

## **SECOND DIVISION**

**[ G.R. No. 92735, June 08, 2000 ]**

**MONARCH INSURANCE CO., INC., TABACALERA INSURANCE CO.,  
INC AND HON. JUDGE AMANTE PURISIMA, PETITIONERS, VS.  
COURT OF APPEALS AND ABOITIZ SHIPPING CORPORATION,  
RESPONDENTS.**

**[G.R. No. 94867]  
ALLIED GUARANTEE INSURANCE COMPANY, PETITIONER, VS.  
COURT OF APPEALS, PRESIDING JUDGE, RTC MANILA, BR. 24  
AND ABOITIZ SHIPPING CORPORATION, RESPONDENTS.**

**[G.R. No. 95578.]  
EQUITABLE INSURANCE CORPORATION, PETITIONER, VS.  
COURT OF APPEALS, FORMER FIRST DIVISION COMPOSED OF  
HON. JUSTICES RODOLFO NOCON, PEDRO RAMIREZ, AND JESUS  
ELBINIAS AND ABOITIZ SHIPPING CORPORATION,  
RESPONDENTS.**

### **D E C I S I O N**

**DE LEON, JR., J.:**

Before us are three consolidated petitions. G.R. No. 92735 is a petition for review filed under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals dated March 29, 1990 in CA-G.R. SP. Case No. 17427 which set aside the writ of execution issued by the lower court for the full indemnification of the claims of the petitioners, Monarch Insurance Company (hereafter "Monarch") and Tabacalera Insurance Company, Incorporated (hereafter "Tabacalera") against private respondent, Aboitiz Shipping Corporation (hereafter "Aboitiz") on the ground that the latter is entitled to the benefit of the limited liability rule in maritime law; G.R. No. 94867 is a petition for *certiorari* under Rule 65 of the Rules of Court to annul and set aside the decision of the Court of Appeals dated August 15, 1990 in CA-G.R. SP No. 20844 which ordered the lower court to stay the execution of the judgment in favor of the petitioner, Allied Guarantee Insurance Company (hereafter "Allied") against Aboitiz insofar as it impairs the rights of the other claimants to their pro-rata share in the insurance proceeds from the sinking of the M/V P. Aboitiz, in accordance with the rule on limited liability; and G.R. No. 95578 is a petition for review under Rule 45 of the Rules of Court seeking a reversal of the decision of the Court of Appeals dated August 24, 1990 and its resolution dated October 4, 1990 in C.A. G.R. Civil Case No. 15071 which modified the judgment of the lower court by applying the hypothecary rule on limited liability to limit the lower court's award of actual damages to petitioner Equitable Insurance Corporation (hereafter "Equitable") to its pro-rata share in the insurance proceeds from the sinking of the M/V P. Aboitiz.

All cases arose from the loss of cargoes of various shippers when the M/V P. Aboitiz, a common carrier owned and operated by Aboitiz, sank on her voyage from Hong Kong to Manila on October 31, 1980. Seeking indemnification for the loss of their cargoes, the shippers, their successors-in-interest, and the cargo insurers such as the instant petitioners filed separate suits against Aboitiz before the Regional Trial Courts. The claims numbered one hundred and ten (110) for the total amount of P41,230,115.00 which is almost thrice the amount of insurance proceeds of P14,500,000.00 plus earned freight of P500,000.00 according to Aboitiz. To this day, some of these claims, including those of herein petitioners, have not yet been settled.

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Monarch and Tabacalera are insurance carriers of lost cargoes. They indemnified the shippers and were consequently subrogated to their rights, interests and actions against Aboitiz, the cargo carrier.<sup>[1]</sup> Because Aboitiz refused to compensate Monarch, it filed two complaints against Aboitiz, docketed as *Civil Cases Nos. 82-2767* and *82-2770*. For its part, Tabacalera also filed two complaints against the same defendant, docketed as *Civil Cases Nos. 82-2768* and *82-2769*. As these four (4) cases had common causes of action, they were consolidated and jointly tried.<sup>[2]</sup>

In Civil Case No. 82-2767 where Monarch also named Malaysian International Shipping Corporation and Litonjua Merchant Shipping Agency as Aboitiz's co-defendants, Monarch sought recovery of P29,719.88 representing the value of three (3) pallets of glass tubing that sank with the M/V P. Aboitiz, plus attorney's fees of not less than P5,000.00, litigation expenses, interest at the legal rate on all these amounts, and cost of suit.<sup>[3]</sup> Civil Case No. 82-2770 was a complaint filed by Monarch against Aboitiz and co-defendants Compagnie Maritime des Chargeurs Reunis and F.E. Zuellig (M), Inc. for the recovery of P39,579.66 representing the value of one case of motor vehicle parts which was lost when the M/V P. Aboitiz sank on her way to Manila, plus attorney's fees of not less than P10, 000.00 and cost of suit.<sup>[4]</sup>

