G.R. Nos. 180880-81 – KEPPEL CEBU SHIPYARD, INC., *petitioner v.* PIONEER INSURANCE AND SURETY CORPORATION, *respondent.*

G.R. Nos. 180896-97 – PIONEER INSURANCE AND SURETY CORPORATION, *petitioner v.* KEPPEL CEBU SHIPYARD, INC., *respondent.*

Promulgated: SEPTEMBER 18, 2012

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DISSENTING OPINION

REYES, *J.*:

I find myself unable to concur in the majority opinion. I would like to emphasize the applicability of *Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc.*[1] in this case.

Below is a summary of *Cebu Shipyard* insofar as it is relevant to *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation.*[2]

M/V Manila City, a luxury passenger cargo vessel owned by William Lines, Inc. (William Lines), was insured with Prudential Guarantee and Assurance Company, Inc. (Prudential) for ₱45,000,000.00 for hull and machinery. Among others, the policy provided as follows:

> Subject to the conditions of [the] Policy, [the] insurance also covers loss of or damage to Vessel directly caused by the following:
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> X X X

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1 366 Phil. 439 (1999).

2 G.R. Nos. 180880-81 & G.R. Nos. 180896-97, September 25, 2009, 601 SCRA 96.

> Negligence of Charterers and/or Repairers, provided such Charterers and/or Repairers are not an Assured hereunder.
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> x x x
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> provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, of any of them. Masters, Officers, Crew or Pilots are not to be considered Owners within the meaning of this Clause should they hold shares in the Vessel.[3]

During the effectivity of the insurance, M/V Manila City caught fire and sank on February 16, 1991 while it was undergoing dry-docking and repair within the premises of Cebu Shipyard and Engineering Works, Inc. (Cebu Shipyard). On February 5, 1991, William Lines brought M/V Manila City to Cebu Shipyard for dry-docking and repair. The Work Orders executed by William Lines and Cebu Shipyard contain the following stipulations:

> 11. Save as provided in Clause 10, the Contractor shall not be under any liability to the Customer either in contract or for delict or quasi-delict or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, namely:
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> (a) The total liability of the Contractor to the Customer (over and above the liability to replace under Clause 10) or of any sub-contractor shall be limited in respect of any defect or event (and a series of accidents arising out of the same defect or event shall constitute one defect or event) to the sum of Pesos Philippine Currency One Million only.
>
> x x x x
>
> 20. The insurance on the vessel should be maintained by the customer and/or owner of the vessel during the period the contract is in effect.[4]

After M/V Manila City caught fire and sank, William Lines filed a complaint with the Regional Trial Court (RTC) of Cebu City against Cebu Shipyard, alleging that the loss of the vessel was due to the latter's fault and negligence.

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[3] Supra note 1, at 444-445.
[4] Id. at 446.

Subsequently, Prudential paid William Lines the value of the vessel's hull and machinery, resulting to Prudential's subrogation to the claims of William Lines against Cebu Shipyard. An amended complaint was filed to include Prudential as a co-plaintiff.

In its Decision dated June 10, 1994, the RTC ruled that it was Cebu Shipyard's negligence that caused the total loss of the vessel. Cebu Shipyard was ordered to pay Prudential the amount of ₱45,000,000.00, representing the amount the latter paid to William Lines.

On appeal, the Court of Appeals (CA) affirmed the RTC decision.

Cebu Shipyard filed a Petition for Review with this Court, claiming, among others, that: (a) it is a co-assured under the insurance contract between William Lines and Prudential by virtue of Clause 20 of the Work Orders; thus, its supposed negligence is an excluded risk; and (b) on the assumption that its negligence was the cause of the vessel's total loss, its liability is limited to ₱1,000,000.00.

In a Decision dated May 5, 1999 penned by Justice Fidel P. Purisima, this Court denied the petition finding no merit in any of Cebu Shipyard's claims. *First*, this Court, not being a trier of facts, is bound by the factual findings of the RTC and the CA that Cebu Shipyard's negligence was the cause of the loss. *Second*, the loss took place while the Cebu Shipyard had custody and control of the vessel, thus, the principle of *res ipsa loquitor* applies. *Third*, Clause 20 of the Work Orders does not make Cebu Shipyard a co-assured under the insurance contract between Prudential and William Lines. While William Lines is required to maintain an insurance contract while the vessel is being dry-docked and repaired by Cebu Shipyard and such coverage benefits Cebu Shipyard, this does not automatically make Cebu Shipyard a co-assured. It is only William Lines who was designated as "assured" in the insurance contract and:

> The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement because the insurance policy denominates the assured and the beneficiaries of the insurance. x x x.[5]

Fourth, the Work Orders are in the nature of adhesion contract, which is recognized as valid in this jurisdiction but reliance thereon is unfavored given a certain factual milieu. In this case, it is unfair and inequitable to limit the liability of Cebu Shipyard to ₱1,000,000.00 in view of the proven fact that its failure to exercise the required diligence was the proximate cause of the loss.

