Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DESIGNER BASKETS, INC.,
Petitioner,

- versus -

AIR SEA TRANSPORT, INC. and ASIA CARGO CONTAINER LINES, INC.,
Respondents.

G.R. No. 184513

Present:
VELASCO, JR., *J.*, *Chairperson*
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

March 9, 2016

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DECISION

JARDELEZA, *J.:*

This is a Petition for Review on *Certiorari*[1] of the August 16, 2007 Decision[2] and September 2, 2008 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 79790, absolving respondents Air Sea Transport, Inc. (ASTI) and Asia Cargo Container Lines, Inc. (ACCLI) from liability in the complaint for sum of money and damages filed by petitioner Designer Baskets, Inc. (DBI).

The Facts

DBI is a domestic corporation engaged in the production of housewares and handicraft items for export.[4] Sometime in October 1995, Ambiente, a foreign-based company, ordered from DBI[5] 223 cartons of

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1 Dated November 3, 2008 and filed under Rule 45 of the Rules of Court. *Rollo*, pp. 9-26.

2 Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Marina L. Buzon and Rosmari D. Carandang, concurring. *Id.* at 27-45.

3 *Id.* at 46-49.

4 Complaint, records, p. 1.

5 DBI received Import Purchase Order No. 23597A dated September 28, 1995 via fax from Ambiente, *id.* at 2.

assorted wooden items (the shipment).[6] The shipment was worth Twelve Thousand Five Hundred Ninety and Eighty-Seven Dollars (US$12,590.87) and payable through telegraphic transfer.[7] Ambiente designated ACCLI as the forwarding agent that will ship out its order from the Philippines to the United States (US). ACCLI is a domestic corporation acting as agent of ASTI, a US based corporation engaged in carrier transport business, in the Philippines.[8]

On January 7, 1996, DBI delivered the shipment to ACCLI for sea transport from Manila and delivery to Ambiente at 8306 Wilshire Blvd., Suite 1239, Beverly Hills, California. To acknowledge receipt and to serve as the contract of sea carriage, ACCLI issued to DBI triplicate copies of ASTI Bill of Lading No. AC/MLLA601317.[9] DBI retained possession of the originals of the bills of lading pending the payment of the goods by Ambiente.[10]

On January 23, 1996, Ambiente and ASTI entered into an Indemnity Agreement (Agreement).[11] Under the Agreement, Ambiente obligated ASTI to deliver the shipment to it or to its order "without the surrender of the relevant bill(s) of lading due to the non-arrival or loss thereof."[12] In exchange, Ambiente undertook to indemnify and hold ASTI and its agent free from any liability as a result of the release of the shipment.[13] Thereafter, ASTI released the shipment to Ambiente without the knowledge of DBI, and without it receiving payment for the total cost of the shipment.[14]

DBI then made several demands to Ambiente for the payment of the shipment, but to no avail. Thus, on October 7, 1996, DBI filed the Original Complaint against ASTI, ACCLI and ACCLI's incorporators-stockholders[15] for the payment of the value of the shipment in the amount of US$12,590.87 or Three Hundred Thirty-Three and Six Hundred Fifty-Eight Pesos (₱333,658.00), plus interest at the legal rate from January 22, 1996, exemplary damages, attorney's fees and cost of suit.[16]

In its Original Complaint, DBI claimed that under Bill of Lading Number AC/MLLA601317, ASTI and/or ACCLI is "to release and deliver the cargo/shipment to the consignee, x x x, only after the original copy or copies of [the] Bill of Lading is or are surrendered to them; otherwise, they

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6 *Id.*
7 Per Invoice Number 497 dated January 6, 1996, records, p. 11.
8 Records, pp. 1-2.
9 *Id.* at 46-48.
10 CA Decision, *rollo*, p. 28.
11 *Id.* at 81.
12 *Id.*
13 *Id.*
14 CA Decision, *rollo*, pp. 28-29.
15 The incorporators-stockholders sued are the following: Marlon Gaya, Richard Sim Ng, Ng Tiam Tiong, Fortunata Sim Ng, Ng Uy Sim, Tina Orleans Ng and Analy R. Borbon. Original Complaint, records, p. 1.
16 Original Complaint, *id.* at 1-5.

