



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ACE NAVIGATION CO., INC.,                      G.R. No. 171591  
Petitioner,

- versus -

FGU                      INSURANCE  
CORPORATION and PIONEER  
INSURANCE AND SURETY  
CORPORATION,  
Respondents.

Present:  
PERALTA, J.,\* *Acting Chairperson*,  
ABAD,  
VILLARAMA, JR.,\*\*  
REYES,\*\* and  
PERLAS-BERNABE, JJ.

Promulgated:

25 June 2012 *Alarcon*

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DECISION

PERLAS-BERNABE, J.:

This is an appeal under Rule 45 of the Rules of Court seeking to reverse the June 22, 2004 Decision<sup>1</sup> and February 17, 2006 Resolution<sup>2</sup> of

\* Per Special Order No. 1228 dated June 6, 2012.

\*\* Designated acting member in lieu of Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

\*\*\* Designated member in lieu of Justice Jose C. Mendoza per Raffle dated 08 February 2012.

the Court of Appeals (CA) ordering petitioner Ace Navigation Co., Inc., jointly and severally with Cardia Limited, to pay respondents FGU Insurance Corp. and Pioneer Insurance and Surety Corp. the sum of ₱213,518.20 plus interest at the rate of six percentum (6%) from the filing of the complaint until paid.

### **The Facts**

On July 19, 1990, Cardia Limited (CARDIA) shipped on board the vessel *M/V Pakarti Tiga* at Shanghai Port China, 8,260 metric tons or 165,200 bags of Grey Portland Cement to be discharged at the Port of Manila and delivered to its consignee, Heindrich Trading Corp. (HEINDRICH). The subject shipment was insured with respondents, FGU Insurance Corp. (FGU) and Pioneer Insurance and Surety Corp. (PIONEER), against all risks under Marine Open Policy No. 062890275 for the amount of ₱18,048,421.00.<sup>3</sup>

The subject vessel is owned by P.T. Pakarti Tata (PAKARTI) which it chartered to Shinwa Kaiun Kaisha Ltd. (SHINWA).<sup>4</sup> Representing itself as owner of the vessel, SHINWA entered into a charter party contract with Sky International, Inc. (SKY), an agent of Kee Yeh Maritime Co. (KEE YEH),<sup>5</sup> which further chartered it to Regency Express Lines S.A. (REGENCY). Thus, it was REGENCY that directly dealt with consignee HEINDRICH, and accordingly, issued Clean Bill of Lading No. SM-1.<sup>6</sup>

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<sup>1</sup> *Rollo* (G.R. No. 171591), pp. 25-34.

<sup>2</sup> *Id.* at 36-37.

<sup>3</sup> *Id.* at 26.

<sup>4</sup> *Id.* at 30.

<sup>5</sup> *Id.* at 29.

<sup>6</sup> *Supra* note 3.

On July 23, 1990, the vessel arrived at the Port of Manila and the shipment was discharged. However, upon inspection of HEINDRICH and petitioner Ace Navigation Co., Inc. (ACENAV), agent of CARDIA, it was found that out of the 165,200 bags of cement, 43,905 bags were in bad order and condition. Unable to collect the sustained damages in the amount of ₱1,423,454.60 from the shipper, CARDIA, and the charterer, REGENCY, the respondents, as co-insurers of the cargo, each paid the consignee, HEINDRICH, the amounts of ₱427,036.40 and ₱284,690.94, respectively,<sup>7</sup> and consequently became subrogated to all the rights and causes of action accruing to HEINDRICH.

Thus, on August 8, 1991, respondents filed a complaint for damages against the following defendants: “REGENCY EXPRESS LINES, S.A./ UNKNOWN CHARTERER OF THE VESSEL 'PAKARTI TIGA'/ UNKNOWN OWNER and/or DEMIFE (*sic*) CHARTERER OF THE VESSEL 'PAKARTI TIGA', SKY INTERNATIONAL, INC. and/or ACE NAVIGATION COMPANY, INC.”<sup>8</sup> which was docketed as Civil Case No. 90-2016.

In their answer with counterclaim and cross-claim, PAKARTI and SHINWA alleged that the suits against them cannot prosper because they were not named as parties in the bill of lading.<sup>9</sup>

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<sup>7</sup> Id.

<sup>8</sup> Supra note 5.

<sup>9</sup> *Rollo* (G.R. No. 171591), p. 27.

Similarly, ACENAV claimed that, not being privy to the bill of lading, it was not a real party-in-interest from whom the respondents can demand compensation. It further denied being the local ship agent of the vessel or REGENCY and claimed to be the agent of the shipper, CARDIA.<sup>10</sup>

For its part, SKY denied having acted as agent of the charterer, KEE YEH, which chartered the vessel from SHINWA, which originally chartered the vessel from PAKARTI. SKY also averred that it cannot be sued as an agent without impleading its alleged principal, KEE YEH.<sup>11</sup>

On September 30, 1991, HEINDRICH filed a similar complaint against the same parties and Commercial Union Assurance Co. (COMMERCIAL), docketed as Civil Case No. 91-2415, which was later consolidated with Civil Case No. 91-2016. However, the suit against COMMERCIAL was subsequently dismissed on joint motion by the respondents and COMMERCIAL.<sup>12</sup>

### **Proceedings Before the RTC and the CA**

In its November 26, 2001 Decision,<sup>13</sup> the RTC dismissed the complaint, the *fallo* of which reads:

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<sup>10</sup> Id. at 26, 10.

