

SECOND DIVISION

[G.R. No. 161849, July 09, 2010]

WALLEM PHILIPPINES SHIPPING, INC., PETITIONER, VS. S.R. FARMS, INC., RESPONDENT.

DECISION

PERALTA, J.:

Assailed in the present petition for review on *certiorari* are the Decision^[1] and Resolution^[2] of the Court of Appeals (CA) dated June 2, 2003 and January 15, 2004, respectively, in CA-G.R. CV No. 65857. The CA Decision reversed and set aside the Decision^[3] dated October 8, 1999 of the Regional Trial Court (RTC) of Manila, Branch 11, in Civil Case No. 93-65021, while the CA Resolution denied petitioners' Motion for Reconsideration.

The facts of the case, as found by the RTC and affirmed by the CA, are as follows:

x x x On March 25, 1992, Continental Enterprises, Ltd. loaded on board the vessel M/V "Hui Yang," at Bedi Bunder, India, a shipment of Indian Soya Bean Meal, for transportation and delivery to Manila, with plaintiff [herein respondent] as consignee/notify party. The said shipment is said to weigh 1,100 metric tons and covered by Bill of Lading No. BEDI 4 dated March 25, 1992 (Exhibit A; also Exhibit I). The vessel is owned and operated by defendant Conti-Feed, with defendant [herein petitioner] Wallem as its ship agent.

The subject cargo is part of the entire shipment of Indian Soya Bean Meal/India Rapeseed Meal loaded in bulk on board the said vessel for delivery to several consignees. Among the consignees were San Miguel Corporation and Vitarich Corporation, including the herein plaintiff (Exhibit A; Exhibits 1 to 6; TSN, p. 13, June 28, 1996).

On April 11, 1992, the said vessel, M/V "Hui Yang" arrived at the port of Manila, Pier 7 South Harbor. Thereafter, the shipment was discharged and transferred into the custody of the receiving barges, the NorthFront-333 and NorthFront-444. The offloading of the shipment went on until April 15, 1992 and was handled by [Ocean Terminal Services, Inc.] OTSI using its own manpower and equipment and without the participation of the crew members of the vessel. All throughout the entire period of unloading operation, good and fair weather condition prevailed.

At the instance of the plaintiff, a cargo check of the subject shipment was made by one Lorenzo Bituin of Erne Maritime and Allied Services, Co. Inc., who noted a shortage in the shipment which was placed at 80.467

metric tons based on draft survey made on the NorthFront-33 and NorthFront-444 showing that the quantity of cargo unloaded from the vessel was only 1019.53 metric tons. Thus, per the bill of lading, there was an estimated shortage of 80.467.

Upon discovery thereof, the vessel chief officer was immediately notified of the said short shipment by the cargo surveyor, who accordingly issued the corresponding Certificate of Discharge dated April 15, 1992 (Exhibit D). The survey conducted and the resultant findings thereon are embodied in the Report of Superintendence dated April 21, 1992 (Exhibits C to C-2) and in the Barge Survey Report both submitted by Lorenzo Bituin (Exhibits C-3 and C-4). As testified to by Lorenzo Bituin, this alleged shortage of 80.467 metric tons was arrived at using the draft survey method which calls for the measurement of the light and loaded condition of the barge in relation to the weight of the water supposedly displaced.^[4]

Petitioner then filed a Complaint for damages against Conti-Feed & Maritime Pvt. Ltd., a foreign corporation doing business in the Philippines and the owner of *M/V "Hui Yang"*; RCS Shipping Agencies, Inc., the ship agent of Conti-Feed; Ocean Terminal Services, Inc. (OTSI), the arrastre operator at Anchorage No. 7, South Harbor, Manila; and Cargo Trade, the customs broker.^[5]

On June 7, 1993, respondent filed an Amended Complaint impleading herein petitioner as defendant alleging that the latter, and not RCS, was the one which, in fact, acted as Conti-Feed's ship agent.^[6]

On June 22, 1993, the complaint against Cargo Trade was dismissed at the instance of respondent on the ground that it has no cause of action against the former.^[7]

Subsequently, upon motion of RCS, the case against it was likewise dismissed for lack of cause of action.^[8]

Meanwhile, defendant OTSI filed its Answer with Counterclaim and Crossclaim^[9] denying the material allegations of the Complaint and alleging that it exercised due care and diligence in the handling of the shipment from the carrying vessel unto the lighters; no damage or loss whatsoever was sustained by the cargo in question while being discharged by OTSI; petitioner's claim had been waived, abandoned or barred by laches or estoppels; liability, if any, is attributable to its co-defendants.

