



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

WESTWIND SHIPPING G.R. No. 200289
CORPORATION,
Petitioner,

- versus -

UCPB GENERAL INSURANCE
CO., INC. and ASIAN
TERMINALS, INC.,
Respondents.

X-----X
ORIENT FREIGHT
INTERNATIONAL, INC.,
Petitioner,

G.R. No. 200314

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
PERALTA,
BERSAMIN,*
ABAD, and
MENDOZA, JJ.

UCPB GENERAL INSURANCE
CO., INC. and ASIAN
TERMINALS, INC.,
Respondents.

Promulgated:

November 25, 2013

Alcopiano

X-----X

DECISION

PERALTA, J.:

These two consolidated cases challenge, by way of petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, the

* Designated as Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1605 dated November 20, 2013.

September 13, 2011 Decision¹ and January 19, 2012 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 86752, which reversed and set aside the January 27, 2006 Decision³ of the Manila City Regional Trial Court Branch (RTC) 30.

The facts, as established by the records, are as follows:

On August 23, 1993, Kinsho-Mataichi Corporation shipped from the port of Kobe, Japan, 197 metal containers/skids of tin-free steel for delivery to the consignee, San Miguel Corporation (SMC). The shipment, covered by Bill of Lading No. KBMA-1074,⁴ was loaded and received clean on board M/V Golden Harvest Voyage No. 66, a vessel owned and operated by Westwind Shipping Corporation (Westwind).

SMC insured the cargoes against all risks with UCPB General Insurance Co., Inc. (UCPB) for US Dollars: One Hundred Eighty-Four Thousand Seven Hundred Ninety-Eight and Ninety-Seven Centavos (US\$184,798.97), which, at the time, was equivalent to Philippine Pesos: Six Million Two Hundred Nine Thousand Two Hundred Forty-Five and Twenty-Eight Centavos (₱6,209,245.28).

The shipment arrived in Manila, Philippines on August 31, 1993 and was discharged in the custody of the arrastre operator, Asian Terminals, Inc. (ATI), formerly Marina Port Services, Inc.⁵ During the unloading operation, however, six containers/skids worth Philippine Pesos: One Hundred Seventeen Thousand Ninety-Three and Twelve Centavos (₱117,093.12) sustained dents and punctures from the forklift used by the stevedores of Ocean Terminal Services, Inc. (OTSI) in centering and shuttling the containers/skids. As a consequence, the local ship agent of the vessel, Baliwag Shipping Agency, Inc., issued two Bad Order Cargo Receipt dated September 1, 1993.

On September 7, 1993, Orient Freight International, Inc. (OFII), the customs broker of SMC, withdrew from ATI the 197 containers/skids, including the six in damaged condition, and delivered the same at SMC's warehouse in Calamba, Laguna through J.B. Limcaoco Trucking (JBL). It was discovered upon discharge that additional nine containers/skids valued at Philippine Pesos: One Hundred Seventy-Five Thousand Six Hundred Thirty-Nine and Sixty-Eight Centavos (₱175,639.68) were also damaged

¹ Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) and Remedios Salazar-Fernando, concurring; *rollo* (G.R. 200289), pp. 7-29, (G.R. 200314), pp. 25-47.

² *Rollo* (G.R. 200289), pp. 31-33; *rollo* (G.R. 200314), pp. 49-51.

³ *Id.* at 79-88, *id.* at 59-68.

⁴ *Rollo* (G.R. 200289), p. 63.

⁵ Records, p. 343.

due to the forklift operations; thus, making the total number of 15 containers/skids in bad order.

Almost a year after, on August 15, 1994, SMC filed a claim against UCPB, Westwind, ATI, and OFII to recover the amount corresponding to the damaged 15 containers/skids. When UCPB paid the total sum of Philippine Pesos: Two Hundred Ninety-Two Thousand Seven Hundred Thirty-Two and Eighty Centavos (₱292,732.80), SMC signed the subrogation receipt. Thereafter, in the exercise of its right of subrogation, UCPB instituted on August 30, 1994 a complaint for damages against Westwind, ATI, and OFII.⁶

