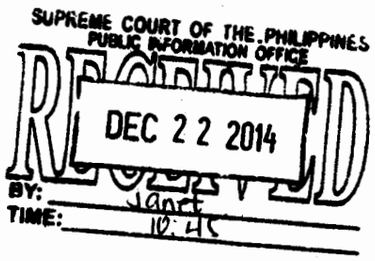
Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 24, 2014** *which reads as follows:*

"G.R. No. 166163 - *COSCO PHILIPPINES SHIPPING INC., AS SHIP AGENT FOR CHINA OCEAN SHIPPING COMPANY, CRONOS HK, TRITON HKG, AND TEXTAINER, Petitioners, v. ASIAN TERMINAL, INC., Respondent.*

This case concerns the liability of the respondent as owner/operator of the container yard from which five container vans of the petitioners were taken out allegedly without proper authority. In this appeal, the petitioners seek to set aside the decision promulgated on September 5, 2003,[1] whereby the Court of Appeals (CA) reversed and set aside the judgment rendered in their favor on February 23, 2000 by the Regional Trial Court, Branch 49, in Manila (RTC).[2]

At the time material to this case, petitioner COSCO Philippines Shipping Inc. (COSCO), a domestic corporation engaged in shipping and agency services, was the duly authorized ship agent in the Philippines of its co-petitioner China Ocean Shipping Company (China Ocean), a foreign corporation existing under the laws of China. Petitioners Cronos HK, Triton HGK and Textainer were foreign corporations engaged in the container leasing business but were not licensed to do business in the Philippines. The latter three sued on an isolated transaction, and have named and appointed COSCO as their attorney-in-fact for the purpose.[3]

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[1] *Rollo*, pp. 11-23; penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court), with Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice/retired) and Associate Justice Arsenio J. Magpale (deceased) concurring.

[2] Id. at 142-148.

[3] Id. at 66-67.

- over – eleven (11) pages .....

Respondent Asian Terminal, Inc. (ATI), a domestic corporation engaged in arrastre operations, and storage and warehouse business, was the cargo handler at the South Harbor in the Port Area in Manila. ATI provided an area in its container yard where shipping companies unloaded their containers from their vessels, or kept their containers prior to loading on board their vessels. Incoming containers were also placed in the container yard of ATI while awaiting clearance from the Bureau of Customs. The containers could be withdrawn only by truckers or brokers with proper delivery orders issued by the shipping companies owning the containers.[4]

On various dates between December 1, 1997 and March 13, 1998, COSCO deposited five container vans in ATI's container yard, as follows:

Container No.	Date of Deposit
(1) CRXU 4552562	December 1, 1997
(2) TEXU 4423838	September 29, 1997
(3) TEXU 7093597	January 28, 1998
(4) TEXU 7077739	February 17, 1998
(5) TRIU 5396197	March 13, 1998[5]

The container vans were leased by China Ocean from Cronos HK, Triton HKG and Textainer at a daily rental of US$14.00. Emmanuel Sanchez was the terminal checker of COSCO when the container vans in question were deposited in ATI's container yard. On February 12, 1998, however, COSCO terminated Sanchez from its employ. In the letter dated March 2, 1998,[6] Anne A. Generoso informed Paul S. Finley of ATI that Daniel D. Guerrero, Jr. would be one of the authorized signatories of COSCO's delivery orders, overtime receiving requests and reefer service orders. The letter was personally delivered by Guerrero, Jr. to ATI on March 3, 1998 through a certain Belle of ATI's Container Division. This was a necessary procedure for the shipping companies using ATI's container yard. COSCO submitted to ATI a list of its authorized signatories to the delivery orders presented to ATI as a requirement for the release of the containers.[7]

On four separate dates, the five container vans were withdrawn from ATI's container yard by COSCO's former terminal inspector Sanchez, together with one Florencio Salem (Salem), a former sub-contractor of the Checkerage Service of COSCO. The details of the withdrawal follow:

4 Id. at 67.
5 Id. at 12.
6 Id. at 175.
7 Id. at 12-13.

1. On March 4, 1998, Sanchez and Salem withdrew two container vans (Container No. TEXU7077739 and Container No. TEXU7093597) with the use of COSCO Delivery Order No. 1790[8] and Delivery Order No.1791,[9] respectively. They misrepresented that the signatory was duly authorized by COSCO to withdraw the container vans. The delivery orders were presented to ATI's delivery checker who then allowed the withdrawal of the container vans, which were later found at the container yard of Movers and Managers Corporation and recovered by COSCO.