It is evident that the Decision dated September 25, 2009 of this Court in *Keppel Cebu Shipyard* shares a parallelism with its Decision dated May 5, 1999 in *Cebu Shipyard*. As to the validity of Clause 20, the limited liability clause of the Ship Repair Agreement between WG & A Jebsens Ship Management, Inc. (Aboitiz), this Court held that:

> Indeed, the assailed clauses amount to a contract of adhesion imposed on WG&A on a "take-it-or-leave-it" basis. A contract of adhesion is so-called because its terms are prepared by only one party, while the other party merely affixes his signature signifying his adhesion thereto. Although not invalid, *per se*, a contract of adhesion is void when the weaker party is imposed upon in dealing with the dominant bargaining party, and its option is reduced to the alternative of "taking it or leaving it," completely depriving such party of the opportunity to bargain on equal footing.
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> x x x x
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> Likewise, Clause 20 is a stipulation that may be considered contrary to public policy. To allow KCSI to limit its liability to only [₱]50,000,000.00, notwithstanding the fact that there was a constructive total loss in the amount of [₱]360,000,000.00, would sanction the exercise of a degree of diligence short of what is ordinarily required. It would not be difficult for a negligent party to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss sustained by the other.[6]

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5 Id. at 456.

6 Supra note 2, at 143-144.

As to the validity of Clause 22(a), the provision in the Ship Repair Agreement that required Aboitiz to maintain an insurance cover on the vehicle while it is being dry-docked and repaired by Keppel Cebu Shipyard, Inc. (KCSI), invoked by KCSI to claim that it is a co-assured in the insurance contract between Aboitiz and Pioneer Insurance and Surety Corporation (Pioneer), this Court held that:

> Along the same vein, Clause 22(a) cannot be upheld. The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement, because the insurance policy denominates the assured and the beneficiaries of the insurance contract. Undeniably, the hull and machinery insurance procured by WG&A from Pioneer named only the former as the assured. There was no manifest intention on the part of WG&A to constitute KCSI as a co-assured under the policies. To have deemed KCSI as a co-assured under the policies would have had the effect of nullifying any claim of WG&A from Pioneer for any loss or damage caused by the negligence of KCSI. No ship owner would agree to make a ship repairer a co-assured under such insurance policy. Otherwise, any claim for loss or damage under the policy would be rendered nugatory. WG&A could not have intended such a result.[7]

The re-opening of our Decision dated September 25, 2009 despite the fact that this had already become final and executory, raises the presumption that there will be a reversal in KCSI's favor.

At the onset, it bears stressing that the conclusions made by this Court in *Keppel Cebu Shipyard* was consistent with the principles enunciated in *Cebu Shipyard* and in observance of the principle of *stare decisis.* In fact, even without having to go through the rigorous exercise of determining whether Aboitiz consented to the limited liability clause (a supposed fine-print in the Ship Repair Agreement), the conclusion would be the same and KCSI's liability to Pioneer would still be within the range of ₱350,000,000.00 considering the pronouncement in *Cebu Shipyard* that a limitation of liability in that form is void for being against public policy.

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[7] Id. at 144.

The same is true with respect to the issue on whether KCSI can be considered a co-assured in the insurance contract between Pioneer and Aboitiz. Even if KCSI's being a co-assured is expressly stipulated in the Ship Repair Agreement (compared to the Work Orders in *Cebu Shipyard*, which was not that explicit), that would not suffice to make it so. *Keppel Cebu Shipyard* echoed the pronouncements in *Cebu Shipyard* that one can only claim to be a co-assured if he is designated as one in the insurance contract itself, and no other contract where the insurer is not a party can be invoked.

Therefore, to hold that KCSI's liability to Pioneer is limited only to ₱50,000,000.00 is tantamount to a reversal of the doctrine espoused in *Cebu Shipyard*; and if such is the intention then a categorical statement to that effect should be made. For several years, ship owners had relied on this formulation that any attempt on the part of the ship repairer and owner of docking facilities to limit their liability to a certain amount, which is way below that actual value of the ship, is an exercise in futility. This holds true even if the ship owner had consented to a contract where such limitation on liability has been stipulated.

It is not without reason that limited liability provisions had been struck down as void for being against public policy. It is indeed distasteful and an affront to one's sense of justice and fairness that: (a) ship owners would render themselves unqualified to the services of ship repairers and owners of docking facilities should they refuse to accede to a limited liability clause; and (b) ship repairers and owners of docking facilities would be relieved of liability to a significant degree even if it was by their fault or negligence that the vessel was placed in utter ruin. The consent of a ship owner to a limited liability clause is not freely given in a certain sense, most especially if the ship owner is confronted with no choice but to engage the services of that ship repairer for being the only one available. Such cutthroat

practice is what this Court would intend to avoid by declaring such a limited liability clause invalid.

In light of the foregoing, and on the ground of immutability of judgment, I register my **DISSENT**. I vote to **AFFIRM** the Decision dated September 25, 2009 of the Court in this case.

BIENVENIDO L. REYES
Associate Justice