become liable to the shipper for the value of the shipment."[17] DBI also averred that ACCLI should be jointly and severally liable with its co-defendants because ACCLI failed to register ASTI as a foreign corporation doing business in the Philippines. In addition, ACCLI failed to secure a license to act as agent of ASTI.[18]

On February 20, 1997, ASTI, ACCLI, and ACCLI's incorporators-stockholders filed a Motion to Dismiss.[19] They argued that: (a) they are not the real parties-in-interest in the action because the cargo was delivered and accepted by Ambiente. The case, therefore, was a simple case of non-payment of the buyer; (b) relative to the incorporators-stockholders of ACCLI, piercing the corporate veil is misplaced; (c) contrary to the allegation of DBI, the bill of lading covering the shipment does not contain a proviso exposing ASTI to liability in case the shipment is released without the surrender of the bill of lading; and (d) the Original Complaint did not attach a certificate of non-forum shopping.[20]

DBI filed an Opposition to the Motion to Dismiss,[21] asserting that ASTI and ACCLI failed to exercise the required extraordinary diligence when they allowed the cargoes to be withdrawn by the consignee without the surrender of the original bill of lading. ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that it is DBI who failed to exercise extraordinary diligence in protecting its own interest. They averred that whether or not the buyer-consignee pays the seller is already outside of their concern.[22]

Before the trial court could resolve the motion to dismiss, DBI filed an Amended Complaint[23] impleading Ambiente as a new defendant and praying that it be held solidarily liable with ASTI, ACCLI, and ACCLI's incorporators-stockholders for the payment of the value of the shipment. DBI alleged that it received reliable information that the shipment was released merely on the basis of a company guaranty of Ambiente.[24] Further, DBI asserted that ACCLI's incorporators-stockholders have not yet fully paid their stock subscriptions; thus, "under the circumstance of [the] case," they should be held liable to the extent of the balance of their subscriptions.[25]

In their Answer,[26] ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that DBI has no cause of action against ACCLI and its incorporators-stockholders because the Amended Complaint, on its face,

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17 Original Complaint, records, p. 3.
18 Records, pp. 3-4.
19 *Id.* at 23-26.
20 *Id.* at 23-25.
21 *Id.* at 30-36.
22 *Id.* at 65-68.
23 *Rollo*, pp. 50-57
24 *Id.* at 53.
25 *Id.* at 54.
26 *Id*. at 58-65.

is for collection of sum of money by an unpaid seller against a buyer. DBI did not allege any act of the incorporators-stockholders which would constitute as a ground for piercing the veil of corporate fiction.[27] ACCLI also reiterated that there is no stipulation in the bill of lading restrictively subjecting the release of the cargo only upon the presentation of the original bill of lading.[28] It regarded the issue of ASTI's lack of license to do business in the Philippines as "entirely foreign and irrelevant to the issue of liability for breach of contract" between DBI and Ambiente. It stated that the purpose of requiring a license (to do business in the Philippines) is to subject the foreign corporation to the jurisdiction of Philippine courts.[29]

On July 22, 1997, the trial court directed the service of summons to Ambiente through the Department of Trade and Industry.[30] The summons was served on October 6, 1997[31] and December 18, 1997.[32] Ambiente failed to file an Answer. Hence, DBI moved to declare Ambiente in default, which the trial court granted in its Order dated September 15, 1998.[33]

The Ruling of the Trial Court

In a Decision[34] dated July 25, 2003, the trial court found ASTI, ACCLI, and Ambiente solidarily liable to DBI for the value of the shipment. It awarded DBI the following:

1. US$12,590.87, or the equivalent of [₱]333,658.00 at the time of the shipment, plus 12% interest per annum from 07 January 1996 until the same is fully paid;
2. [₱]50,000.00 in exemplary damages;
3. [₱]47,000.00 as and for attorney's fees; and,
4. [₱]10,000.00 as cost of suit.[35]

The trial court declared that the liability of Ambiente is "very clear." As the buyer, it has an obligation to pay for the value of the shipment. The trial court noted that "[the case] is a simple sale transaction which had been perfected especially since delivery had already been effected and with only the payment for the shipment remaining left to be done."[36]

With respect to ASTI, the trial court held that as a common carrier, ASTI is bound to observe extraordinary diligence in the vigilance over the goods. However, ASTI was remiss in its duty when it allowed the unwarranted release of the shipment to Ambiente.[37] The trial court found