2. On March 14, 1998, Sanchez and Salem pulled out Container No. TRIU 5396197 from ATI's container yard with the use of COSCO's Delivery Order No. 5885.[10] They again misrepresented that the signatory was duly authorized to withdraw the container van. On March 16, 1998, Sanchez and Salem withdrew Container No. CRXU 4552562 at ATI's container yard with the use of COSCO's Delivery Order No. 5092.[11] The withdrawal was made in the same manner employed in the previous two instances.

3. On April 17, 1998, Sanchez and Salem withdrew container van No. TEXU 4423838 from ATI's container yard. This time, the withdrawal was not upon COSCO's delivery order but by using ATI's Equipment Interchange Receipt (EIR) No. EKK00540[12] signed by the person who was the signatory of COSCO's four delivery orders used in withdrawing the other four containers. It appears on the face of EIR No. EKK00540, however, that Delivery Order No. 5092, which had already been used to withdraw container van No. CRXU 4552562 on March 16, 1998, was again being used to withdraw container van number TEXU 4423838.[13]

Claiming the withdrawal of the container vans to be unauthorized, the petitioners demanded from ATI the payment for storage, detention and hauling charges and rental fees for the two recovered container vans, and the value and replacement cost of the lost container vans as well as rental fees and other charges for the same. After ATI refused to pay as demanded, the petitioners brought this action in the RTC in Manila (Civil Case No. 98-92088), claiming the following:

a. The amount of THREE THOUSAND SEVEN HUNDRED FIFTY SIX PESOS (Php3,756.00) allegedly representing fees for storage, detention and hauling of two (2) container vans and ONE THOUSAND EIGHT HUNDRED FORTY EIGHT US DOLLARS (US$1,848.00) supposedly as and for rental fees.

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8 Id. at 183.
9 Id. at 185.
10 Id. at 189.
11 Id. at 187.
12 Records, p. 96-F.
13 Id. at 96-E.

b. The amount of FOUR THOUSAND SEVEN HUNDRED US DOLLARS (US$4,700.00) allegedly representing the price value of one (1) container and/or the cost for a replacement and THREE THOUSAND THREE HUNDRED THIRTY TWO US DOLLARS (US$3,332.00) supposedly as and for rental fees and for unnamed charges.

c. The amount of FOUR THOUSAND SEVEN HUNDRED US DOLLARS (US$4,700.00) allegedly representing the price value of one (1) container and/or the cost for a replacement and THREE THOUSAND THREE HUNDRED FOUR US DOLLARS (US$3,304.00) as and for rental fees and for unnamed charges.

d. The amount of FOUR THOUSAND SEVEN HUNDRED US DOLLARS (US$4,700.00) allegedly representing the price value of one container and/or the cost for a replacement and THREE THOUSAND TWO HUNDRED NINETY US DOLLARS (US$3,290.00) as and for rental and for unnamed charges.[14]

In its answer with compulsory counterclaim,[15] ATI denied liability for the loss of the vans, averring that the unauthorized withdrawal of the vans was due to the failure of COSCO to notify it of Sanchez's termination; and that in its record Sanchez remained to be an authorized signatory for COSCO's delivery orders; that although COSCO sent the letter dated March 2, 1998, the letter only stated that Guerrero, Jr. was one of the authorized signatories in COSCO's delivery order, overtime receiving request and reefer service order; and that it was not furnished by COSCO with the complete specimen signatures of the authorized signatories.[16]

In their memorandum,[17] the petitioners additionally alleged that Virgilio F. Angeles, COSCO's General Manager, wrote a letter dated February 13, 1998[18] addressed to Paul S. Finley, Senior Vice President and General Manager of the Container Division of ATI, informing the latter that Sanchez was no longer connected with COSCO effective February 12, 1998, and that any transaction entered into by him for and in behalf of COSCO would not be honored. The letter was faxed to ATI on February 13, 1998.

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14 Records, pp. 7-8.
15 Id. at 33-37.
16 Id. at 33.
17 Id. at 97-115.
18 Id. at 121.

