

THIRD DIVISION

[G.R. No. 160088, July 13, 2011]

AGUSTIN P. DELA TORRE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, CRISOSTOMO G. CONCEPCION, RAMON "BOY" LARRAZABAL, PHILIPPINE TRIGON SHIPYARD CORPORATION, AND ROLAND G. DELA TORRE, RESPONDENTS.

[G.R. No. 160565]

PHILIPPINE TRIGON SHIPYARD CORPORATION AND ROLAND G. DELA TORRE, PETITIONERS, VS. CRISOSTOMO G. CONCEPCION, AGUSTIN DELA TORRE AND RAMON "BOY" LARRAZABAL, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

These consolidated petitions ^[1] for review on certiorari seek to reverse and set aside the September 30, 2002 Decision ^[2] and September 18, 2003 Resolution ^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 36035, affirming *in toto* the July 10, 1991 Decision ^[4] of the Regional Trial Court, Branch 60, Angeles City (RTC). The RTC Decision in Civil Case No. 4609, an action for Sum of Money and Damages, ordered the defendants, jointly and severally, to pay various damages to the plaintiff.

The Facts:

Respondent Crisostomo G. Concepcion (*Concepcion*) owned *LCT-Josephine*, a vessel registered with the Philippine Coast Guard. On February 1, 1984, Concepcion entered into a "Preliminary Agreement" ^[5] with Roland de la Torre (*Roland*) for the dry-docking and repairs of the said vessel as well as for its charter afterwards. ^[6] Under this agreement, Concepcion agreed that after the dry-docking and repair of *LCT-Josephine*, it "should" be chartered for ₱10,000.00 per month with the following conditions:

1. The CHARTERER will be the one to pay the insurance premium of the vessel
2. The vessel will be used once every three (3) months for a maximum period of two (2) weeks
3. The SECOND PARTY (referring to Concepcion) agreed that LCT-Josephine should be used by the FIRST PARTY (referring to Roland) for the maximum period of two (2) years

4. The FIRST PARTY (Roland) will take charge[x] of maintenance cost of the said vessel. [Underscoring Supplied]

On June 20, 1984, Concepcion and the Philippine Trigon Shipyard Corporation [7] (PTSC), represented by Roland, entered into a "Contract of Agreement," [8] wherein the latter would charter *LCT-Josephine* retroactive to May 1, 1984, under the following conditions:

- a. Chartered amount of the vessel - ₱20,000.00 per month effective May 1, 1984;
- j. The owner (Concepcion) shall pay 50% downpayment for the dry-docking and repair of the vessel and the balance shall be paid every month in the amount of P10,000.00, to be deducted from the rental amount of the vessel;
- k. In the event that a THIRD PARTY is interested to purchase the said vessel, the SECOND PARTY (PTSC/ Roland) has the option for first priority to purchase the vessel. If the SECOND PARTY (PTSC/Roland) refuses the offer of the FIRST PARTY (Concepcion), shall give the SECOND PARTY (PTSC/Roland) enough time to turn over the vessel so as not to disrupt previous commitments;
- l. That the SECOND PARTY (PTSC/Roland) has the option to terminate the contract in the event of the SECOND PARTY (PTSC/Roland) decide to stop operating;
- m. The SECOND PARTY (PTSC/Roland) shall give 90 days notice of such termination of contract;
- n. Next x x year of dry-docking and repair of vessel shall be shouldered by the SECOND PARTY (PTSC/Roland); [Underscoring Supplied]

On August 1, 1984, PTSC/Roland sub-chartered *LCT-Josephine* to Trigon Shipping Lines (TSL), a single proprietorship owned by Roland's father, Agustin de la Torre (Agustin). [9] The following are the terms and conditions of that "Contract of Agreement:" [10]