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27 *Id.* at 60-61.
28 *Id.* at 61.
29 *Id.* at 62.
30 Records, p. 92.
31 *Id.* at 96; 107-108.
32 *Id.* at 115.
33 *Id.* at 168-169.
34 Penned by Judge Raul Bautista Villanueva. *Rollo*, pp. 82-92.
35 *Id*. at 92.
36 *Id.* at 89.
37 *Id.*

that the damages suffered by DBI was due to ASTI's release of the merchandise despite the non-presentation of the bill of lading. That ASTI entered into an Agreement with Ambiente to release the shipment without the surrender of the bill of lading is of no moment.[38] The Agreement cannot save ASTI from liability because in entering into such, it violated the law, the terms of the bill of lading and the right of DBI over the goods.[39]

The trial court also added that the Agreement only involved Ambiente and ASTI. Since DBI is not privy to the Agreement, it is not bound by its terms.[40]

The trial court found that ACCLI "has not done enough to prevent the defendants Ambiente and [ASTI] from agreeing among themselves the release of the goods in total disregard of [DBI's] rights and in contravention of the country's civil and commercial laws."[41] As the forwarding agent, ACCLI was "well aware that the goods cannot be delivered to the defendant Ambiente since [DBI] retained possession of the originals of the bill of lading."[42] Consequently, the trial court held ACCLI solidarily liable with ASTI.

As regards ACCLI's incorporators-stockholders, the trial court absolved them from liability. The trial court ruled that the participation of ACCLI's incorporators-stockholders in the release of the cargo is not as direct as that of ACCLI.[43]

DBI, ASTI and ACCLI appealed to the CA. On one hand, DBI took issue with the order of the trial court awarding the value of the shipment in Philippine Pesos instead of US Dollars. It also alleged that even assuming that the shipment may be paid in Philippine Pesos, the trial court erred in pegging its value at the exchange rate prevailing at the time of the shipment, rather than at the exchange rate prevailing at the *time of payment*.[44]

On the other hand, ASTI and ACCLI questioned the trial court's decision finding them solidarily liable with DBI for the value of the shipment. They also assailed the trial court's award of interest, exemplary damages, attorney's fees and cost of suit in DBI's favor.[45]

The Ruling of the Court of Appeals

The CA affirmed the trial court's finding that Ambiente is liable to DBI, but absolved ASTI and ACCLI from liability. The CA found that the

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38 *Id.*
39 *Id*. at 90.
40 *Id*. at 89.
41 *Id*. at 90.
42 *Id.*
43 *Id*. at 92.
44 Brief for the Plaintiff-Appellant, *rollo*, pp. 137-147.
45 *Id.* at 97-119.

pivotal issue is whether the law requires that the bill of lading be surrendered by the buyer/consignee before the carrier can release the goods to the former. It then answered the question in the *negative*, thus:

> **There is nothing in the applicable laws that require the surrender of bills of lading before the goods may be released to the buyer/consignee**. In fact, Article 353 of the Code of Commerce suggests a contrary conclusion, viz---
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> > "Art. 353. After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations shall be considered canceled xxx In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading."
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> The clear import of the above article is that the surrender of the bill of lading is not an absolute and mandatory requirement for the release of the goods to the consignee. **The fact that the carrier is given the alternative option to simply require a receipt for the goods delivered suggests that the surrender of the bill of lading may be dispensed with when it cannot be produced by the consignee for whatever cause**.[46] (Emphasis supplied.)

The CA stressed that DBI failed to present evidence to prove its assertion that the surrender of the bill of lading upon delivery of the goods is a common mercantile practice.[47] Further, even assuming that such practice exists, it cannot prevail over law and jurisprudence.[48]

As for ASTI, the CA explained that its only obligation as a common carrier was to deliver the shipment in good condition. It did not include looking beyond the details of the transaction between the seller and the consignee, or more particularly, ascertaining the payment of the goods by the buyer Ambiente.[49]

Since the agency between ASTI and ACCLI was established and not disputed by any of the parties, neither can ACCLI, as a mere agent of ASTI, be held liable. This must be so in the absence of evidence that the agent exceeded its authority.[50]

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46 *Id.* at 34.
47 *Id.* at 36-37.
48 *Id.*
49 *Rollo*, p. 36.
50 *Id.* at 37.