<sup>11</sup> Supra note 9.

<sup>12</sup> Id.

<sup>13</sup> *Rollo* (G.R. No. 171591), pp. 38-42.

WHEREFORE, premises considered, plaintiffs' complaint is DISMISSED. Defendants' counter-claim against the plaintiffs are likewise dismissed, it appearing that plaintiff[s] did not act in evident bad faith in filing the present complaint against them.

Defendant Pakarti and Shinwa's cross-claims against their co-defendants are likewise dismissed for lack of sufficient evidence.

No costs.

SO ORDERED.

Dissatisfied, the respondents appealed to the CA which, in its assailed June 22, 2004 Decision,<sup>14</sup> found PAKARTI, SHINWA, KEE YEH and its agent, SKY, solidarily liable for 70% of the respondents' claim, with the remaining 30% to be shouldered solidarily by CARDIA and its agent, ACENAV, thus:

WHEREFORE, premises considered, the Decision dated November 26, 2001 is hereby MODIFIED in the sense that:

a) defendant-appellees P.T. Pakarti Tata, Shinwa Kaiun Kaisha, Ltd., Kee Yeh Maritime Co., Ltd. and the latter's agent Sky International, Inc. are hereby declared jointly and severally liable, and are DIRECTED to pay FGU Insurance Corporation the amount of Two Hundred Ninety Eight Thousand Nine Hundred Twenty Five and 45/100 (₱298,925.45) Pesos and Pioneer Insurance and Surety Corp. the sum of One Hundred Ninety Nine Thousand Two Hundred Eighty Three and 66/100 (₱199,283.66) Pesos representing Seventy (70%) percentum of their respective claims as actual damages plus interest at the rate of six (6%) percentum from the date of the filing of the complaint; and

b) defendant Cardia Ltd. and defendant-appellee Ace Navigation Co., Inc. are DECLARED jointly and severally liable and are hereby DIRECTED to pay FGU Insurance Corporation One Hundred Twenty Eight Thousand One Hundred Ten and 92/100 (₱128,110.92) Pesos and Pioneer Insurance and Surety Corp. Eighty Five Thousand Four Hundred Seven and 28/100 (₱85,407.28) Pesos representing thirty (30%) percentum

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<sup>14</sup> Id. at 25-34.

of their respective claims as actual damages, plus interest at the rate of six (6%) percentum from the date of the filing of the complaint.

SO ORDERED.

Finding that the parties entered into a time charter party, not a demise or bareboat charter where the owner completely and exclusively relinquishes possession, command and navigation to the charterer, the CA held PAKARTI, SHINWA, KEE YEH and its agent, SKY, solidarily liable for 70% of the damages sustained by the cargo. This solidarity liability was borne by their failure to prove that they exercised extraordinary diligence in the vigilance over the bags of cement entrusted to them for transport. On the other hand, the CA passed on the remaining 30% of the amount claimed to the shipper, CARDIA, and its agent, ACENAV, upon a finding that the damage was partly due to the cargo's inferior packing.

With respect to REGENCY, the CA affirmed the findings of the RTC that it did not acquire jurisdiction over its person for defective service of summons.

PAKARTI's, SHINWA's, SKY's and ACENAV's respective motions for reconsideration were subsequently denied in the CA's assailed February 17, 2006 Resolution.

### **Issues Before the Court**

PAKARTI, SHINWA, SKY and ACENAV filed separate petitions for review on certiorari before the Court, docketed as G.R. Nos. 171591, 171614, and 171663, which were ordered consolidated in the Court's Resolution dated July 31, 2006.<sup>15</sup>

On April 21, 2006, SKY manifested<sup>16</sup> that it will no longer pursue its petition in G.R. No. 171614 and has preferred to await the resolution in G.R. No. 171663 filed by PAKARTI and SHINWA. Accordingly, an entry of judgment<sup>17</sup> against it was made on August 18, 2006. Likewise, on November 29, 2007, PAKARTI and SHINWA moved<sup>18</sup> for the withdrawal of their petitions for lack of interest, which the Court granted in its January 21, 2008 Resolution.<sup>19</sup> The corresponding entry of judgment<sup>20</sup> against them was made on March 17, 2008.

Thus, only the petition of ACENAV remained for the Court's resolution, with the lone issue of whether or not it may be held liable to the respondents for 30% of their claim.

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<sup>15</sup> Id. at 55.

<sup>16</sup> *Rollo* (G.R. No. 171614), p. 9.

