

THIRD DIVISION

[G.R. Nos. 180880-81, September 25, 2009]

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.

DECISION

NACHURA, J.:

Before us are the consolidated petitions filed by the parties--Pioneer Insurance and Surety Corporation^[1] (Pioneer) and Keppel Cebu Shipyard, Inc.^[2] (KCSI)--to review on *certiorari* the Decision^[3] dated December 17, 2004 and the Amended Decision^[4] dated December 20, 2007 of the Court of Appeals (CA) in CA-G.R. SP Nos. 74018 and 73934.

On January 26, 2000, KCSI and WG&A Jebsens Shipmanagement, Inc. (WG&A) executed a Shiprepair Agreement^[5] wherein KCSI would renovate and reconstruct WG&A's M/V "Superferry 3" using its dry docking facilities pursuant to its restrictive safety and security rules and regulations. Prior to the execution of the Shiprepair Agreement, "Superferry 3" was already insured by WG&A with Pioneer for US\$8,472,581.78. The Shiprepair Agreement reads--

SHIPREPAIR AGREEMENT^[6]

Company: WG & A JEBSENS SHIPMANAGEMENT INC.
Address: Harbour Center II, Railroad & Chicago Sts.
Port Area, City of Manila

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. In addition, the following are mutually agreed upon by the parties:

1. The Owner shall inform its insurer of Clause 20^[7] and 22 (a)^[8] (refer at the back hereof) and shall include Keppel Cebu Shipyard as a co-assured in its insurance

policy.

2. The Owner shall waive its right to claim for any loss of profit or loss of use or damages consequential on such loss of use resulting from the delay in the redelivery of the above vessel.
3. Owner's sub-contractors or workers are not permitted to work in the yard without the 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 any or 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.
5. On arrival, the Owner Representative, Captain, Chief Officer and Chief Engineer will be invited to attend a conference with our Production, Safety and Security personnel whereby they will be briefed on, and given copies of Shipyard safety regulations.
6. An adequate number of officers and crew must remain on board at all times to ensure the safety of the vessel and compliance of safety regulations by crew and owner employed workmen.
7. The ship's officers/crew or owner appointed security personnel shall maintain watch against pilferage and acts of sabotage.
8. The yard must be informed and instructed to provide the necessary security arrangement coverage should there be inadequate or no crew on board to provide the expressed safety and security enforcement.
9. The Owner shall be liable to Keppel Cebu Shipyard for any death and/or bodily injuries for the [K]eppel Cebu Shipyard's employees and/or contract workers; theft and/or damages to Keppel Cebu Shipyard's properties and other liabilities which are caused by the workers of the Owner.
10. The invoice shall be based on quotation reference 99-KCSI-211 dated December 20, 1999 tariff dated March 15, 1998.
11. Payment term shall be as follows:

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.

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| (Signed) <u>BARRY CHIA SOO HOCK</u> (Printed Name/Signature Above Name) | (Signed) (Printed Name/Signature Above Name) |
| Vice President - Operations Keppel Cebu Shipyard, Inc. | Authorized Representative for and in behalf of: <u>WG & A Jebsens Shipmgmt.</u> |
| <u>JAN. 26, 2000</u> Date | _____ Date |

On February 8, 2000, in the course of its repair, M/V "Superferry 3" was gutted by fire. Claiming that the extent of the damage was pervasive, WG&A declared the vessel's damage as a "total constructive loss" and, hence, 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. WG&A, in turn, executed a Loss and Subrogation Receipt^[9] in favor of Pioneer, to wit:

LOSS AND SUBROGATION RECEIPT

16 June 2000

Our Claim Ref: MH-NIL-H0-99-00018

US\$8,472,581.78

RECEIVED from **PIONEER INSURANCE & SURETY CORPORATION** the sum of **U.S. DOLLARS EIGHT MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED EIGHTY-ONE & 78/100 (US\$ 8,472,581.78)** equivalent to **PESOS THREE HUNDRED SIXTY MILLION & 00/100 (Php 360,000,000.00)**, in full satisfaction, compromise and discharge of all claims for loss and expenses sustained to the vessel "**SUPERFERRY 3**" insured under Policy Nos. MH-H0-99-0000168-00-D (H&M) and MH-H0-99-0000169 (I.V.) by reason as follows:

**Fire on board at Keppel Cebu Shipyard
on 08 February 2000**

and in consideration of which the undersigned hereby assigns and transfers to the said company each and all claims and demands against any person, persons, corporation or property arising from or connected with such loss or damage and the said company is subrogated in the place of and to the claims and demands of the undersigned against said person, persons, corporation or property in the premises to the extent of the amount above-mentioned.

