

THIRD DIVISION

[G.R. No. 102316, June 30, 1997]

**VALENZUELA HARDWOOD AND INDUSTRIAL SUPPLY, INC.,
PETITIONER, VS. COURT OF APPEALS AND SEVEN BROTHERS
SHIPPING CORPORATION, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Is a stipulation in a charter party that the "(o)wners shall not be responsible for loss, split, short-landing, breakages and any kind of damages to the cargo"^[1] valid? This is the main question raised in this petition for review assailing the Decision of Respondent Court of Appeals^[2] in CA-G.R. No. CV-20156 promulgated on October 15, 1991. The Court of Appeals modified the judgment of the Regional Trial Court of Valenzuela, Metro Manila, Branch 171, the dispositive portion of which reads:

"WHEREFORE, Judgment is hereby rendered ordering South Sea Surety and Insurance Co., Inc. to pay plaintiff the sum of TWO MILLION PESOS (P2,000,000.00) representing the value of the policy of the lost logs with legal interest thereon from the date of demand on February 2, 1984 until the amount is fully paid or in the alternative, defendant Seven Brothers Shipping Corporation to pay plaintiff the amount of TWO MILLION PESOS (P2,000,000.00) representing the value of lost logs plus legal interest from the date of demand on April 24, 1984 until full payment thereof; the reasonable attorney's fees in the amount equivalent to five (5) percent of the amount of the claim and the costs of the suit.

Plaintiff is hereby ordered to pay defendant Seven Brothers Shipping Corporation the sum of TWO HUNDRED THIRTY THOUSAND PESOS (P230,000.00) representing the balance of the stipulated freight charges.

Defendant South Sea Surety and Insurance Company's counterclaim is hereby dismissed."

In its assailed Decision, Respondent Court of Appeals held:

"WHEREFORE, the appealed judgment is hereby AFFIRMED except in so far (sic) as the liability of the Seven Brothers Shipping Corporation to the plaintiff is concerned which is hereby REVERSED and SET ASIDE."^[3]

The Facts

The factual antecedents of this case as narrated in the Court of Appeals Decision are

as follows:

"It appears that on 16 January 1984, plaintiff (Valenzuela Hardwood and Industrial Supply, Inc.) entered into an agreement with the defendant Seven Brothers (Shipping Corporation) whereby the latter undertook to load on board its vessel M/V Seven Ambassador the former's lauan round logs numbering 940 at the port of Maconacon, Isabela for shipment to Manila.

On 20 January 1984, plaintiff insured the logs against loss and/or damage with defendant South Sea Surety and Insurance Co., Inc. for P2,000,000.00 and the latter issued its Marine Cargo Insurance Policy No. 84/24229 for P2,000,000.00 on said date.

On 24 January 1984, the plaintiff gave the check in payment of the premium on the insurance policy to Mr. Victorio Chua.

In the meantime, the said vessel M/V Seven Ambassador sank on 25 January 1984 resulting in the loss of the plaintiff's insured logs.

On 30 January 1984, a check for P5,625.00 (Exh. 'E') to cover payment of the premium and documentary stamps due on the policy was tendered due to the insurer but was not accepted. Instead, the South Sea Surety and Insurance Co., Inc. cancelled the insurance policy it issued as of the date of the inception for non-payment of the premium due in accordance with Section 77 of the Insurance Code.

On 2 February 1984, plaintiff demanded from defendant South Sea Surety and Insurance Co., Inc. the payment of the proceeds of the policy but the latter denied liability under the policy. Plaintiff likewise filed a formal claim with defendant Seven Brothers Shipping Corporation for the value of the lost logs but the latter denied the claim.

After due hearing and trial, the court a quo rendered judgment in favor of plaintiff and against defendants. Both defendants shipping corporation and the surety company appealed.

Defendant-appellant Seven Brothers Shipping Corporation impute (sic) to the court a quo the following assignment of errors, to wit:

'A. The lower court erred in holding that the proximate cause of the sinking of the vessel Seven Ambassadors, was not due to fortuitous event but to the negligence of the captain in stowing and securing the logs on board, causing the iron chains to snap and the logs to roll to the portside.

B. The lower court erred in declaring that the non-liability clause of the Seven Brothers Shipping Corporation from logs (sic) of the cargo stipulated in the charter party is void for being contrary to public policy invoking article 1745 of the New Civil Code.

C. The lower court erred in holding defendant-appellant Seven Brothers

Shipping Corporation liable in the alternative and ordering/directing it to pay plaintiff-appellee the amount of two million (P2,000,000.00) pesos representing the value of the logs plus legal interest from date of demand until fully paid.

D. The lower court erred in ordering defendant-appellant Seven Brothers Shipping Corporation to pay appellee reasonable attorney's fees in the amount equivalent to 5% of the amount of the claim and the costs of the suit.

E. The lower court erred in not awarding defendant-appellant Seven Brothers Corporation its counter-claim for attorney's fees.

F. The lower court erred in not dismissing the complaint against Seven Brothers Shipping Corporation.'

Defendant-appellant South Sea Surety and Insurance Co., Inc. assigns the following errors:

A. The trial court erred in holding that Victorio Chua was an agent of defendant-appellant South Sea Surety and Insurance Company, Inc. and likewise erred in not holding that he was the representative of the insurance broker Columbia Insurance Brokers, Ltd.

