

## SECOND DIVISION

[ G.R. No. 152313, October 19, 2011 ]

**REPUBLIC FLOUR MILLS CORPORATION, PETITIONER, VS.  
FORBES FACTORS, INC. RESPONDENT.**

### D E C I S I O N

**SERENO, J.:**

Petitioner filed this present Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking a reversal of the Court of Appeals Decision,<sup>[2]</sup> the dispositive portion of which states:

**WHEREFORE**, premises considered, the Decision dated April 15, 1996 rendered by the Regional Trial Court of Makati City, Branch 60, is hereby **AFFIRMED**, with **MODIFICATIONS**, as follows:

- 1) The legal interest rate of six percent (6%) per annum should be computed from the date of the filing of the complaint which shall become twelve percent (12%) per annum from the time the judgment becomes final and executory until its satisfaction.
- 2) The award of P300,000.00 as exemplary damages is reduced to P50,000.00;
- 3) The award of P400,00.00 as attorney's fees is likewise reduced to P75,000.00;
- 4) The Decision is hereby affirmed in all other respects.

**SO ORDERED.**

The case arose when petitioner refused to pay the demurrage being collected by respondent.

The facts are as follows:

In a contract dated 26 April 1983, respondent was appointed as the exclusive Philippine indent representative of Richco Rotterdam B.V. (Richco), a foreign corporation, in the sale of the latter's commodities. Under one of the terms of the contract, respondent was to assume the liabilities of all the Philippine buyers, should they fail to honor the commitments on the discharging operations of each vessel, including the payment of demurrage and other penalties. In such instances, Richco shall have the option to debit the account of respondent corresponding to the

liabilities of the buyers, and respondent shall then be deemed to be subrogated to all the rights of Richco against these defaulting buyers.<sup>[3]</sup>

Sometime in 1987, petitioner purchased Canadian barley and soybean meal from Richco. The latter thereafter chartered four (4) vessels to transport the products to the Philippines. Each of the carrier bulk cargoes was covered by a Contract of Sale executed between respondent as the seller and duly authorized representative of Richco and petitioner as the buyer. The four contracts specifically referred to the charter party in determining demurrage or dispatch rate. The contract further provided that petitioner guarantees to settle any demurrage due within one (1) month from respondent's presentation of the statement.

Upon delivery of the barley and soybean meal, petitioner failed to discharge the cargoes from the four (4) vessels at the computed allowable period to do so. Thus, it incurred a demurrage amounting to a total of US\$193,937.41.

On numerous occasions, on behalf of Richco, respondent demanded from petitioner the payment of the demurrage, to no avail. Consequently, on 20 October 1991, Richco sent a communication to respondent, informing it that the demurrage due from petitioner had been debited from the respondent's account.

Thereafter, on 12 February 1992, respondent filed with the Regional Trial Court (RTC), National Capital Judicial Region, Makati City, a Complaint for demurrage and damages against petitioner. Meanwhile, the latter raised the defense that the delay was due to respondent's inefficiency in unloading the cargo.

On 15 April 1996, after trial on the merits, the RTC rendered a Decision<sup>[4]</sup> holding petitioner liable to pay demurrage and damages to respondent, to wit:

34. **WHEREFORE**, the Court hereby renders judgment as follows:

34.1 The defendant REPUBLIC FLOUR MILLS CORPORATION is ordered to pay the plaintiff FORBES FACTORS, INC. the following:

34.1.1. US\$193,937.41 or its Philippine PESO equivalent at the rate of exchange at the time of payment - As demurrage.

34.1.2 Six (6) percent of the amount in the preceding paragraph 34.1.1 - Per annum from October 29, 1991 until the said amount is fully paid - As damages.

34.1.3. P300,000.00 - As exemplary damages.

34.1.4. P 400,000.00 - As attorney's fees.

34.2. The COUNTERCLAIM is DISMISSED; and

34.3. Cost is taxed against the defendant.

The RTC found that the delay in discharging the cargoes within the allowable period was due to petitioner's failure to provide enough barges on which to load the goods. It likewise found that petitioner in fact acknowledged that the latter had incurred demurrage when it alleged that the computation was bloated. Petitioner was thus liable to pay demurrage based on the sales contracts executed with respondent and on the contract executed between respondent and Richco.

Finally, the court ruled that respondent was entitled to damages from petitioner's "wanton, fraudulent, reckless, oppressive or malevolent" refusal to pay the latter's liabilities despite repeated demands.

Subsequently, petitioner appealed to the Court of Appeals (CA), alleging that respondent was not a real party-in-interest to bring the collection suit. Petitioner insisted that the payment of demurrage should be made to the owner of the vessels that transported the goods, and not to respondent who was merely the indent representative of Richco, the charterer of the vessel. In addition, petitioner claimed that it was denied due process when the RTC refused to reset the hearing for the presentation of Reynaldo Santos, petitioner's witness and export manager. Finally, petitioner contested the RTC's award of exemplary damages and attorney's fees.

On 18 February 2002, the CA promulgated the assailed Decision. It upheld the validity of the Contracts of Sale and held that these had the force of law between the contracting parties and must be complied with in good faith. However, the appellate court modified the trial court's award of damages. It held that exemplary damages are not intended to enrich anyone, thus, reducing the amount from P300,000 to P50,000. It also found the award of attorney's fees to be excessive, and consequently reduced it from P400,000 to P75,000.

Hence this Petition.

Three issues are raised for the resolution by this Court. First, petitioner assails the right of respondent to demand payment of demurrage. Petitioner asserts that, by definition, demurrage is the sum fixed by the contract of carriage as remuneration to the ship owner for the detention of the vessel beyond the number of days allowed by the charter party.<sup>[5]</sup> Thus, since respondent is not the ship owner, it has no right to demand the payment of demurrage and has no personality to bring the claim against petitioner. Second, petitioner questions the propriety of the award of damages in favor of respondent. And third, the former insists that it was denied due process when the RTC denied its Motion to reset the hearing to present its witness.

We find the petition without merit.

The facts are undisputed. The delay incurred by petitioner in discharging the cargoes from the vessels was due to its own fault. Its obligation to demurrage is established by the Contracts of Sale it executed, wherein it agreed to the conditions to provide all discharging facilities at its expense in order to effect the immediate discharge of cargo; and to place for its account all discharging costs, fees, taxes, duties and all other charges incurred due to the nature of the importation.<sup>[6]</sup>

Meanwhile, respondent unequivocally established that Richco charged to it the