

SECOND DIVISION

[G.R. No. 147724, June 08, 2004]

LORENZO SHIPPING CORP., PETITIONER, VS. CHUBB AND SONS, INC., GEARBULK, LTD. AND PHILIPPINE TRANSMARINE CARRIERS, INC., RESPONDENTS.

D E C I S I O N

PUNO, J.:

On appeal is the Court of Appeals' August 14, 2000 Decision^[1] in CA-G.R. CV No. 61334 and March 28, 2001 Resolution^[2] affirming the March 19, 1998 Decision^[3] of the Regional Trial Court of Manila which found petitioner liable to pay respondent Chubb and Sons, Inc. attorney's fees and costs of suit.

Petitioner Lorenzo Shipping Corporation (Lorenzo Shipping, for short), a domestic corporation engaged in coastwise shipping, was the carrier of 581 bundles of black steel pipes, the subject shipment, from Manila to Davao City. From Davao City, respondent Gearbulk, Ltd., a foreign corporation licensed as a common carrier under the laws of Norway and doing business in the Philippines through its agent, respondent Philippine Transmarine Carriers, Inc. (Transmarine Carriers, for short), a domestic corporation, carried the goods on board its vessel M/V San Mateo Victory to the United States, for the account of Sumitomo Corporation. The latter, the consignee, is a foreign corporation organized under the laws of the United States of America. It insured the shipment with respondent Chubb and Sons, Inc., a foreign corporation organized and licensed to engage in insurance business under the laws of the United States of America.

The facts are as follows:

On November 21, 1987, Mayer Steel Pipe Corporation of Binondo, Manila, loaded 581 bundles of ERW black steel pipes worth US\$137,912.84^[4] on board the vessel M/V Lorcon IV, owned by petitioner Lorenzo Shipping, for shipment to Davao City. Petitioner Lorenzo Shipping issued a clean bill of lading designated as Bill of Lading No. T-3^[5] for the account of the consignee, Sumitomo Corporation of San Francisco, California, USA, which in turn, insured the goods with respondent Chubb and Sons, Inc.^[6]

The M/V Lorcon IV arrived at the Sasa Wharf in Davao City on December 2, 1987. Respondent Transmarine Carriers received the subject shipment which was discharged on December 4, 1987, evidenced by Delivery Cargo Receipt No. 115090.^[7] It discovered seawater in the hatch of M/V Lorcon IV, and found the steel pipes submerged in it. The consignee Sumitomo then hired the services of R.J. Del Pan Surveyors to inspect the shipment prior to and subsequent to discharge. Del Pan's Survey Report^[8] dated December 4, 1987 showed that the subject shipment was no

longer in good condition, as in fact, the pipes were found with rust formation on top and/or at the sides. Moreover, the surveyor noted that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was "rusty, thinning, and with several holes at different places." The rusty condition of the cargo was noted on the mate's receipts and the checker of M/V Lorcon IV signed his *conforme* thereon.
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After the survey, respondent Gearbulk loaded the shipment on board its vessel M/V San Mateo Victory, for carriage to the United States. It issued Bills of Lading Nos. DAV/OAK 1 to 7,^[10] covering 364 bundles of steel pipes to be discharged at Oakland, U.S.A., and Bills of Lading Nos. DAV/SEA 1 to 6,^[11] covering 217 bundles of steel pipes to be discharged at Vancouver, Washington, U.S.A. All bills of lading were marked "ALL UNITS HEAVILY RUSTED."

While the cargo was in transit from Davao City to the U.S.A., consignee Sumitomo sent a letter^[12] of intent dated December 7, 1987, to petitioner Lorenzo Shipping, which the latter received on December 9, 1987. Sumitomo informed petitioner Lorenzo Shipping that it will be filing a claim based on the damaged cargo once such damage had been ascertained. The letter reads:

Please be advised that the merchandise herein below noted has been landed in bad order ex-Manila voyage No. 87-19 under B/L No. T-3 which arrived at the port of Davao City on December 2, 1987.