B. The trial court erred in holding that Victorio Chua received compensation/commission on the premiums paid on the policies issued by the defendant-appellant South Sea Surety and Insurance Company, Inc.

C. The trial court erred in not applying Section 77 of the Insurance Code.

D. The trial court erred in disregarding the 'receipt of payment clause' attached to and forming part of the Marine Cargo Insurance Policy No. 84/24229.

E. The trial court in disregarding the statement of account or bill stating the amount of premium and documentary stamps to be paid on the policy by the plaintiff-appellee.

F. The trial court erred in disregarding the indorsement of cancellation of the policy due to non-payment of premium and documentary stamps.

G. The trial court erred in ordering defendant-appellant South Sea Surety and Insurance Company, Inc. to pay plaintiff-appellee P2,000,000.00 representing value of the policy with legal interest from 2 February 1984 until the amount is fully paid,

H. The trial court erred in not awarding to the defendant-appellant the attorney's fees alleged and proven in its counterclaim.'

The primary issue to be resolved before us is whether defendants shipping corporation and the surety company are liable to the plaintiff for the latter's lost logs."^[4]

The Court of Appeals affirmed in part the RTC judgment by sustaining the liability of South Sea Surety and Insurance Company ("South Sea"), but modified it by holding

that Seven Brothers Shipping Corporation ("Seven Brothers") was not liable for the lost cargo.^[5] In modifying the RTC judgment, the respondent appellate court ratiocinated thus:

"It appears that there is a stipulation in the charter party that the ship owner would be exempted from liability in case of loss.

The court a quo erred in applying the provisions of the Civil Code on common carriers to establish the liability of the shipping corporation. The provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier.

Under American jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier.

As a private carrier, a stipulation exempting the owner from liability even for the negligence of its agent is valid (Home Insurance Company, Inc. vs. American Steamship Agencies, Inc., 23 SCRA 24).

The shipping corporation should not therefore be held liable for the loss of the logs."^[6]

South Sea and herein Petitioner Valenzuela Hardwood and Industrial Supply, Inc. ("Valenzuela") filed separate petitions for review before this Court. In a Resolution dated June 2, 1995, this Court denied the petition of South Sea.^[7] There the Court found no reason to reverse the factual findings of the trial court and the Court of Appeals that Chua was indeed an authorized agent of South Sea when he received Valenzuela's premium payment for the marine cargo insurance policy which was thus binding on the insurer.^[8]

The Court is now called upon to resolve the petition for review filed by Valenzuela assailing the CA Decision which exempted Seven Brothers from any liability for the lost cargo.

The Issue

Petitioner Valenzuela's arguments revolve around a single issue: "whether or not respondent Court (of Appeals) committed a reversible error in upholding the validity of the stipulation in the charter party executed between the petitioner and the private respondent exempting the latter from liability for the loss of petitioner's logs arising from the negligence of its (Seven Brothers') captain."^[9]

The Court's Ruling

The petition is not meritorious.

Validity of Stipulation is Lis Mota

The charter party between the petitioner and private respondent stipulated that the "(o)wners shall not be responsible for loss, split, short-landing, breakages and any

kind of damages to the cargo.”^[10] The validity of this stipulation is the *lis mota* of this case.

It should be noted at the outset that there is no dispute between the parties that the proximate cause of the sinking of M/V Seven Ambassadors resulting in the loss of its cargo was the “snapping of the iron chains and the subsequent rolling of the logs to the portside due to the negligence of the captain in stowing and securing the logs on board the vessel and not due to fortuitous event.”^[11] Likewise undisputed is the status of Private Respondent Seven Brothers as a private carrier when it contracted to transport the cargo of Petitioner Valenzuela. Even the latter admits this in its petition.^[12]

The trial court deemed the charter party stipulation void for being contrary to public policy,^[13] citing Article 1745 of the Civil Code which provides:

“Art. 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

- (1) That the goods are transported at the risk of the owner or shipper;
- (2) That the common carrier will not be liable for any loss, destruction, or deterioration of the goods;
- (3) That the common carrier need not observe any diligence in the custody of the goods;
- (4) That the common carrier shall exercise a degree of diligence less than that of a good father of a family, or of a man of ordinary prudence in the vigilance over the movables transported;
- (5) That the common carrier shall not be responsible for the acts or omissions of his or its employees;
- (6) That the common carrier’s liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished;
- (7) That the common carrier is not responsible for the loss, destruction, or deterioration of goods on account of the defective condition of the car, vehicle, ship, airplane or other equipment used in the contract of carriage.”

Petitioner Valenzuela adds that the stipulation is void for being contrary to Articles 586 and 587 of the Code of Commerce^[14] and Articles 1170 and 1173 of the Civil Code. Citing Article 1306 and paragraph 1, Article 1409 of the Civil Code,^[15] petitioner further contends that said stipulation “gives no duty or obligation to the private respondent to observe the diligence of a good father of a family in the custody and transportation of the cargo.”

The Court is not persuaded. As adverted to earlier, it is undisputed that private