After trial, the RTC dismissed UCPB's complaint and the counterclaims of Westwind, ATI, and OFII. It ruled that the right, if any, against ATI already prescribed based on the stipulation in the 16 Cargo Gate Passes issued, as well as the doctrine laid down in *International Container Terminal Services, Inc. v. Prudential Guarantee & Assurance Co. Inc.*⁷ that a claim for reimbursement for damaged goods must be filed within 15 days from the date of consignee's knowledge. With respect to Westwind, even if the action against it is not yet barred by prescription, conformably with Section 3 (6) of the Carriage of Goods by Sea Act (COGSA) and Our rulings in *E.E. Elser, Inc., et al. v. Court of Appeals, et al.*⁸ and *Belgian Overseas Chartering and Shipping N.V. v. Phil. First Insurance Co., Inc.*,⁹ the court *a quo* still opined that Westwind is not liable, since the discharging of the cargoes were done by ATI personnel using forklifts and that there was no allegation that it (Westwind) had a hand in the conduct of the stevedoring operations. Finally, the trial court likewise absolved OFII from any liability, reasoning that it never undertook the operation of the forklifts which caused the dents and punctures, and that it merely facilitated the release and delivery of the shipment as the customs broker and representative of SMC.

On appeal by UCPB, the CA reversed and set aside the trial court. The *fallo* of its September 13, 2011 Decision directed:

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. The Decision dated January 27, 2006 rendered by the court *a quo* is **REVERSED AND SET ASIDE**. Appellee Westwind Shipping Corporation is hereby ordered to pay to the appellant UCPB General Insurance Co., Inc., the amount of One Hundred Seventeen Thousand and Ninety-Three Pesos and Twelve Centavos (Php117,093.12), while Orient Freight International, Inc. is hereby ordered to pay to UCPB the sum of One Hundred Seventy-Five Thousand Six Hundred Thirty-Nine Pesos and Sixty-Eight Centavos (Php175,639.68). Both sums shall bear interest at

⁶ *Id.* at 1-8; *rollo* (G.R. 200289), pp. 59-62.

⁷ 377 Phil. 1082 (1999).

⁸ 96 Phil. 264 (1954).

⁹ 432 Phil. 567 (2002).

the rate of six (6%) percent per annum, from the filing of the complaint on August 30, 1994 until the judgment becomes final and executory. Thereafter, an interest rate of twelve (12%) percent per annum shall be imposed from the time this decision becomes final and executory until full payment of said amounts.

SO ORDERED.¹⁰

While the CA sustained the RTC judgment that the claim against ATI already prescribed, it rendered a contrary view as regards the liability of Westwind and OFII. For the appellate court, Westwind, not ATI, is responsible for the six damaged containers/skids at the time of its unloading. In its rationale, which substantially followed *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*,¹¹ it concluded that the common carrier, not the arrastre operator, is responsible during the unloading of the cargoes from the vessel and that it is not relieved from liability and is still bound to exercise extraordinary diligence at the time in order to see to it that the cargoes under its possession remain in good order and condition. The CA also considered that OFII is liable for the additional nine damaged containers/skids, agreeing with UCPB's contention that OFII is a common carrier bound to observe extraordinary diligence and is presumed to be at fault or have acted negligently for such damage. Noting the testimony of OFII's own witness that the delivery of the shipment to the consignee is part of OFII's job as a cargo forwarder, the appellate court ruled that Article 1732 of the New Civil Code (NCC) does not distinguish between one whose principal business activity is the carrying of persons or goods or both and one who does so as an ancillary activity. The appellate court further ruled that OFII cannot excuse itself from liability by insisting that JBL undertook the delivery of the cargoes to SMC's warehouse. It opined that the delivery receipts signed by the inspector of SMC showed that the containers/skids were received from OFII, not JBL. At the most, the CA said, JBL was engaged by OFII to supply the trucks necessary to deliver the shipment, under its supervision, to SMC.

Only Westwind and OFII filed their respective motions for reconsideration, which the CA denied; hence, they elevated the case before Us *via* petitions docketed as G.R. Nos. 200289 and 200314, respectively.

Westwind argues that it no longer had actual or constructive custody of the containers/skids at the time they were damaged by ATI's forklift operator during the unloading operations. In accordance with the stipulation of the bill of lading, which allegedly conforms to Article 1736 of the NCC, it contends that its responsibility already ceased from the moment the cargoes were delivered to ATI, which is reckoned from the moment the goods were taken into the latter's custody. Westwind adds that ATI, which is a

¹⁰ *Rollo* (G.R. 200289), pp. 27-28, *rollo* (G.R. 200314), pp. 45-46. (Emphasis in the original)

¹¹ G.R. No. 165647, March 26, 2009, 582 SCRA 457.

completely independent entity that had the right to receive the goods as exclusive operator of stevedoring and arrastre functions in South Harbor, Manila, had full control over its employees and stevedores as well as the manner and procedure of the discharging operations.

As for OFII, it maintains that it is not a common carrier, but only a customs broker whose participation is limited to facilitating withdrawal of the shipment in the custody of ATI by overseeing and documenting the turnover and counterchecking if the quantity of the shipments were in tally with the shipping documents at hand, but without participating in the physical withdrawal and loading of the shipments into the delivery trucks of JBL. Assuming that it is a common carrier, OFII insists that there is no need to rely on the presumption of the law – that, as a common carrier, it is presumed to have been at fault or have acted negligently in case of damaged goods – considering the undisputed fact that the damages to the containers/skids were caused by the forklift blades, and that there is no evidence presented to show that OFII and Westwind were the owners/operators of the forklifts. It asserts that the loading to the trucks were made by way of forklifts owned and operated by ATI and the unloading from the trucks at the SMC warehouse was done by way of forklifts owned and operated by SMC employees. Lastly, OFII avers that neither the undertaking to deliver nor the acknowledgment by the consignee of the fact of delivery makes a person or entity a common carrier, since delivery alone is not the controlling factor in order to be considered as such.

Both petitions lack merit.

The case of *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*¹² applies, as it settled the query on which between a common carrier and an arrastre operator should be responsible for damage or loss incurred by the shipment *during* its unloading. We elucidated at length:

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.

For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading,

¹² *Id.*

until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo*, the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the shipowner.

Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

x x x x

On the other hand, the functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.

In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*, the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote:

The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. **Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.** (Emphasis supplied) (Citations omitted)

The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals* with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

Thus, in this case, the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The aforementioned Section 3 (2) of the COGSA states that among the carriers' responsibilities are to properly and carefully load, care for and discharge the goods carried. The bill of lading covering the subject shipment likewise stipulates that the carrier's liability for loss or damage to the goods ceases after its discharge from the vessel. Article 619 of the Code of Commerce holds a ship captain liable for the cargo from the time it is turned over to him until its delivery at the port of unloading.

In a case decided by a U.S. Circuit Court, *Nichimen Company v. M/V Farland*, it was ruled that like the duty of seaworthiness, the duty of care of the cargo is non-delegable, and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee, and there is an implied obligation that this shall be accomplished with sound machinery, competent hands, and in such manner that no unnecessary injury shall be done thereto. And the fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading.

X X X X

It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier x x x.¹³

In *Regional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co. (Philippines), Inc.*¹⁴ and *Asian Terminals, Inc. v. Philam Insurance Co., Inc.*,¹⁵ the Court echoed the doctrine that cargoes, while being unloaded, generally remain under the custody of the carrier.

We cannot agree with Westwind's disputation that "the carrier in *Wallem* clearly exercised supervision during the discharge of the shipment and that is why it was faulted and held liable for the damage incurred by the shipment during such time." What Westwind failed to realize is that the extraordinary responsibility of the common carrier lasts until the time the goods are actually or constructively delivered by the carrier to the consignee or to the person who has a right to receive them. There is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given him to remove the goods.¹⁶ In this case, since the discharging of the containers/skids, which were covered by only one bill of lading, had not yet been completed at the time the damage occurred, there is no reason to imply

¹³ *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, *supra* note 11, at 466-472. (Emphasis supplied)

¹⁴ G.R. No. 168151, September 4, 2009, 598 SCRA 304.

¹⁵ G.R. Nos. 181163, 181262 and 181319, July 24, 2013.

¹⁶ *Samar Mining Company, Inc. v. Nordeutscher Lloyd and C.F. Sharp & Company, Inc.*, 217 Phil. 497, 506 (1984), citing 11 Words and Phrases 676, citing *Yazoo & MVR Company v. Altman*, 187 SW 656, 657.

that there was already delivery, actual or constructive, of the cargoes to ATI. Indeed, the earlier case of *Delsan Transport Lines, Inc. v. American Home Assurance Corp.*¹⁷ serves as a useful guide, thus:

Delsan's argument that it should not be held liable for the loss of diesel oil due to backflow because the same had already been actually and legally delivered to Caltex at the time it entered the shore tank holds no water. It had been settled that the subject cargo was still in the custody of Delsan because the discharging thereof has not yet been finished when the backflow occurred. Since the discharging of the cargo into the depot has not yet been completed at the time of the spillage when the backflow occurred, there is no reason to imply that there was actual delivery of the cargo to the consignee. Delsan is straining the issue by insisting that when the diesel oil entered into the tank of Caltex on shore, there was legally, at that moment, a complete delivery thereof to Caltex. To be sure, the extraordinary responsibility of common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by, the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to a person who has the right to receive them. The discharging of oil products to Caltex Bulk Depot has not yet been finished, Delsan still has the duty to guard and to preserve the cargo. The carrier still has in it the responsibility to guard and preserve the goods, a duty incident to its having the goods transported.