Tabacalera sought against Franco Belgian Services, F. E. Zuellig and Aboitiz in Civil Case No. 82-2768 the recovery of P284,218.00 corresponding to the value of nine (9) cases of Renault spare parts, P213,207.00 for the value of twenty-five (25) cases of door closers and P42,254.00 representing the value of eighteen (18) cases of plastic spangle, plus attorney's fees of not less than P50,000.00 and cost of suit.<sup>[5]</sup> In Civil Case No. 82-2769, Tabacalera claimed from Hong Kong Island Shipping Co., Ltd., Citadel Lines and Aboitiz indemnification in the amount of P75,058.00 for the value of four (4) cartons of motor vehicle parts that foundered with the M/V P. Aboitiz, plus attorney's fees of not less than P20,000.00 and cost of suit.<sup>[6]</sup>

In its answer with counterclaim, Aboitiz rejected responsibility for the claims on the ground that the sinking of its cargo vessel was due to *force majeure* or an act of God.<sup>[7]</sup> Aboitiz was subsequently declared as in default for its failure to appear during the pre-trial. Its counsel filed a motion to set aside the order of default with notice of his withdrawal as such counsel. Before the motion could be acted upon, Judge Bienvenido Ejercito, the presiding judge of the trial court, was promoted to the then Intermediate Appellate Court. The cases were thus re-raffled to Branch VII

of the RTC of Manila presided by Judge Amante P. Purisima, the co-petitioner in G.R. No. 92735. Without resolving the pending motion to set aside the order of default, the trial court set the cases for hearing. However, since Aboitiz had repeatedly failed to appear in court, the trial court denied the said motion and allowed Monarch and Tabacalera to present evidence *ex-parte*.<sup>[8]</sup>

Monarch and Tabacalera proffered in evidence the survey of Perfect Lambert, a surveyor commissioned to investigate the possible cause of the sinking of the cargo vessel. The survey established that on her voyage to Manila from Hong Kong, the vessel did not encounter weather so inclement that Aboitiz would be exculpated from liability for losses. In his note of protest, the master of M/V P. Aboitiz described the wind force encountered by the vessel as from ten (10) to fifteen (15) knots, a weather condition classified as typical and moderate in the South China Sea at that particular time of the year. The survey added that the seaworthiness of the vessel was in question especially because the breaches of the hull and the serious flooding of two (2) cargo holds occurred simultaneously in "seasonal weather."<sup>[9]</sup>

In due course, the trial court rendered judgment against Aboitiz but the complaint against all the other defendants was dismissed. Aboitiz was held liable for the following: (a) in Civil Case No. 82-2767, P29,719.88 with legal interest from the filing of the complaint until fully paid plus attorney's fees of P30,000.00 and cost of suit; (b) in Civil Case No. 82-2768, P539,679.00 with legal interest of 12% per annum from date of filing of the complaint until fully paid, plus attorney's fees of P30,000.00, litigation expenses and cost of suit; (c) in Civil Case No. 82-2769, P75,058.00 with legal interest of 12% per annum from date of filing of the complaint until fully paid, plus P5,000.00 attorney's fees, litigation expenses and cost of suit, and (d) in Civil Case No. 82-2770, P39,579.66 with legal interest of 12% per annum from date of filing of the complaint until fully paid, plus attorney's fees of P5,000.00, litigation expenses and cost of suit.

Aboitiz filed a motion for reconsideration of the decision and/or for new trial to lift the order of default. The court denied the motion on August 27, 1986.<sup>[10]</sup> Aboitiz appealed to the Court of Appeals but the appeal was dismissed for its failure to file appellant's brief. It subsequently filed an urgent motion for reconsideration of the dismissal with prayer for the admission of its attached appellant's brief. The appellate court denied that motion for lack of merit in a Resolution dated July 8, 1988.<sup>[11]</sup>

Aboitiz thus filed a petition for review before this Court. Docketed as G.R. No. 84158, the petition was denied in the Resolution of October 10, 1988 for being filed out of time. Aboitiz's motion for the reconsideration of said Resolution was similarly denied.<sup>[12]</sup> Entry of judgment was made in the case.<sup>[13]</sup>

Consequently, Monarch and Tabacalera moved for execution of judgment. The trial court granted the motion on April 4, 1989<sup>[14]</sup> and issued separate writs of execution. However, on April 12, 1989, Aboitiz, invoking the real and hypothecary nature of liability in maritime law, filed an urgent motion to quash the writs of execution.<sup>[15]</sup> According to Aboitiz, since its liability is limited to the value of the vessel which was insufficient to satisfy the aggregate claims of all 110 claimants, to indemnify Monarch and Tabacalera ahead of the other claimants would be prejudicial

to the latter. Monarch and Tabacalera opposed the motion to quash.<sup>[16]</sup>

On April 17, 1989, before the motion to quash could be heard, the sheriff levied upon five (5) heavy equipment owned by Aboitiz for public auction sale. At said sale, Monarch was the highest bidder for one (1) unit FL-151 Fork Lift (big) and one (1) unit FL-25 Fork Lift (small). Tabacalera was also the highest bidder for one (1) unit TCH TL-251 Hyster Container Lifter, one (1) unit Hyster Top Lifter (out of order), and one (1) unit ER-353 Crane. The corresponding certificates of sale<sup>[17]</sup> were issued to Monarch and Tabacalera.

