-81 are PARTIALLY GRANTED and the Amended Decision dated December 20, 2007 of the Court of Appeals is MODIFIED. Accordingly, KCSI is ordered to pay Pioneer the amount of P360,000,000.00 less P30,252,648.09, equivalent to the salvage value recovered by Pioneer from M/V "Superferry 3," or the net total amount of **P329,747,351.91**, with six percent (6%) interest per annum reckoned from the time the Request for Arbitration was filed until this Decision becomes final and executory, plus twelve percent (12%) interest per annum on the said amount or any balance thereof from the finality of the Decision until the same will have been fully paid. The arbitration costs shall be borne by both parties on a pro rata basis. Costs against KCSI.

SO ORDERED. [Emphasis and underscoring supplied]

Aggrieved, KCSI moved for the reconsideration^[11] of the September 25, 2009 Decision and, subsequently, prayed that its motion be set for oral arguments.^[12] Following the opposition filed by Pioneer and the reply filed by KCSI, the Special Third Division of the Court on June 21, 2010, resolved to deny with finality KCSI's motions for lack of merit.^[13]

Undaunted, KCSI again sought reconsideration of the decision of the Third Division of the Court, reiterating its prayer that these cases be set for oral arguments. KCSI also prayed that these cases be referred to the Court *En Banc* and set for its consideration.^[14] Following a reorganization of the divisions of the Court, these cases were transferred to the Second Division.^[15] On October 20, 2010, the Second Division of the Court resolved to deny KCSI's second motion for reconsideration.^[16]

On November 4, 2010, the Court issued an order for Entry of Judgment, stating that the decision in these cases had become final and executory.^[17]

Through its *Motion to Re-Open Proceedings and Motion to Refer to the Court En Banc*,^[18] dated November 23, 2010, and its *Supplemental Motion*,^[19] dated December 13, 2010, KCSI sought the re-opening of the proceedings, and pleaded that these cases be referred to the Court *En Banc*. Pioneer filed its Opposition^[20] to KCSI's motions.

On April 11, 2011, persuaded by KCSI's arguments, the Second Division of the Court resolved to refer these cases to the Court *En Banc* for acceptance.^[21] As earlier stated, on June 7, 2011, the Court *En Banc* resolved to accept the cases.^[22] Pioneer sought reconsideration but its motion was denied.^[23]

In the disposition of the subject petitions, the Court is confronted with procedural and substantive issues:

Procedural:

Is the Court *En Banc* in violation of the doctrine of immutability of judgment in taking cognizance of the foregoing cases, considering that these cases were already adjudged as final and executory?

Did the failure to elevate the records from the court of origin to the Court render void any decision made by the latter?

Substantive:

As restated by the Court in its September 25, 2009 Decision, the substantive issues for resolution of the Court are the following:

- A. To whom may negligence over the fire that broke out on board M/V "Superferry 3" be imputed?
- B. Is subrogation proper? If proper, to what extent can subrogation be made?
- C. Should interest be imposed on the award of damages? If so, how much?
- D. Who should bear the cost of the arbitration?^[24]

The Court shall first dispose of the procedural issues.

Anent the first procedural issue, Pioneer, in essence, faults the Court *En Banc* when it took cognizance of the foregoing cases and ordered their reopening in its June 7, 2011 Resolution. It argues that the decision in the present cases had already become final and, according to the principle of immutability of judgment, once a judgment attains finality, it becomes immutable and unalterable, however unjust the result of error may appear.

The rule is not absolute.

The Internal Rules of the Supreme Court provides that the Court *En Banc* shall act on the following matters and cases:

- (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
- (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;
- (c) cases raising novel questions of law;
- (d) cases affecting ambassadors, other public ministers, and consuls;