The extent of the loss and/or damage has not yet been determined but apparently all bundles are corroded. We reserve the right to claim as soon as the amount of claim is determined and the necessary supporting documents are available.

Please find herewith a copy of the survey report which we had arranged for after unloading of our cargo from your vessel in Davao.

We trust that you shall make everything in order.

On January 17, 1988, M/V San Mateo Victory arrived at Oakland, California, U.S.A., where it unloaded 364 bundles of the subject steel pipes. It then sailed to Vancouver, Washington on January 23, 1988 where it unloaded the remaining 217 bundles. Toplis and Harding, Inc. of San Francisco, California, surveyed the steel pipes, and also discovered the latter heavily rusted. When the steel pipes were tested with a silver nitrate solution, Toplis and Harding found that they had come in contact with salt water. The survey report,^[13] dated January 28, 1988 states:

x x x

We entered the hold for a close examination of the pipe, which revealed moderate to heavy amounts of patchy and streaked dark red/orange rust on all lifts which were visible. Samples of the shipment were tested with a solution of silver nitrate revealing both positive and occasional negative chloride reactions, indicating pipe had come in contact with salt water. In addition, all tension applied metal straps were very heavily rusted, and also exhibited chloride reactions on testing with silver nitrate.

It should be noted that subject bills of lading bore the following remarks as to conditions of goods: "ALL UNITS HEAVILY RUSTED." Attached herein is a copy of a survey report issued by Del Pan Surveyors of Davao City, Philippines dated, December 4, 1987 at Davao City, Philippines, which describes conditions of the cargo as sighted aboard the vessel "LORCON IV," prior to and subsequent to discharge at Davao City. Evidently, the aforementioned rust damages were apparently sustained while the shipment was in the custody of the vessel "LORCON IV," prior to being laden on board the vessel "SAN MATEO VICTORY" in Davao.

Due to its heavily rusted condition, the consignee Sumitomo rejected the damaged steel pipes and declared them unfit for the purpose they were intended.^[14] It then filed a marine insurance claim with respondent Chubb and Sons, Inc. which the latter settled in the amount of US\$104,151.00.^[15]

On December 2, 1988, respondent Chubb and Sons, Inc. filed a complaint^[16] for collection of a sum of money, docketed as Civil Case No. 88-47096, against respondents Lorenzo Shipping, Gearbulk, and Transmarine. Respondent Chubb and Sons, Inc. alleged that it is not doing business in the Philippines, and that it is suing under an isolated transaction.

On February 21, 1989, respondents Gearbulk and Transmarine filed their answer^[17] with counterclaim and cross-claim against petitioner Lorenzo Shipping denying liability on the following grounds: (a) respondent Chubb and Sons, Inc. has no capacity to sue before Philippine courts; (b) the action should be dismissed on the ground of *forum non conveniens*; (c) damage to the steel pipes was due to the inherent nature of the goods or to the insufficiency of packing thereof; (d) damage to the steel pipes was not due to their fault or negligence; and, (e) the law of the country of destination, U.S.A., governs the contract of carriage.

Petitioner Lorenzo Shipping filed its answer with counterclaim on February 28, 1989, and amended it on May 24, 1989. It denied liability, alleging, among others: (a) that rust easily forms on steel by mere exposure to air, moisture and other marine elements; (b) that it made a disclaimer in the bill of lading; (c) that the goods were improperly packed; and, (d) prescription, laches, and extinguishment of obligations and actions had set in.

The Regional Trial Court ruled in favor of the respondent Chubb and Sons, Inc., finding that: (1) respondent Chubb and Sons, Inc. has the right to institute this action; and, (2) petitioner Lorenzo Shipping was negligent in the performance of its obligations as a carrier. The dispositive portion of its Decision states:

WHEREFORE, the judgment is hereby rendered ordering Defendant Lorenzo Shipping Corporation to pay the plaintiff the sum of US\$104,151.00 or its equivalent in Philippine peso at the current rate of exchange with interest thereon at the legal rate from the date of the institution of this case until fully paid, the attorney's fees in the sum of P50,000.00, plus the costs of the suit, and dismissing the plaintiff's complaint against defendants Gearbulk, Ltd. and Philippine Transmarine Carriers, Inc., for lack of merit, and the two defendants' counterclaim,

there being no showing that the plaintiff had filed this case against said defendants in bad faith, as well as the two defendants' cross-claim against Defendant Lorenzo Shipping Corporation, for lack of factual basis.

