EN BANC

G.R. Nos. 180880-81 — KEPPEL CEBU SHIPYARD, INC., *Petitioner*, *versus* PIONEER INSURANCE AND SURETY CORPORATION, *Respondent*.

G.R. Nos. 180896-97 — PIONEER INSURANCE AND SURETY CORPORATION, *Petitioner*, *versus* KEPPEL CEBU SHIPYARD, INC., *Respondent*.

Promulgated:

SEPTEMBER 18, 2012

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CONCURRING OPINION

ABAD, *J.*:

I concur with the main opinion in reconsidering the Division's decision in these cases. I especially address the dissenting opinion of Justice Arturo D. Brion.

On January 26, 2000 Keppel Cebu Shipyard, Inc. (KCSI) and WG&A Jebsens Shipmanagement, Inc. (WG&A) executed a Shiprepair Agreement where KCSI agreed to renovate and reconstruct WG&A's M/V Superferry 3 using its dry docking facilities pursuant to its safety and security rules and regulations. Under the agreement, KCSI's total liability was limited to ₱50 Million. Meanwhile, the ship was insured with Pioneer Insurance and Surety Corporation (Pioneer) for US$8,472,581.78.

In the course of the repairs, M/V Superferry 3 was destroyed by fire. WG&A declared a "total constructive loss" and filed an insurance claim with Pioneer which, in turn, paid WG&A the total sum insured equivalent to ₱360 Million. WG&A then executed a Loss and Subrogation Receipt in favor of Pioneer.

Pioneer tried to collect from KCSI the full amount of ₱360 Million that it had paid to WG&A, but KCSI denied any responsibility for the loss of the vessel. Consequently, Pioneer filed a Request for Arbitration before the Construction Industry Arbitration Commission (CIAC).

On October 28, 2002 the CIAC rendered a decision declaring both WG&A and KCSI guilty of negligence. Holding that the liability for damages was limited to ₱50 Million, the CIAC ordered KCSI to pay Pioneer ₱25 Million, with interest at 6% per annum from the time of filing of the case up to the time the decision is promulgated, and 12% interest after the decision becomes final and executory.

Pioneer and KCSI appealed to the Court of Appeals (CA) in CA-G.R. SP 74018 and CA-G.R. SP 73934, respectively. The CA dismissed Pioneer's petition, but granted KCSI's appeal. On Pioneer's motion for reconsideration, however, the CA issued an amended decision ordering KCSI to pay Pioneer ₱25 Million, without legal interest, within 15 days from the finality of its amended decision.

Both Pioneer and KCSI elevated the matter to the Court for review under Rule 45 of the Rules of Court. On September 25, 2009 the Court's Second Division partially granted the petitions and modified the CA's amended decision. The Court found KCSI solely liable for the loss of the vessel and ordered it to pay Pioneer ₱360 Million less the salvage value of ₱30,252,648.09, or the net amount of ₱329,747,351.91 with 6% per annum from the time the Request for Arbitration was filed until the decision becomes final and executory, plus 12% per annum on the amount or any balance from finality of the decision until full payment.

KCSI filed a motion for reconsideration, which the Court denied on June 21, 2010. KCSI then filed a second motion for reconsideration to refer to the Court *En Banc* and for oral arguments, which the Court also denied on October 20, 2010. The decision became final and executory on November 4, 2010.

On November 23, 2010 KCSI filed a motion to reopen proceedings and motion to refer to the Court *En Banc.* The Court's Second Division voted 4-1 to submit the case to the *En Banc*, while two-thirds of the Court *En Banc*, or ten members, voted to grant KCSI's motion. Three members dissented and two members took no part.

The Court *En Banc* has, in exceptional cases, reopened and accepted for review decisions that have otherwise attained finality. Indeed, it has suspended the rules of procedure when there are special and compelling reasons to alter a judgment that has been declared final even by the Court itself.

For instance, the Court set aside entry of judgment in *Manotok IV v. Heirs of Homer L. Barque*[1] to protect the Torrens system of registration. The Court did the same thing in *Tan Tiac Chiong v. Cosico*[2] owing to due

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[1] G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468.
[2] 434 Phil. 753 (2002).

process concerns. In *Barnes v. Judge Padilla*,[3] the Court allowed the recall of entries of judgment in the interest of justice. Meanwhile, in the more recent cases of *League of Cities of the Philippines v. Commission on Elections*[4] and *Navarro v. Ermita*[5] the Court vacated previous decisions in order to uphold congressional intent.

In *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*,[6] the Court *En Banc* also reversed a division ruling despite a final and executory judgment because the Court found the issue of just compensation a matter of public interest. Notably, the *ponente* then was Justice Brion who now vigorously opposes the reopening of these cases in his dissenting opinion.

It is argued that the Court violated the principle on immutability of judgments and that it is proscribed from accepting motions for reconsideration after finality of the assailed decision. But, as shown by jurisprudence cited above, a final judgment may be reopened and reviewed by the Court in order to render just and equitable relief.

We are of course aware that the departure from the rules of procedure may provoke criticism from various quarters. But, to be sure, the Court does not recall entries of judgment indiscriminately or without sufficient justification. In granting KCSI's motion, there is no resulting "monumental imbalance in the legal structure" but merely an affirmation that, in rendering justice, courts should be mindful first of substantive rights rather than technicalities.[7]

Here, the CIAC and the CA had the same factual findings with respect to the negligence of the parties. Both found WG&A and KCSI equally at fault for the loss of the vessel. The Court's Second Division, however, held only KCSI liable. What is more, it disregarded the limitation-of-liability clause in the Shiprepair Agreement that would have an impact on future commercial contracts.

KCSI argues that the Court's Second Division had no basis to reverse the factual findings of the CIAC and the CA without having asked for the case records. KCSI also points out that the limitation-of-liability clause is valid and that, on at least 22 different occasions, WG&A or its affiliate companies had willingly entered into similar agreements with the same conditions. Needless to say, these are serious allegations that the Court *En Banc*, by a vote of two-thirds or ten of its members, rightfully saw fit to evaluate.

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[3] 482 Phil. 903 (2004).
[4] G.R. Nos. 176951, 177499, and 178056, April 12, 2011, 648 SCRA 344.
[5] G.R. No. 180050, April 12, 2011, 648 SCRA 400.
[6] G.R. No. 164195, April 5, 2011, 647 SCRA 207.
[7] Supra note 3, at 916, citing *De Guzman v. Sandiganbayan*, 326 Phil. 182 (1996).

Besides, the Court acted in accordance with its internal rules which recognize the *En Banc's* power to review and take cognizance of cases under exceptional circumstances. Section 3(m), Rule 2 of the rules expressly provides that the Court *En Banc* shall act on cases that it deems of sufficient importance to merit its attention. In this regard, the rules also state that a second motion for reconsideration may be entertained, in the higher interest of justice, by a two-thirds vote of the Court *En Banc's* members.

ROBERTO A. ABAD
Associate Justice