For its part, petitioner denied the allegations of respondent claiming, among others, that it is not accountable nor responsible for any alleged shortage sustained by the shipment while in the possession of its co-defendants; the alleged shortage was due to negligent or faulty loading or unloading of the cargo by the stevedores/shipper/consignee; the shortage, if any, was due to pre-shipment damage, inherent nature, vice or defect of the cargo for which herein petitioner is not liable; respondent's claim is already barred by laches and/or prescription.^[10]

Conti-Feed did not file an Answer.

Pre-Trial Conference was conducted, after which trial ensued.

On October 8, 1999, the RTC rendered its Decision^[11] dismissing respondent's complaint, as well as the opposing parties' counterclaims and crossclaims.

Aggrieved by the RTC Decision, respondent filed an appeal with the CA.

On June 2, 2003, the CA rendered its presently assailed Decision disposing as follows:

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one entered ordering defendants-appellees Conti-Feed and Maritime Pvt. Ltd. and Wallem Philippines Shipping, Inc., to pay the sum representing the value of the 80.467 metric tons of Indian Soya Beans shortdelivered, with legal interest from the time the judgment becomes final until full payment, plus attorney's fees and expenses of litigation of P10,000.00, as well as the cost of suit.

SO ORDERED.^[12]

Petitioner filed a Motion for Reconsideration.

On July 8, 2003, respondent filed a Motion for a More Definite Dispositive Portion^[13] praying that the value of the 80.467 metric tons of Indian Soya Beans, which petitioner and Conti-Feed were ordered to pay, be specified in the dispositive portion of the CA Decision.

Petitioner filed its Comment/Opposition^[14] to private respondent's Motion.

On January 15, 2004, the CA issued a Resolution denying petitioner's Motion for Reconsideration and modifying the dispositive portion of its Decision, thus:

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one entered ordering defendants-appellees Conti-Feed and Maritime Pvt. Ltd. and Wallem Shipping, Inc., to pay the sum of \$19,070.06 representing the value of the 80.467 metric tons of Indian Soya Beans shortdelivered, with legal interest from the time the judgment becomes final until full payment, plus attorney's fees and expenses of litigation of P10,000.00, as well as the costs of suit.

SO ORDERED.^[15]

Hence, the instant petition based on the following Assignment of Errors:

THE COURT OF APPEALS ERRED IN APPLYING THE PRESUMPTION OF NEGLIGENCE UNDER ARTICLE 1735 OF THE CIVIL CODE. THIS PROVISION DOES NOT APPLY IN THIS CASE BECAUSE THERE WAS NO LOSS OR SHORTAGE OR SHORTDELIVERY.

II

THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE CASE CONSIDERING THAT:

A. THE CLAIM WAS ALREADY TIME-BARRED WHEN THE CASE WAS FILED AGAINST HEREIN PETITIONER ON 8 MAY 1993, AS PROVIDED IN SECTION 3 (6) OF THE COGSA. THE ONE-YEAR PRESCRIPTIVE PERIOD COMMENCED ON 15 APRIL 1992 WHEN THE SUBJECT SHIPMENT WAS DELIVERED TO PRIVATE RESPONDENT AND LAPSED ON 15 APRIL 1993; AND

B. [RESPONDENT] WAIVED ITS RIGHT OF ACTION WHEN IT DID NOT GIVE A WRITTEN NOTICE OF LOSS TO THE PETITIONER WITHIN THREE (3) DAYS FROM DISCHARGE OF THE SUBJECT SHIPMENT AS PROVIDED IN SECTION 3 (6) OF THE COGSA.

III

IN THE REMOTE POSSIBILITY OF LOSS OR SHORTAGE OR SHORTDELIVERY, THE COURT OF APPEALS ERRED IN IMPUTING NEGLIGENCE AGAINST THE PETITIONER WHICH WAS NOT RESPONSIBLE IN LOADING AND/OR DISCHARGING THE SUBJECT SHIPMENT.

IV

THE COURT OF APPEALS ERRED IN GRANTING [RESPONDENT'S] MOTION FOR A MORE DEFINITE DISPOSITIVE PORTION WITHOUT STATING IN THE DECISION, THE LEGAL BASES FOR DOING SO.

V

THE COURT OF APPEALS ERRED IN GRANTING THE MOTION FOR A MORE DEFINITE DISPOSITIVE PORTION BECAUSE [RESPONDENT] FILED SAID MOTION MORE THAN FIFTEEN (15) DAYS AFTER [RESPONDENT] RECEIVED THE DECISION OF THE COURT OF APPEALS. THE COURT OF APPEALS FURTHER ERRED IN INSERTING A DEFINITE MONETARY VALUE OF THE ALLEGED SHORTAGE BECAUSE THERE WAS NO FACTUAL FINDING, BOTH IN THE TRIAL COURT AND IN THE COURT OF APPEALS, AS TO THE SPECIFIC AMOUNT OF THE ALLEGED SHORTDELIVERED CARGO.^[16]