- a. Chartered amount of the vessel ₱30,000.00 per month effective August, 1984;
- b. Downpayment of the 50% upon signing of the contract and the balance every end of the month;
- c. Any cost for the additional equipment to be installed on the vessel will be borne by the FIRST PARTY (PTSC/ Roland) and the cost of the equipment will be deductible from the monthly rental of the vessel;
- d. In the event the vessel is grounded or other [force majeure] that will make the vessel non-operable, the rental of the vessel shall be suspended from the start until the vessel will be considered

operational;

- e. The cost for the dry-docking and/or repair of vessel shall not exceed ₱200,000.00, any excess shall be borne by the SECOND PARTY (TSL/Agustin);
- f. The SECOND PARTY (TSL/Agustin) undertakes to shoulder the maintenance cost for the duration of the usage;
- g. All cost for the necessary repair of the vessel shall be on the account of the SECOND PARTY (TSL/Agustin);
- h. That the SECOND PARTY (TSL/Agustin) has the option to terminate the contract in the event the SECOND PARTY (TSL/Agustin) decides to stop operating;
- i. The FIRST PARTY (PTSC/Roland) will terminate the services of all vessel's crew and the SECOND PARTY (TSL/Agustin) shall have the right to replace and rehire the crew of the vessel.
- j. Insurance premium of the vessel will be divided equally between the FIRST PARTY (PTSC/Rolando) and the SECOND PARTY (TSL/Agustin). [Underscoring supplied]

On November 22, 1984, TSL, this time represented by Roland per Agustin's Special Power of Attorney, [11] sub-chartered *LCT-Josephine* to Ramon Larrazabal (*Larrazabal*) for the transport of cargo consisting of sand and gravel to Leyte. The following were agreed upon in that contract, [12] to wit:

- 1. That the FIRST PARTY (TSL by Roland) agreed that LCT-Josephine shall be used by the SECOND PARTY (Larrazabal) for and in consideration on the sum of FIVE THOUSAND FIVE HUNDRED (₱ 5,500.00) PESOS, Philippine currency per day charter with the following terms and conditions.
- 2. That the CHARTERER should pay ₱2,000.00 as standby pay even that will made (sic) the vessel non-operable cause[d] by natural circumstances.
- 3. That the CHARTERER will supply the consumed crude oil and lube oil per charter day.
- 4. That the SECOND PARTY (Larrazabal) is the one responsible to supervise in loading and unloading of cargo load on the vessel.
- 5. That the SECOND PARTY (Larrazabal) shall give one week notice for such termination of contract.
- 6. TERMS OF PAYMENTS that the SECOND PARTY (Larrazabal) agreed to pay 15 days in advance and the balance should be paid weekly. [Underscoring Supplied]

On November 23, 1984, the *LCT-Josephine* with its cargo of sand and gravel arrived at Philpos, Isabel, Leyte. The vessel was beached near the NDC Wharf. With the vessel's ramp already lowered, the unloading of the vessel's cargo began with the use of Larrazabal's payloader. While the payloader was on the deck of the *LCT-Josephine* scooping a load of the cargo, the vessel's ramp started to move downward, the vessel tilted and sea water rushed in. Shortly thereafter, *LCT-Josephine* sank. [13]

Concepcion demanded that PTSC/ Roland refloat *LCT-Josephine*. The latter assured Concepcion that negotiations were underway for the refloating of his vessel. [14] Unfortunately, this did not materialize.

For this reason, Concepcion was constrained to institute a complaint for "Sum of Money and Damages" against PTSC and Roland before the RTC. PTSC and Roland filed their answer together with a third-party complaint against Agustin. Agustin, in turn, filed his answer plus a fourth-party complaint against Larrazabal. The latter filed his answer and counterclaim but was subsequently declared in default by the RTC. [15] Eventually, the fourth-party complaint against Larrazabal was dismissed when the RTC rendered its decision in favor of Concepcion on July 10, 1991. [16] In said RTC decision, the following observations were written:

The testimonies of Roland de la Torre and Hubart Sungayan quoted above, show: (1) that the payloader was used to unload the cargo of sand and gravel; (2) that the payloader had to go inside the vessel and scoop up a load; (3) that the ramp according to Roland de la Torre, "was not properly put into peak (sic) such that the front line will touch the bottom, particularly will touch the sea x x x"; (4) that "the tires (of the payloader) will be submerged to (sic) the sea"; (5) that according to Sungayan "the ramp of the vessel was moving down"; (6) that the payloader had to be maneuvered by its operator who dumped the load at the side of the vessel; (7) that the dumping of the load changed the stability of the vessel and tilted it to the starboard side; and (8) that the tilting caused the sliding of the cargo toward that side and opened the manhole through which seawater rushed in. [17]

Hubart Sungayan, who was the chiefmate of *LCT-Josephine* and under the employ of TSL/Agustin, also admitted at the trial that it was TSL/Agustin, through its crew, who was in-charge of *LCT-Josephine's* operations although the responsibility of loading and unloading the cargo was under Larrazabal. Thus, the RTC declared that the "efficient cause of the sinking of the *LCT-JOSEPHINE* was the improper lowering or positioning of the ramp," which was well within the charge or responsibility of the captain and crew of the vessel. [18] The *fallo* of the RTC Decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

1. The defendants, Philippine Trigon Shipping Corporation and Roland de la Torre, and the third-party defendant, Agustin de la Torre, shall

pay the plaintiff, jointly and severally, the sum of EIGHT HUNDRED FORTY-ONE THOUSAND THREE HUNDRED EIGHTY SIX PESOS AND EIGHTY SIX CENTAVOS (₱841,386.86) as the value of the LCT JOSEPHINE with interest thereon at the legal rate of 6% per annum from the date of demand, that is from March 14, 1985, the date when counsel for the defendant Philippine Trigon Shipyard Corporation answered the demand of the plaintiff, until fully paid;

2. The defendants, Philippine Trigon Shipyard Corporation and Roland de la Torre, shall pay to the plaintiff the sum of NINETY THOUSAND PESOS (₱90,000.00) as unpaid rentals for the period from May 1, 1984, to November, 1984, and the sum of ONE HUNDRED SEVENTY THOUSAND PESOS (₱170,000.00) as lost rentals from December, 1984, to April 30, 1986, with interest on both amounts at the rate of 6% per annum also from demand on March 14, 1985, until fully paid;
3. The defendants and the third-party defendant shall likewise pay to the plaintiff jointly and severally the sum of TWENTY-FIVE THOUSAND PESOS (₱25,000.00) as professional fee of plaintiff's counsel plus FIVE HUNDRED PESOS (₱500.00) per appearance of said counsel in connection with actual trial of this case, the number of such appearances to be determined from the records of this case;
4. The defendants' counterclaim for the unpaid balance of plaintiff's obligation for the dry-docking and repair of the vessel LCT JOSEPHINE in the amount of TWENTY-FOUR THOUSAND THREE HUNDRED FOUR PESOS AND THIRTY-FIVE CENTAVOS (₱24,304.35), being valid, shall be deducted from the unpaid rentals, with interest on the said unpaid balance at the rate of 6% per annum from the date of the filing of the counter-claim on March 31, 1986;
5. The counter-claim of the defendants in all other respects, for lack of merit, is hereby DISMISSED;
6. The fourth-party complaint against the fourth-party defendant, Ramon Larrazabal, being without basis, is likewise DISMISSED; and
7. The defendants and third-party defendant shall pay the costs.

SO ORDERED. [19]

Agustin, PTSC and Roland went to the CA on appeal. The appellate court, in agreement with the findings of the RTC, affirmed its decision *in toto*.

Still not in conformity with the CA findings against them, Agustin, PTSC and Roland came to this Court through these petitions for review. In G.R. No. 160088, petitioner Agustin raises the following issues: