

## SECOND DIVISION

[ G.R. No. 121833, October 17, 2008 ]

**ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. COURT OF APPEALS, MALAYAN INSURANCE COMPANY, INC., COMPAGNIE MARITIME DES CHARGEURS REUNIS, AND F.E. ZUELLIG (M), INC., RESPONDENTS.**

**G.R. NO. 130752**

**ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. COURT OF APPEALS, THE HON. JUDGE REMEGIO E. ZARI, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, BRANCH 20; ASIA TRADERS INSURANCE CORPORATION, AND ALLIED GUARANTEE INSURANCE CORPORATION, RESPONDENTS.**

**G.R. NO. 137801**

**ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. EQUITABLE INSURANCE CORPORATION, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

Before this Court are three consolidated Rule 45 petitions all involving the issue of whether the real and hypothecary doctrine may be invoked by the shipowner in relation to the loss of cargoes occasioned by the sinking of *M/V P. Aboitiz* on 31 October 1980. The petitions filed by Aboitiz Shipping Corporation (Aboitiz) commonly seek the computation of its liability in accordance with the Court's pronouncement in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*<sup>[1]</sup> (hereafter referred to as "the 1993 GAFLAC case").

The three petitions stemmed from some of the several suits filed against Aboitiz before different regional trial courts by shippers or their successors-in-interest for the recovery of the monetary value of the cargoes lost, or by the insurers for the reimbursement of whatever they paid. The trial courts awarded to various claimants the amounts of P639,862.02, P646,926.30, and P87,633.81 in G.R. Nos. 121833, 130752 and 137801, respectively.

### ANTECEDENTS

*G.R. No. 121833*

Respondent Malayan Insurance Company, Inc. (Malayan) filed five separate actions against several defendants for the collection of the amounts of the cargoes allegedly paid by Malayan under various marine cargo policies<sup>[2]</sup> issued to the insurance

claimants. The five civil cases, namely, Civil Cases No. 138761, No. 139083, No. 138762, No. R-81-526 and No. 138879, were consolidated and heard before the Regional Trial Court (RTC) of Manila, Branch 54.

The defendants in Civil Case No. 138761 and in Civil Case No. 139083 were Malayan International Shipping Corporation, a foreign corporation based in Malaysia, its local ship agent, Litonjua Merchant Shipping Agency (Litonjua), and Aboitiz. The defendants in Civil Case No. 138762 were Compagnie Maritime des Chargeurs Reunis (CMCR), its local ship agent, F.E. Zuellig (M), Inc. (Zuellig), and Aboitiz. Malayan also filed Civil Case No. R-81-526 only against CMCR and Zuellig. Thus, defendants CMCR and Zuellig filed a third-party complaint against Aboitiz. In the fifth complaint docketed as Civil Case No. 138879, only Aboitiz was impleaded as defendant.

The shipments were supported by their respective bills of lading and insured separately by Malayan against the risk of loss or damage. In the five consolidated cases, Malayan sought the recovery of amounts totaling P639,862.02.

Aboitiz raised the defenses of lack of jurisdiction, lack of cause of action and prescription. It also claimed that *M/V P. Aboitiz* was seaworthy, that it exercised extraordinary diligence and that the loss was caused by a fortuitous event.

After trial on the merits, the RTC of Manila rendered a Decision dated 27 November 1989, adjudging Aboitiz liable on the money claims. The decretal portion reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Civil Case No. 138072 (R-81-526-CV), the defendants are adjudged liable and ordered to pay to the plaintiffs jointly and severally the amount of P128,896.79; the third-party defendant Aboitiz is adjudged liable to reimburse and ordered to pay the defendants or whosoever of them paid the plaintiff up to the said amount;
2. In Civil Case No. 138761, Aboitiz is adjudged liable and ordered to pay plaintiff the amount of One Hundred Sixty Three-Thousand Seven Hundred Thirteen Pesos and Thirty-Eight Centavos (P163,713.38).
3. In Civil Case No. 138762, defendant Aboitiz is adjudged liable and ordered to pay plaintiff the sum of Seventy Three Thousand Five Hundred Sixty-Nine Pesos and Ninety-Four Centavos (P73,569.94); and Sixty-Four Thousand Seven Hundred Four Pesos and Seventy-Seven Centavos (P64,704.77);
4. In Civil Case No. 139083, defendant Aboitiz is adjudged liable and ordered to pay plaintiff the amount of One Hundred Fifty-Six Thousand Two Hundred Eighty-Seven Pesos and Sixty-Four Centavos (P156,287.64);

In Civil Case No. 138879, defendant Aboitiz is adjudged liable and ordered to pay plaintiff the amount of Fifty-Two Thousand Six Hundred Eighty-Nine Pesos and Fifty Centavos (P52,689.50).

All the aforesaid award shall bear interest at the legal rate from the filing of the respective complaints. Considering that there is no clear showing that the cases fall under Article 2208, Nos. 4 and 5, of the Civil Code, and in consonance with the basic rule that there be no penalty (in terms of attorney's fees) imposed on the right to litigate, no damages by way of attorney's fees are awarded; however, costs of the party/parties to whom judgment awards are made shall be made by the party ordered to pay the said judgment awards.

SO ORDERED.<sup>[3]</sup>

Aboitiz, CMCR and Zuellig appealed the RTC decision to the Court of Appeals. The appeal was docketed as CA-G.R. SP No. 35975-CV. During the pendency of the appeal, the Court promulgated the decision in the 1993 GAFLAC case.

On 31 March 1995, the Court of Appeals (Ninth Division) affirmed the RTC decision. It disregarded Aboitiz's argument that the sinking of the vessel was caused by a *force majeure*, in view of this Court's finding in a related case, *Aboitiz Shipping Corporation v. Court of Appeals, et al.* (the 1990 GAFLAC case).<sup>[4]</sup> In said case, this Court affirmed the Court of Appeals' finding that the sinking of *M/V P. Aboitiz* was caused by the negligence of its officers and crew. It is one of the numerous collection suits against Aboitiz, which eventually reached this Court in connection with the sinking of *M/V P. Aboitiz*.

As to the computation of Aboitiz's liability, the Court of Appeals again based its ruling on the 1990 GAFLAC case that Aboitiz's liability should be based on the declared value of the shipment in consonance with the exceptional rule under Section 4(5)<sup>[5]</sup> of the Carriage of Goods by Sea Act.

Aboitiz moved for reconsideration<sup>[6]</sup> to no avail. Hence, it filed this petition for review on certiorari docketed as G.R. No. 121833.<sup>[7]</sup> The instant petition is based on the following grounds:

THE COURT OF APPEALS SHOULD HAVE LIMITED THE RECOVERABLE AMOUNT FROM ASC TO THAT AMOUNT STIPULATED IN THE BILL OF LADING.

IN THE ALTERNATIVE, THE COURT OF APPEALS SHOULD HAVE FOUND THAT THE TOTAL LIABILITY OF ASC IS LIMITED TO THE VALUE OF THE VESSEL OR THE INSURANCE PROCEEDS THEREOF.<sup>[8]</sup>

On 4 December 1995, the Court issued a Resolution<sup>[9]</sup> denying the petition. Aboitiz moved for reconsideration, arguing that the limited liability doctrine enunciated in the 1993 GAFLAC case should be applied in the computation of its liability. In the Resolution<sup>[10]</sup> dated 6 March 1996, the Court granted the motion and ordered the reinstatement of the petition and the filing of a comment.

G.R. No. 130752

Respondents Asia Traders Insurance Corporation (Asia Traders) and Allied Guarantee

Insurance Corporation (Allied) filed separate actions for damages against Aboitiz to recover by way of subrogation the value of the cargoes insured by them and lost in the sinking of the vessel *M/V P. Aboitiz*. The two actions were consolidated and heard before the RTC of Manila, Branch 20.

Aboitiz reiterated the defense of *force majeure*. The trial court rendered a decision<sup>[11]</sup> on 25 April 1990 ordering Aboitiz to pay damages in the amount of P646,926.30. Aboitiz sought reconsideration, arguing that the trial court should have considered the findings of the Board of Marine Inquiry that the sinking of the *M/V P. Aboitiz* was caused by a typhoon and should have applied the real and hypothecary doctrine in limiting the monetary award in favor of the claimants. The trial court denied Aboitiz's motion for reconsideration.

Aboitiz elevated the case to the Court of Appeals. While the appeal was pending, this Court promulgated the decision in the 1993 *GAFLAC* case. The Court of Appeals subsequently rendered a decision on 30 May 1994, affirming the RTC decision.<sup>[12]</sup>

Aboitiz appealed the Court of Appeals decision to this Court.<sup>[13]</sup> In a Resolution dated 20 September 1995,<sup>[14]</sup> the Court denied the petition for raising factual issues and for failure to show that the Court of Appeals committed any reversible error. Aboitiz's motion for reconsideration was also denied in a Resolution dated 22 November 1995.<sup>[15]</sup>

The 22 November 1995 Resolution became final and executory. On 26 February 1996, Asia Traders and Allied filed a motion for execution before the RTC of Manila, Branch 20. Aboitiz opposed the motion. On 16 August 1996, the trial court granted the motion and issued a writ of execution.