On April 18, 1989, the day before the hearing of the motion to quash, Aboitiz filed a supplement to its motion, to add the fact that an auction sale had taken place. On April 19, 1989, Judge Purisima issued an order denying the motion to quash but freezing execution proceedings for ten (10) days to give Aboitiz time to secure a restraining order from a higher court.<sup>[18]</sup> Execution was scheduled to resume to fully satisfy the judgment when the grace period shall have lapsed without such restraining order having been obtained by Aboitiz.

Aboitiz filed with the Court of Appeals a petition for *certiorari* and prohibition with prayer for preliminary injunction and/or temporary restraining order under CA-G.R. No. SP-17427.<sup>[19]</sup> On March 29, 1990, the appellate court rendered a Decision the dispositive portion of which reads:

"WHEREFORE, the writ of certiorari is hereby granted, annulling the subject writs of execution, auction sale, certificates of sale, and the assailed orders of respondent Judge dated April 4 and April 19, 1989 insofar as the money value of those properties of Aboitiz, levied on execution and sold at public auction, has exceeded the pro-rata shares of Monarch and Tabacalera in the insurance proceeds of Aboitiz in relation to the pro-rata shares of the 106 other claimants.

"The writ of prohibition is also granted to enjoin respondent Judge, Monarch and Tabacalera from proceeding further with execution of the judgments in question insofar as the execution would satisfy the claims of Monarch and Tabacalera in excess of their pro-rata shares and in effect reduce the balance of the proceeds for distribution to the other claimants to their prejudice.

"The question of whether or how much of the claims of Monarch and Tabacalera against the insurance proceeds has already been settled through the writ of execution and auction sale in question, being factual issues, shall be threshed out before respondent Judge.

"The writ of preliminary injunction issued in favor of Aboitiz, having served its purpose, is hereby lifted. No pronouncement as to costs.

"SO ORDERED."<sup>[20]</sup>

Hence, the instant petition for review on *certiorari* where petitioners Monarch, Tabacalera and Judge Purisima raise the following assignment of errors:

1. The appellate court grievously erred in re-opening the

- Purísima decisions, already final and executory, on the alleged ground that the issue of real and hypothecary liability had not been previously resolved by Purísima, the appellate court, and this Hon. Supreme Court;
2. The appellate court erred when it resolved that Aboitiz is entitled to the limited real and hypothecary liability of a ship owner, considering the facts on record and the law on the matter.
  3. The appellate court erred when it concluded that Aboitiz does not have to present evidence to prove its entitlement to the limited real and hypothecary liability.
  4. The appellate court erred in ignoring the case of "Aboitiz Shipping Corporation v. CA and Allied Guaranty Insurance Co., Inc." (G.R. No. 88159), decided by this Honorable Supreme Court as early as November 13, 1989, considering that said case, now factual and executory, is in pari materia with the instant case.
  5. The appellate court erred in not concluding that irrespective of whether Aboitiz is entitled to limited hypothecary liability or not, there are enough funds to satisfy all the claimants.
  6. The appellate court erred when it concluded that Aboitiz had made an "abandonment" as envisioned by Art. 587 of the Code of Commerce.
  7. The appellate court erred when it concluded that other claimants would suffer if Tabacalera and Monarch would be fully paid.
  8. The appellate court erred in concluding that certiorari was the proper remedy for Aboitiz.<sup>[21]</sup>

### **G.R. NOS. 94867 & 95578**

Allied as insurer-subrogee of consignee Peak Plastic and Metal Products Limited, filed a complaint against Aboitiz for the recovery of P278,536.50 representing the value of 676 bags of PVC compound and 10 bags of ABS plastic lost on board the M/V P. Aboitiz, with legal interest from the date of filing of the complaint, plus attorney's fees, exemplary damages and costs.<sup>[22]</sup> Docketed as Civil Case No. 138643, the case was heard before the Regional Trial Court of Manila, Branch XXIV, presided by Judge Sergio D. Mabunay.

On the other hand, Equitable, as insurer-subrogee of consignee-assured Axel Manufacturing Corporation, filed an amended complaint against Franco Belgian Services, F.E. Zuellig, Inc. and Aboitiz for the recovery of P194,794.85 representing the value of 76 drums of synthetic organic tanning substances and 1,000 kilograms of optical bleaching agents which were also lost on board the M/V P. Aboitiz, with legal interest from the date of filing of the complaint, plus 25% attorney's fees, exemplary damages, litigation expenses and costs of suit.<sup>[23]</sup> Docketed as Civil Case No. 138396, the complaint was assigned to the Regional Trial Court of Manila, Branch VIII.

In its answer with counterclaim in the two cases, Aboitiz disclaimed responsibility for the amounts being recovered, alleging that the loss was due to a fortuitous event or