

SECOND DIVISION

[G.R. No. 179446, January 09, 2011]

**LOADMASTERS CUSTOMS SERVICES, INC., PETITIONER, VS.
GLODEL BROKERAGE CORPORATION AND R&B INSURANCE
CORPORATION, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court assailing the August 24, 2007 Decision ^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 82822, entitled "*R&B Insurance Corporation v. Glodel Brokerage Corporation and Loadmasters Customs Services, Inc.*," which held petitioner Loadmasters Customs Services, Inc. (*Loadmasters*) liable to respondent Glodel Brokerage Corporation (*Glodel*) in the amount of P1,896,789.62 representing the insurance indemnity which R&B Insurance Corporation (*R&B Insurance*) paid to the insured-consignee, Columbia Wire and Cable Corporation (*Columbia*).

THE FACTS:

On August 28, 2001, R&B Insurance issued Marine Policy No. MN-00105/2001 in favor of Columbia to insure the shipment of 132 bundles of electric copper cathodes against All Risks. On August 28, 2001, the cargoes were shipped on board the vessel "Richard Rey" from Isabela, Leyte, to Pier 10, North Harbor, Manila. They arrived on the same date.

Columbia engaged the services of Glodel for the release and withdrawal of the cargoes from the pier and the subsequent delivery to its warehouses/plants. Glodel, in turn, engaged the services of Loadmasters for the use of its delivery trucks to transport the cargoes to Columbia's warehouses/plants in Bulacan and Valenzuela City.

The goods were loaded on board twelve (12) trucks owned by Loadmasters, driven by its employed drivers and accompanied by its employed truck helpers. Six (6) truckloads of copper cathodes were to be delivered to Balagtas, Bulacan, while the other six (6) truckloads were destined for Lawang Bato, Valenzuela City. The cargoes in six truckloads for Lawang Bato were duly delivered in Columbia's warehouses there. Of the six (6) trucks en route to Balagtas, Bulacan, however, only five (5) reached the destination. One (1) truck, loaded with 11 bundles or 232 pieces of copper cathodes, failed to deliver its cargo.

Later on, the said truck, an Isuzu with Plate No. NSD-117, was recovered but without the copper cathodes. Because of this incident, Columbia filed with R&B Insurance a claim for insurance indemnity in the amount of P1,903,335.39. After the requisite investigation and adjustment, R&B Insurance paid Columbia the

amount of P1,896,789.62 as insurance indemnity.

R&B Insurance, thereafter, filed a complaint for damages against both Loadmasters and Glodel before the Regional Trial Court, Branch 14, Manila (*RTC*), docketed as Civil Case No. 02-103040. It sought reimbursement of the amount it had paid to Columbia for the loss of the subject cargo. It claimed that it had been subrogated "to the right of the consignee to recover from the party/parties who may be held legally liable for the loss." [2]

On November 19, 2003, the *RTC* rendered a decision [3] holding Glodel liable for damages for the loss of the subject cargo and dismissing Loadmasters' counterclaim for damages and attorney's fees against R&B Insurance. The dispositive portion of the decision reads:

WHEREFORE, all premises considered, the plaintiff having established by preponderance of evidence its claims against defendant Glodel Brokerage Corporation, judgment is hereby rendered ordering the latter:

1. To pay plaintiff R&B Insurance Corporation the sum of P1,896,789.62 as actual and compensatory damages, with interest from the date of complaint until fully paid;
2. To pay plaintiff R&B Insurance Corporation the amount equivalent to 10% of the principal amount recovered as and for attorney's fees plus P1,500.00 per appearance in Court;
3. To pay plaintiff R&B Insurance Corporation the sum of P22,427.18 as litigation expenses.

WHEREAS, the defendant Loadmasters Customs Services, Inc.'s counterclaim for damages and attorney's fees against plaintiff are hereby dismissed.

With costs against defendant Glodel Brokerage Corporation.

SO ORDERED. [4]

Both R&B Insurance and Glodel appealed the *RTC* decision to the *CA*.