The CA, thus, ruled:

> **WHEREFORE**, in view of the foregoing, the Decision dated July 25, 2003 of Branch 255 of the Regional Trial court of Las [Piñas] City in Civil Case No. LP-96-0235 is hereby **AFFIRMED** with the following **MODIFICATIONS:**
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> 1. Defendants-appellants Air Sea Transport, Inc. and Asia Cargo Container Lines, Inc. are hereby **ABSOLVED** from all liabilities;
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> 2. The actual damages to be paid by defendant Ambiente shall be in the amount of US$12,590.87. Defendant Ambiente's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of payment;[51] and
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> 3. The rate of interest to be imposed on the total amount of US$12,590.87 shall be 6% per annum computed from the filing of the complaint on October 7, 1996 until the finality of this decision. After this decision becomes final and executory, the applicable rate shall be 12% per annum until its full satisfaction.
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> SO ORDERED.[52]

Hence, this petition for review, which raises the sole issue of whether ASTI and ACCLI may be held solidarily liable to DBI for the value of the shipment.

Our Ruling

We deny the petition.

A common carrier may release the goods to the consignee even without the surrender of the bill of lading.

This case presents an instance where an unpaid seller sues not only the buyer, but the carrier and the carrier's agent as well, for the payment of the value of the goods sold. The basis for ASTI and ACCLI's liability, as pleaded by DBI, is the bill of lading covering the shipment.

A bill of lading is defined as "a written acknowledgment of the receipt of goods and an agreement to transport and to deliver them at a specified

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[51] The CA, citing *C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, G.R. No. 133498, April 18, 2002, 381 SCRA 314, 319-320, stated that Republic Act No. 8183 allows the parties to agree upon payment in another currency other than the Philippine Peso. Hence, the obligation of Ambiente may be paid at the currency agreed upon by the parties or its peso equivalent at the time of payment.

[52] *Rollo*, pp. 43-44.

place to a person named or on his order."[53] It may also be 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 of carriage, and agreeing or directing that the freight be delivered to bearer, to order or to a specified person at a specified place.[54]

Under Article 350 of the Code of Commerce, "the shipper as well as the carrier of the merchandise or goods may mutually demand that a bill of lading be made." A bill of lading, when issued by the carrier to the shipper, is the legal evidence of the contract of carriage between the former and the latter. It defines the rights and liabilities of the parties in reference to the contract of carriage. The stipulations in the bill of lading are valid and binding unless they are contrary to law, morals, customs, public order or public policy.[55]

Here, ACCLI, as agent of ASTI, issued Bill of Lading No. AC/MLLA601317 to DBI. This bill of lading governs the rights, obligations and liabilities of DBI and ASTI. DBI claims that Bill of Lading No. AC/MLLA601317 contains a provision stating that ASTI and ACCLI are "to release and deliver the cargo/shipment to the consignee, x x x, only after the original copy or copies of the said Bill of Lading is or are surrendered to them; otherwise they become liable to [DBI] for the value of the shipment."[56] Quite tellingly, however, DBI does not point or refer to any specific clause or provision on the bill of lading supporting this claim. The language of the bill of lading shows no such requirement. What the bill of lading provides on its face is:

> Received by the Carrier in apparent good order and condition unless otherwise indicated hereon, the Container(s) and/or goods hereinafter mentioned to be transported and/or otherwise forwarded from the Place of Receipt to the intended Place of Delivery upon and [subject] to all the terms and conditions appearing on the face and back of this Bill of Lading. **If required by the Carrier this Bill of Lading duly endorsed must be surrendered in exchange for the Goods of delivery order.**[57] (Emphasis supplied.)

There is no obligation, therefore, on the part of ASTI and ACCLI to release the goods only upon the surrender of the original bill of lading.

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53 Agbayani, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES, 1993 ed., Vol. IV, p. 133; citing *Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, 98 Phil. 290, 293 (1956), citing 9 Am. Jur. 662.

54 Agbayani, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES, *supra*; citing Black's Law Dictionary.

55 *Provident Insurance Corp. v. Court of* Appeals, G.R. No. 118030, January 15, 2004, 419 SCRA 480, 483.