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Petitioner Lorenzo Shipping appealed to the Court of Appeals insisting that: (a) respondent Chubb and Sons does not have capacity to sue before Philippine courts; and, (b) petitioner Lorenzo Shipping was not negligent in the performance of its obligations as carrier of the goods. The appellate court denied the petition and affirmed the decision of the trial court.

The Court of Appeals likewise denied petitioner Lorenzo Shipping's Motion for Reconsideration^[19] dated September 3, 2000, in a Resolution^[20] promulgated on March 28, 2001.

Hence, this petition. Petitioner Lorenzo Shipping submits the following issues for resolution:

- (1) Whether or not the prohibition provided under Art. 133 of the Corporation Code applies to respondent Chubb, it being a mere subrogee or assignee of the rights of Sumitomo Corporation, likewise a foreign corporation admittedly doing business in the Philippines without a license;
- (2) Whether or not Sumitomo, Chubb's predecessor-in-interest, validly made a claim for damages against Lorenzo Shipping within the period prescribed by the Code of Commerce;
- (3) Whether or not a delivery cargo receipt without a notation on it of damages or defects in the shipment, which created a prima facie presumption that the carrier received the shipment in good condition, has been overcome by convincing evidence;
- (4) Assuming that Lorenzo Shipping was guilty of some lapses in transporting the steel pipes, whether or not Gearbulk and Transmarine, as common carriers, are to share liability for their separate negligence in handling the cargo.^[21]

In brief, we resolve the following issues:

- (1) whether respondent Chubb and Sons has capacity to sue before the Philippine courts; and,
- (2) whether petitioner Lorenzo Shipping is negligent in carrying the subject cargo.

Petitioner argues that respondent Chubb and Sons is a foreign corporation not licensed to do business in the Philippines, and is not suing on an isolated

transaction. It contends that because the respondent Chubb and Sons is an insurance company, it was merely subrogated to the rights of its insured, the consignee Sumitomo, after paying the latter's policy claim. Sumitomo, however, is a foreign corporation doing business in the Philippines without a license and does not have capacity to sue before Philippine courts. Since Sumitomo does not have capacity to sue, petitioner then concludes that, neither the subrogee-respondent Chubb and Sons could sue before Philippine courts.

We disagree with petitioner.

In the first place, petitioner failed to raise the defense that Sumitomo is a foreign corporation doing business in the Philippines without a license. It is therefore estopped from litigating the issue on appeal especially because it involves a question of fact which this Court cannot resolve. Secondly, assuming *arguendo* that Sumitomo cannot sue in the Philippines, it does not follow that respondent, as subrogee, has also no capacity to sue in our jurisdiction.

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities.^[22] The principle covers the situation under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy.^[23] It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means which the creditor could employ to enforce payment.^[24]

The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted – he cannot acquire any claim, security, or remedy the subrogor did not have.^[25] In other words, a subrogee cannot succeed to a right not possessed by the subrogor.^[26] A subrogee in effect steps into the shoes of the insured and can recover only if insured likewise could have recovered.

However, when the insurer succeeds to the rights of the insured, he does so only in relation to the debt. The person substituted (the insurer) will succeed to all the rights of the creditor (the insured), having reference to the debt due the latter.^[27] In the instant case, the rights inherited by the insurer, respondent Chubb and Sons, pertain only to the payment it made to the insured Sumitomo as stipulated in the insurance contract between them, and which amount it now seeks to recover from petitioner Lorenzo Shipping which caused the loss sustained by the insured Sumitomo. The capacity to sue of respondent Chubb and Sons could not perchance belong to the group of rights, remedies or securities pertaining to the payment respondent insurer made for the loss which was sustained by the insured Sumitomo and covered by the contract of insurance. Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any