To recapitulate, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. The mere proof of delivery of goods in good order to the carrier, and their arrival in the place of destination in bad order, make out a *prima facie* case against the carrier, so that if no explanation is given as to how the injury occurred, the carrier must be held responsible. It is incumbent upon the carrier to prove that the loss was due to accident or some other circumstances inconsistent with its liability.¹⁸

The contention of OFII is likewise untenable. A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business.¹⁹ In *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*,²⁰ the Court already reiterated:

It is settled that under a given set of facts, a customs broker may be regarded as a common carrier. Thus, this Court, in *A.F. Sanchez Brokerage, Inc. v. The Honorable Court of Appeals* held:

The appellate court did not err in finding petitioner, a customs broker, to be also a common carrier, as defined under Article 1732 of the Civil Code, to wit,

¹⁷ 530 Phil. 332 (2006).

¹⁸ *Delsan Transport Lines, Inc. v. American Home Assurance Corp.*, *supra*, at 340-341.

¹⁹ *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation*, G.R. No. 179446, January 10, 2011, 639 SCRA 69, 80.

²⁰ 496 Phil. 437 (2005).

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

X X X X

Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity. The contention, therefore, of petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration.

And in *Calvo v. UCPB General Insurance Co. Inc.*, this Court held that as the transportation of goods is an integral part of a customs broker, the customs broker is also a common carrier. For to declare otherwise “would be to deprive those with whom [it] contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for [its] customers, is part and parcel of petitioner’s business.”²¹

That OFII is a common carrier is buttressed by the testimony of its own witness, Mr. Loveric Panganiban Cueto, that part of the services it offers to clients is cargo forwarding, which includes the delivery of the shipment to the consignee.²² Thus, for undertaking the transport of cargoes from ATI to SMC’s warehouse in Calamba, Laguna, OFII is considered a common carrier. As long as a person or corporation holds itself to the public for the purpose of transporting goods as a business, it is already considered a common carrier regardless of whether it owns the vehicle to be used or has to actually hire one.

As a common carrier, OFII is mandated to observe, under Article 1733 of the Civil Code,²³ extraordinary diligence in the vigilance over the goods²⁴ it transports according to the peculiar circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to

²¹ *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, *supra*, at 450-551.

²² TSN, February 1, 1999, p. 11.

²³ Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

X X X X

²⁴ In *Compania Maritima v. Court of Appeals* (G.R. No. L-31379, August 29, 1958, 164 SCRA 685, 692), the meaning of “extraordinary diligence in the vigilance over goods” was explained, thus:

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for safe carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and “to use all reasonable means to ascertain the nature and characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires.”

have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence.²⁵ In the case at bar, it was established that, except for the six containers/skids already damaged, OFII received the cargoes from ATI in good order and condition; and that upon its delivery to SMC, additional nine containers/skids were found to be in bad order, as noted in the Delivery Receipts issued by OFII and as indicated in the Report of Cares Marine & Cargo Surveyors. Instead of merely excusing itself from liability by putting the blame to ATI and SMC, it is incumbent upon OFII to prove that it actively took care of the goods by exercising extraordinary diligence in the carriage thereof. It failed to do so. Hence, its presumed negligence under Article 1735 of the Civil Code remains unrebutted.

WHEREFORE, premises considered, the petitions of Westwind and OFII in G.R. Nos. 200289 and 200314, respectively, are **DENIED**. The September 13, 2011 Decision and January 19, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 86752, which reversed and set aside the January 27, 2006 Decision of the Manila City Regional Trial Court, Branch 30, are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
 Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson


LUCAS P. BERSAMIN
 Associate Justice

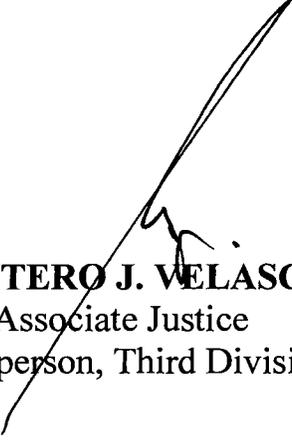

ROBERTO A. ABAD
 Associate Justice

²⁵ Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required on Article 1733.


JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


MARIA LOURDES P. A. SERENO
Chief Justice