56 Amended Complaint, *rollo,* p. 52.

57 *Id.* at 70-72.

Further, a carrier is allowed by law to release the goods to the consignee even without the latter's surrender of the bill of lading. The third paragraph of Article 353 of the Code of Commerce is enlightening:

> Article 353. The legal evidence of the contract between the shipper and the carrier shall be the bills of lading, by the contents of which the disputes which may arise regarding their execution and performance shall be decided, no exceptions being admissible other than those of falsity and material error in the drafting.
>
> After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled, unless in the same act the claim which the parties may wish to reserve be reduced to writing, with the exception of that provided for in Article 366.
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> **In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading**. (Emphasis supplied.)

The general rule is that upon receipt of the goods, the consignee surrenders the bill of lading to the carrier and their respective obligations are considered canceled. The law, however, provides two exceptions where the goods may be released without the surrender of the bill of lading because the consignee can no longer return it. These exceptions are when the bill of lading gets lost or for other cause. In either case, the consignee must issue a receipt to the carrier upon the release of the goods. Such receipt shall produce the same effect as the surrender of the bill of lading.

We have already ruled that the non-surrender of the original bill of lading does not violate the carrier's duty of extraordinary diligence over the goods.[58] In *Republic v. Lorenzo Shipping Corporation*,[59] we found that the carrier exercised extraordinary diligence when it released the shipment to the consignee, not upon the surrender of the original bill of lading, but upon signing the delivery receipts and surrender of the certified true copies of the bills of lading. Thus, we held that the surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its contractual obligation.

Under special circumstances, we did not even require presentation of any form of receipt by the consignee, in lieu of the original bill of lading, for

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[58] See *Republic v. Lorenzo Shipping Corporation*, G.R. No. 153563, February 7, 2005, 450 SCRA 550, 556; as cited by the CA, *rollo*, pp. 34-35.

[59] G.R. No. 153563, February 7, 2005, 450 SCRA 550.

the release of the goods. In *Macam v. Court of Appeals,*[60] we absolved the carrier from liability for releasing the goods to the consignee without the bills of lading despite this provision on the bills of lading:

> "One of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order."[61] (Citations omitted.)

In clearing the carrier from liability, we took into consideration that the shipper sent a telex to the carrier after the goods were shipped. The telex instructed the carrier to deliver the goods without need of presenting the bill of lading and bank guarantee per the shipper's request since "for prepaid shipt ofrt charges already fully paid our end x x x."[62] We also noted the usual practice of the shipper to request the shipping lines to immediately release perishable cargoes through telephone calls.

Also, in *Eastern Shipping Lines v. Court of Appeals,*[63] we absolved the carrier from liability for releasing the goods to the supposed consignee, Consolidated Mines, Inc. (CMI), on the basis of an Undertaking for Delivery of Cargo but without the surrender of the original bill of lading presented by CMI. Similar to the factual circumstance in this case, the Undertaking in *Eastern Shipping Lines* guaranteed to hold the carrier "harmless from all demands, claiming liabilities, actions and expenses."[64] Though the central issue in that case was who the consignee was in the bill of lading, it is noteworthy how we gave weight to the Undertaking in ruling in favor of the carrier:

> But assuming that CMI may not be considered consignee, the petitioner cannot be faulted for releasing the goods to CMI under the circumstances, due to its lack of knowledge as to who was the real consignee in view of CMI's strong representations and letter of undertaking wherein it stated that the bill of lading would be presented later. This is precisely the situation covered by the last paragraph of Art. 353 of the [Code of Commerce] to wit:
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> > "If in case of loss or for any other reason whatsoever, the consignee cannot return upon receiving the merchandise the bill of lading subscribed by the carrier, he shall give said carrier a receipt of the goods delivered this receipt producing the same effects as the return of the bill of lading."[65]

Clearly, law and jurisprudence is settled that the surrender of the original bill of lading is not absolute; that in case of loss or any other cause, a common carrier may release the goods to the consignee even without it.

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60 G.R. No. 125524, August 25, 1999, 313 SCRA 77.
61 *Id.* at 78.
62 *Id.* at 79.
63 G.R. No. 80936, October 17, 1990, 190 SCRA 512; as cited by the CA, *rollo,* pp. 35-36.
64 *Eastern Shipping Lines v. Court of Appeals, supra* at 515.
65 *Id.* at 522-523.