On August 24, 2007, the *CA* rendered the assailed decision which reads in part:

Considering that appellee is an agent of appellant Glodel, whatever liability the latter owes to appellant R&B Insurance Corporation as insurance indemnity must likewise be the amount it shall be paid by appellee Loadmasters.

WHEREFORE, the foregoing considered, the appeal is PARTLY GRANTED in that the appellee Loadmasters is likewise held liable to appellant Glodel in

the amount of P1,896,789.62 representing the insurance indemnity appellant Glodel has been held liable to appellant R&B Insurance Corporation.

Appellant Glodel's appeal to absolve it from any liability is herein DISMISSED.

SO ORDERED. [5]

Hence, Loadmasters filed the present petition for review on certiorari before this Court presenting the following

ISSUES

1. Can Petitioner Loadmasters be held liable to Respondent Glodel in spite of the fact that the latter respondent Glodel did not file a cross-claim against it (Loadmasters)?

2. Under the set of facts established and undisputed in the case, can petitioner Loadmasters be legally considered as an Agent of respondent Glodel? [6]

To totally exculpate itself from responsibility for the lost goods, Loadmasters argues that it cannot be considered an agent of Glodel because it never represented the latter in its dealings with the consignee. At any rate, it further contends that Glodel has no recourse against it for its (Glodel's) failure to file a cross-claim pursuant to Section 2, Rule 9 of the 1997 Rules of Civil Procedure.

Glodel, in its Comment, [7] counters that Loadmasters is liable to it under its cross-claim because the latter was grossly negligent in the transportation of the subject cargo. With respect to Loadmasters' claim that it is already estopped from filing a cross-claim, Glodel insists that it can still do so even for the first time on appeal because there is no rule that provides otherwise. Finally, Glodel argues that its relationship with Loadmasters is that of Charter wherein the transporter (Loadmasters) is only hired for the specific job of delivering the merchandise. Thus, the diligence required in this case is merely ordinary diligence or that of a good father of the family, not the extraordinary diligence required of common carriers.

R&B Insurance, for its part, claims that Glodel is deemed to have interposed a cross-claim against Loadmasters because it was not prevented from presenting evidence to prove its position even without amending its Answer. As to the relationship between Loadmasters and Glodel, it contends that a contract of agency existed between the two corporations. [8]

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. [9] Doubtless, R&B Insurance is subrogated to the rights of the insured to the extent of the amount it paid the consignee under the marine insurance, as provided under

Article 2207 of the Civil Code, which reads:

ART. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

As subrogee of the rights and interest of the consignee, R&B Insurance has the right to seek reimbursement from either Loadmasters or Glodel or both for breach of contract and/or tort.

The issue now is who, between Glodel and Loadmasters, is liable to pay R&B Insurance for the amount of the indemnity it paid Columbia.

At the outset, it is well to resolve the issue of whether Loadmasters and Glodel are common carriers to determine their liability for the loss of the subject cargo. Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public.

Based on the aforecited definition, Loadmasters is a common carrier because it is engaged in the business of transporting goods by land, through its trucking service. It is a *common carrier* as distinguished from a *private carrier* wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public. [10] The distinction is significant in the sense that "the rights and obligations of the parties to a contract of private carriage are governed principally by their stipulations, not by the law on common carriers." [11]

In the present case, there is no indication that the undertaking in the contract between Loadmasters and Glodel was private in character. There is no showing that Loadmasters solely and exclusively rendered services to Glodel.

In fact, Loadmasters *admitted* that it is a common carrier. [12]

In the same vein, Glodel is also considered a common carrier within the context of Article 1732. In its Memorandum, [13] it states that it "is a corporation duly organized and existing under the laws of the Republic of the Philippines and is engaged in the business of customs brokering." It cannot be considered otherwise because as held by this Court in *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, [14] a customs broker is also regarded as a common carrier, the transportation of goods being an integral part of its business.

Loadmasters and Glodel, being both common carriers, are mandated from the nature of their business and for reasons of public policy, to observe the extraordinary diligence in the vigilance over the goods transported by them