<sup>17</sup> Id. at 35-36.

<sup>18</sup> *Rollo* (G.R. No. 171663), pp. 349-354.

<sup>19</sup> Id. at 355-356.

<sup>20</sup> Id. at 357-358.

Maintaining that it was not a party to the bill of lading, ACENAV asserts that it cannot be held liable for the damages sought to be collected by the respondents. It also alleged that since its principal, CARDIA, was not impleaded as a party-defendant/respondent in the instant suit, no liability can therefore attach to it as a mere agent. Moreover, there is dearth of evidence showing that it was responsible for the supposed defective packing of the goods upon which the award was based.

### **The Court's Ruling**

A bill of lading is defined as "an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight to be delivered to the order or assigns of a specified person at a specified place."<sup>21</sup> It operates both as a receipt and as a contract. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks and condition, quality, and value. As a contract, it names the contracting parties, which include the consignee, fixes the route, destination, and freight rates or charges, and stipulates the rights and obligations assumed by the parties.<sup>22</sup> As such, it shall only be binding upon the parties who make them, their assigns and heirs.<sup>23</sup>

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<sup>21</sup> Martin, *Commentaries and Jurisprudence on the Philippine Commercial Laws*, 1989 Revised Ed., Vol. 3, p. 91.

<sup>22</sup> *Iron Bulk Shipping Phil., Co., Ltd. v. Remington Industrial Sales Corp.*, G.R. No. 136960, December 8, 2003, 417 SCRA 229, 234-235.

<sup>23</sup> Art. 1311, Civil Code.

In this case, the original parties to the bill of lading are: (a) the shipper CARDIA; (b) the carrier PAKARTI; and (c) the consignee HEINDRICH. However, by virtue of their relationship with PAKARTI under separate charter arrangements, SHINWA, KEE YEH and its agent SKY likewise became parties to the bill of lading. In the same vein, ACENAV, as admitted agent of CARDIA, also became a party to the said contract of carriage.

The respondents, however, maintain<sup>24</sup> that ACENAV is a *ship agent* and not a mere agent of CARDIA, as found by both the CA<sup>25</sup> and the RTC.<sup>26</sup>

The Court disagrees.

Article 586 of the Code of Commerce provides:

ART. 586. The shipowner and the ship agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.

*By **ship agent** is understood the person entrusted with the provisioning of a vessel, or who represents her in the port in which she may be found. (Emphasis supplied)*

Records show that the obligation of ACENAV was limited to informing the consignee HEINDRICH of the arrival of the vessel in order for the latter to immediately take possession of the goods. No evidence was

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<sup>24</sup> *Rollo* (G.R. No. 171591), pp. 64-69.

<sup>25</sup> *Id.* at 33.

<sup>26</sup> *Id.* at 42.

offered to establish that ACENAV had a hand in the provisioning of the vessel or that it represented the carrier, its charterers, or the vessel at any time during the unloading of the goods. Clearly, ACENAV's participation was simply to assume responsibility over the cargo when they were unloaded from the vessel. Hence, no reversible error was committed by the courts *a quo* in holding that ACENAV was not a ship agent within the meaning and context of Article 586 of the Code of Commerce, but a *mere agent* of CARDIA, the shipper.

On this score, Article 1868 of the Civil Code states:

ART. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

Corollarily, Article 1897 of the same Code provides that an agent is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

Both exceptions do not obtain in this case. Records are bereft of any showing that ACENAV exceeded its authority in the discharge of its duties as a mere agent of CARDIA. Neither was it alleged, much less proved, that ACENAV's limited obligation as agent of the shipper, CARDIA, was not known to HEINDRICH.

Furthermore, since CARDIA was not impleaded as a party in the instant suit, the liability attributed upon it by the CA<sup>27</sup> on the basis of its finding that the damage sustained by the cargo was due to improper packing cannot be borne by ACENAV. As mere agent, ACENAV cannot be made responsible or held accountable for the damage supposedly caused by its principal.<sup>28</sup>

Accordingly, the Court finds that the CA erred in ordering ACENAV jointly and severally liable with CARDIA to pay 30% of the respondents' claim.

**WHEREFORE**, the assailed Decision and Resolution of the Court of Appeals are hereby **REVERSED**. The complaint against petitioner Ace Navigation Co., Inc. is hereby **DISMISSED**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

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<sup>27</sup> Id. at 33.

<sup>28</sup> *Maritime Agencies & Services, Inc. v. Court of Appeals*, G.R. Nos. 77638 and 77674, July 12, 1990, 187 SCRA 346, 355.

**WE CONCUR:**



**DIOSDADO M. PERALTA**

Associate Justice  
Acting Chairperson



**ROBERTO A. ABAD**

Associate Justice



**MARTIN S. VILLARAMA, JR.**

Associate Justice



**BIENVENIDO L. REYES**

Associate Justice

**A T T E S T A T I O N**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**

Associate Justice  
Acting Chairperson, Third Division

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**

Senior Associate Justice

(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)