Here, Ambiente could not produce the bill of lading covering the shipment not because it was lost, but for another cause: the bill of lading was retained by DBI pending Ambiente's full payment of the shipment. Ambiente and ASTI then entered into an Indemnity Agreement, wherein the former asked the latter to release the shipment even without the surrender of the bill of lading. The execution of this Agreement, and the undisputed fact that the shipment was released to Ambiente pursuant to it, to our mind, operates as a receipt in substantial compliance with the last paragraph of Article 353 of the Code of Commerce.

Articles 1733, 1734, and 1735 of the Civil Code are not applicable.

DBI, however, challenges the Agreement, arguing that the carrier released the goods pursuant to it, notwithstanding the carrier's knowledge that the bill of lading should first be surrendered. As such, DBI claims that ASTI and ACCLI are liable for damages because they failed to exercise extraordinary diligence in the vigilance over the goods pursuant to Articles 1733, 1734, and 1735 of the Civil Code.[66]

DBI is mistaken.

Articles 1733, 1734, and 1735 of the Civil Code are not applicable in this case. The Articles state:

> Article 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.
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> Such extraordinary diligence in vigilance over the goods is further expressed in Articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in Articles 1755 and 1756.
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> Article 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:
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> (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
> (2) Act of the public enemy in war, whether international or civil;
> (3) Act or omission of the shipper or owner of the goods;
> (4) The character of the goods or defects in the packing or in the containers;
> (5) Order or act of competent public authority.

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[66] Opposition to Motion to Dismiss, records, pp. 31-32.

> Article 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 in Article 1733.

Articles 1733, 1734, and 1735 speak of the common carrier's responsibility over the **goods**. They refer to the general liability of common carriers in case of **loss, destruction** or **deterioration** of goods and the presumption of negligence against them. This responsibility or duty 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.[67] It is, in fact, undisputed that the goods were timely delivered to the proper consignee or to the one who was authorized to receive them. DBI's only cause of action against ASTI and ACCLI is the release of the goods to Ambiente without the surrender of the bill of lading, purportedly in violation of the terms of the bill of lading. We have already found that Bill of Lading No. AC/MLLA601317 does not contain such express prohibition. Without any prohibition, therefore, the carrier had no obligation to withhold release of the goods. Articles 1733, 1734, and 1735 do not give ASTI any such obligation.

The applicable provision instead is Article 353 of the Code of Commerce, which we have previously discussed. To reiterate, the Article allows the release of the goods to the consignee even without his surrender of the original bill of lading. In such case, the duty of the carrier to exercise extraordinary diligence is not violated. Nothing, therefore, prevented the consignee and the carrier to enter into an indemnity agreement of the same nature as the one they entered here. No law or public policy is contravened upon its execution.

Article 1503 of the Civil Code does not apply to contracts for carriage of goods.

In its petition, DBI continues to assert the wrong application of Article 353 of the Code of Commerce to its Amended Complaint. It alleges that the third paragraph of Article 1503 of the Civil Code is the applicable provision because: (a) Article 1503 is a special provision that deals particularly with the situation of the seller retaining the bill of lading; and (b) Article 1503 is a law which is later in point of time to Article 353 of the Code of Commerce.[68] DBI posits that being a special provision, Article 1503 of the Civil Code should prevail over Article 353 of the Code of Commerce, a

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67 CIVIL CODE, Art. 1736.
68 *Rollo*, pp. 17-18.

general provision that makes no reference to the seller retaining the bill of lading.[69]

DBI's assertion is untenable. Article 1503 is an exception to the general presumption provided in the first paragraph of Article 1523, which reads:

> Article 1523. **Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in Articles 1503, first, second and third paragraphs, or unless a contrary intent appears.**
>
> Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in the course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.
>
> Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (Emphasis supplied.)

Article 1503, on the other hand, provides:

> **Article 1503. When there is a contract of sale of specific goods**, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.
>
> Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

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69 *Id.* at 17.

> **Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.**
>
> Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the ownership in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (Emphasis supplied.)