Alleging that it had no other speedy, just or adequate remedy to prevent the execution of the judgment, Aboitiz filed with the Court of Appeals a petition for certiorari and prohibition with an urgent prayer for preliminary injunction and/or temporary restraining order docketed as CA-G.R. SP No. 41696.<sup>[16]</sup> The petition was mainly anchored on this Court's ruling in the 1993 *GAFLAC* case.

On 8 August 1997, the Court of Appeals (Special Seventeenth Division) rendered the assailed decision dismissing the petition.<sup>[17]</sup> Based on the trial court's finding that Aboitiz was actually negligent in ensuring the seaworthiness of *M/V P. Aboitiz*, the appellate court held that the real and hypothecary doctrine enunciated in the 1993 *GAFLAC* case may not be applied in the case.

In view of the denial of its motion for reconsideration,<sup>[18]</sup> Aboitiz filed before this Court the instant petition for review on certiorari docketed as G.R. No. 130752.<sup>[19]</sup> The petition attributes the following errors to the Court of Appeals:

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE LOWER COURT HAD MADE AN EXPRESS FINDING OF THE ACTUAL NEGLIGENCE OF ABOITIZ IN THE SINKING OF THE *M/V P. ABOITIZ* THEREBY DEPRIVING ABOITIZ OF THE BENEFIT OF THE DOCTRINE OF THE REAL AND HYPOTHECARY NATURE OF MARITIME LAW.<sup>[20]</sup>

THE COURT OF APPEALS ERRED IN NOT GIVING WEIGHT TO THE GAFLAC CASE DECIDED BY THE HONORABLE COURT WHICH SUPPORTS THE APPLICABILITY OF THE REAL AND HYPOTHECARY NATURE OF MARITIME LAW IN THE PRESENT CASE.<sup>[21]</sup>

G.R. No. 137801

On 27 February 1981, Equitable Insurance Corporation (Equitable) filed an action for damages against Aboitiz to recover by way of subrogation the value of the cargoes insured by Equitable that were lost in the sinking of *M/V P. Aboitiz*.<sup>[22]</sup> The complaint, which was docketed as Civil Case No. 138395, was later amended to implead Seatrain Pacific Services S.A. and Citadel Lines, Inc. as party defendants.<sup>[23]</sup> The complaint against the latter defendants was subsequently dismissed upon motion in view of the amicable settlement reached by the parties.

On 7 September 1989, the RTC of Manila, Branch 7, rendered judgment<sup>[24]</sup> ordering Aboitiz to pay Equitable the amount of P87,633.81, plus legal interest and attorney's fees.<sup>[25]</sup> It found that Aboitiz was guilty of contributory negligence and, therefore, liable for the loss.

In its appeal, docketed as CA-G.R. CV No. 43458, Aboitiz invoked the doctrine of limited liability and claimed that the typhoon was the proximate cause of the loss. On 27 November 1998, the Court of Appeals rendered a decision, affirming the RTC decision.<sup>[26]</sup>

The Court of Appeals (Fifteenth Division) ruled that the loss of the cargoes and the sinking of the vessel were due to its unseaworthiness and the failure of the crew to exercise extraordinary diligence. Said findings were anchored on the 1990 *GAFLAC* case and on this Court's resolution dated November 13, 1989 in G.R. No. 88159, dismissing Aboitiz's petition and affirming the findings of the appellate court on the vessel's unseaworthiness and the crew's negligence.

Its motion for reconsideration<sup>[27]</sup> having been denied,<sup>[28]</sup> Aboitiz filed before this Court a petition for review on certiorari, docketed as G.R. No. 137801,<sup>[29]</sup> raising this sole issue, to wit:

WHETHER OR NOT THE DOCTRINE OF REAL AND HYPOTHECARY NATURE OF MARITIME LAW (ALSO KNOWN AS THE "LIMITED LIABILITY RULE") APPLIES.<sup>[30]</sup>

*ISSUES*

The principal issue common to all three petitions is whether Aboitiz can avail limited liability on the basis of the real and hypothecary doctrine of maritime law. Corollary to this issue is the determination of actual negligence on the part of Aboitiz.

These consolidated petitions similarly posit that Aboitiz's liability to respondents should be limited to the value of the insurance proceeds of the lost vessel plus pending freightage and not correspond to the full insurable value of the cargoes paid by respondents, based on the Court's ruling in the 1993 *GAFLAC* case.