**WILLIAM, GOTHONG & ABOITIZ, INC.
&/OR ABOITIZ SHIPPING CORP.**

By: (Signed)

Witnesses: (Signed)

(Signed)

Armed with the subrogation receipt, Pioneer tried to collect from KCSI, but the latter denied any responsibility for the loss of the subject vessel. As KCSI continuously refused to pay despite repeated demands, Pioneer, on August 7, 2000, filed a Request for Arbitration before the Construction Industry Arbitration Commission (CIAC) docketed as CIAC Case No. 21-2000, seeking the following reliefs:

1. To pay to the claimant Pioneer Insurance and Surety Corporation the sum of U.S.\$8,472,581.78 or its equivalent amount in Philippine Currency, plus interest thereon computed from the date of the "Loss and Subrogation Receipt" on 16 June 2000 or from the date of filing of [the] "Request for Arbitration," as may be found proper;
2. To pay to claimant WG&A, INC. and/or Aboitiz Shipping Corporation and WG&A Jebsens Shipmanagement, Inc. the sum of P500,000,000.00 plus interest thereon from the date of filing [of the] "Request for Arbitration" or date of the arbitral award, as may be found proper;
3. To pay to the claimants herein the sum of P3,000,000.00 for and as attorney's fees; plus other damages as may be established during the proceedings, including arbitration fees and other litigation expenses, and the costs of suit.

It is likewise further prayed that Clauses 1 and 2 on the unsigned page 1 of the "Shiprepair Agreement" (Annex "A") as well as the hardly legible Clauses 20 and 22 (a) and other similar clauses printed in very fine print on the unsigned dorsal page thereof, be all declared illegal and void *ab initio* and without any legal effect whatsoever.^[10]

KCSI and WG&A reached an amicable settlement, leading the latter to file a Notice of Withdrawal of Claim on April 17, 2001 with the CIAC. The CIAC granted the withdrawal on October 22, 2001, thereby dismissing the claim of WG&A against KCSI. Hence, the arbitration proceeded with Pioneer as the remaining claimant.

In the course of the proceedings, Pioneer and KCSI stipulated, among others, that: (1) on January 26, 2000, M/V "Superferry 3" arrived at KCSI in Lapu-Lapu City, Cebu, for dry docking and repairs; (2) on the same date, WG&A signed a ship repair agreement with KCSI; and (3) a fire broke out on board M/V "Superferry 3" on February 8, 2000, while still dry docked in KCSI's shipyard.^[11]

As regards the disputed facts, below are the respective positions of the parties, viz.:

Pioneer's Theory of the Case:

First, Pioneer (as Claimant) is the real party in interest in this case and that Pioneer has been subrogated to the claim of its assured. The Claimant claims that it has the preponderance of evidence over that of the Respondent. Claimant cited documentary references on the *Statutory Source of the Principle of Subrogation*. Claimant then proceeded to explain that the *Right of Subrogation*:

*Is by Operation of Law
exists in Property Insurance
is not Dependent Upon Privity of Contract.*

Claimant then argued that *Payment Operates as Equitable Assignment of Rights to Insurer* and that the *Right of Subrogation Entitles Insurer to Recover from the Liable Party*.

Second, Respondent Keppel had custody of and control over the M/V "Superferry 3" while said vessel was in Respondent Keppel's premises. In its Draft Decision, Claimant stated:

- A. The evidence presented during the hearings indubitably proves that respondent not only took custody but assumed responsibility and control over M/V Superferry 3 in carrying out the dry-docking and repair of the vessel.
- B. The presence on board the M/V Superferry 3 of its officers and crew does not relieve the respondent of its responsibility for said vessel.
- C. Respondent Keppel assumed responsibility over M/V Superferry 3 when it brought the vessel inside its graving dock and applied its own safety rules to the dry-docking and repairs of the vessel.
- D. The practice of allowing a shipowner and its sub-contractors to perform maintenance works while the vessel was within