Articles 1523 and 1503, therefore, refer to a contract of sale between a seller and a buyer. In particular, they refer to who between the seller and the buyer has the right of possession or ownership over the goods subject of the sale. Articles 1523 and 1503 do not apply to a contract of carriage between the shipper and the common carrier. The third paragraph of Article 1503, upon which DBI relies, does not oblige the common carrier to withhold delivery of the goods in the event that the bill of lading is retained by the seller. Rather, it only gives the seller a better right to the possession of the goods as against the mere inchoate right of the buyer. Thus, Articles 1523 and 1503 find no application here. The case before us does not involve an action where the seller asserts ownership over the goods as against the buyer. Instead, we are confronted with a complaint for sum of money and damages filed by the seller against the buyer and the common carrier due to the non-payment of the goods by the buyer, and the release of the goods by the carrier despite non-surrender of the bill of lading. A contract of sale is separate and distinct from a contract of carriage. They involve different parties, different rights, different obligations and liabilities. Thus, we quote with approval the ruling of the CA, to wit:

> On the third assigned error, [w]e rule for the defendants-appellants [ASTI and ACCLI]. **They are correct in arguing that the nature of their obligation with plaintiff [DBI] is separate and distinct from the transaction of the latter with defendant Ambiente. As carrier of the goods transported by plaintiff, its obligation is simply to ensure that such goods are delivered on time and in good condition.** In the case [*Macam v. Court of Appeals*], the Supreme Court emphasized that "the extraordinary responsibility of the common carriers lasts until actual or

> constructive delivery of the cargoes to the consignee or to the person who has the right to receive them." x x x
>
> **It is therefore clear that the moment the carrier has delivered the subject goods, its responsibility ceases to exist and it is thereby freed from all the liabilities arising from the transaction. Any question regarding the payment of the buyer to the seller is no longer the concern of the carrier.** This easily debunks plaintiff's theory of joint liability.[70] x x x (Emphasis supplied; citations omitted.)

The contract between DBI and ASTI is a contract of carriage of goods; hence, ASTI's liability should be pursuant to that contract and the law on transportation of goods. Not being a party to the contract of sale between DBI and Ambiente, ASTI cannot be held liable for the payment of the value of the goods sold. In this regard, we cite *Loadstar Shipping Company, Incorporated v. Malayan Insurance Company, Incorporated*,[71] thus:

> Malayan opposed the petitioners' invocation of the Philex-PASAR purchase agreement, stating that the contract involved in this case is a contract of affreightment between the petitioners and PASAR, not the agreement between Philex and PASAR, which was a contract for the sale of copper concentrates.
>
> On this score, the Court agrees with Malayan that contrary to the trial court's disquisition, the petitioners cannot validly invoke the penalty clause under the Philex-PASAR purchase agreement, where penalties are to be imposed by the buyer PASAR against the seller Philex if some elements exceeding the agreed limitations are found on the copper concentrates upon delivery. **The petitioners are not privy to the contract of sale of the copper concentrates. The contract between PASAR and the petitioners is a contract of carriage of goods and not a contract of sale. Therefore, the petitioners and PASAR are bound by the laws on transportation of goods and their contract of affreightment.** Since the Contract of Affreightment between the petitioners and PASAR is silent as regards the computation of damages, whereas the bill of lading presented before the trial court is undecipherable, the New Civil Code and the Code of Commerce shall govern the contract between the parties.[72] (Emphasis supplied; citations omitted.)

In view of the foregoing, we hold that under Bill of Lading No. AC/MLLA601317 and the pertinent law and jurisprudence, ASTI and ACCLI are not liable to DBI. We sustain the finding of the CA that only Ambiente, as the buyer of the goods, has the obligation to pay for the value

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70 CA Decision, *rollo*, pp. 39-40.
71 G.R. No. 185565, November 26, 2014, 742 SCRA 627.
72 *Id.* at 637.

of the shipment. However, in view of our ruling in *Nacar v. Gallery Frames,*[73] we modify the legal rate of interest imposed by the CA. Instead of 12% per annum from the finality of this judgment until its full satisfaction, the rate of interest shall only be 6% per annum.

WHEREFORE, the petition is **DENIED** for lack of merit. The August 16, 2007 Decision and the September 2, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 79790 are hereby **AFFIRMED** with the **MODIFICATION** that from the finality of this decision until its full satisfaction, the applicable rate of interest shall be 6% per annum.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
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.

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[73] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

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, it is hereby certified 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