The petitioners insist that the March 2, 1998 letter of authority of Guerrero, Jr. was accompanied by a list of the names of COSCO's authorized personnel to sign documents and their specimen signatures with the name of Guerrero, Jr. being typed as the thirteenth and last person on the list.[19]

Judgment of the RTC

On February 23, 2000,[20] the RTC ruled in favor of the petitioners, *viz*:

> WHEREFORE, this Court hereby renders judgment for the plaintiffs and against the defendant ordering the latter to pay the former the following amounts:
>
> 1. a) On the first cause of action the amount of ₱75,800.00;
>
> b) On the second cause of action the amount of ₱313,127.52;
>
> c) On the third cause of action, the amount of ₱312,035.94; and
>
> d) On the fourth cause of action, in the amount of ₱311,490.15
>
> 2. the costs of suit.
>
> No pronouncement as to exemplary damages as this Court finds no justification for its award.
>
> SO ORDERED.[21]

Holding ATI liable for damages, the RTC opined thusly:

> Gauged from what appear on the records, the defendant Asian Terminal, Inc. received from the plaintiff the latter's letter with the listings of the signatories who are authorized to release the vans. They are thirteen (13) all in all ending with the name of Daniel D. Guerrero, Jr. There was no mention of Emmanuel Sanchez and Florencio Salem.
>
> The action of the defendant in allowing the release of the subject container vans thru persons other than those appearing in the list marked as Exhibit "A-3" and "A-4" is evidently imprudent. Had the defendant exercised caution, and as correctly pointed out by the plaintiff, the unauthorized release could have been aborted.

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19 Id. at 158-160.
20 Id. at 218-224.
21 Id. at 224.

> The denial of the defendant as to the termination of employment of Emmanuel Sanchez is unavailing, it being clear enough, that when the plaintiff furnished the defendant the names of the authorized signatories, Emmanuel Sanchez not having been amongst them, it goes without saying that Emmanuel Sanchez, was no longer authorized.
>
> It is futile for the defendant to pretend that Emmanuel Sanchez was authorized whereas, Exhibits "A-3" and "A-4" are plain and easily understandable that the listing consists of the persons authorized, hence, it follows that persons not on the list necessarily are not so authorized. If there is any doubt, sheer use of prudence would dictate a reassuring inquiry regarding the quandary, before any action, which may spawn a misstep, should have been carried out.[22]

Decision of the CA

Dissatisfied, ATI appealed to the CA.

In its assailed decision promulgated on September 5, 2003,[23] the CA reversed and set aside the ruling of the RTC. It ruled that COSCO did not establish with sufficient clarity and certainty that ATI had been duly and properly informed and apprised of the change in COSCO's authorized signatories as of February 12, 1998; that ATI was not liable for the loss of the container vans; and that ATI was not negligent in allowing the release of the vans to Sanchez on the strength of the delivery orders considering that ATI had no knowledge of Sanchez's termination.

The petitioners sought a reconsideration, but the CA denied their motion on November 19, 2004.[24]

Issues

In this appeal, the petitioners posit that the CA erred:

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> x x x IN DISREGARDING THE SWORN AFFIDAVITS AND DOCUMENTARY EVIDENCE OF PETITIONERS CLEARLY SHOWING THEREIN ITS CAUSE OF ACTION AGAINST RESPONDENT AND INSTEAD GAVE CREDENCE TO THE UNVERIFIED AND UNSWORN DENIAL MADE BY RESPONDENT THROUGH COUNSEL.

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22 Id. at 223.
23 Supra note 1.
24 *Rollo*, pp. 92-93.

II

x x x WHEN IT FAILED TO APPRECIATE THE FACT THAT RESPONDENT WAS PROPERLY NOTIFIED THAT EMMANUEL SANCHEZ WAS NO LONGER CONNECTED WITH PETITIONERS EFFECTIVE 12 FEBRUARY 1998 AS SHOWN BY THE SWORN AFFIDAVIT OF MS. ANNE GENEROSO, LETTER OF PETITIONER DATED 13 FEBRUARY 1998 AND THE FACSIMILE CONFIRMATION.

III

x x x WHEN IT RULED THAT RESPONDENT WAS NOT DULY NOTIFIED OF THE REPLACEMENT OF EMMANUEL SANCHEZ BY MR. DANIEL GUERRERO, JR. AND THAT THE RESPONDENT RECEIVED A COPY OF THE UPDATED SPECIMEN SIGNATURES.

IV

x x x WHEN IT RULED THAT RESPONDENT IS NOT LIABLE IN THE FACE OF THE UNCONTROVERTED EVIDENCE OF PETITIONERS SHOWING THAT THE LOSS OF THE CONTAINERS OF PETITIONERS WAS DUE TO THE CLEAR FAULT AND/OR NEGLIGENCE OF RESPONDENT.[25]

The petitioners assert that ATI had been informed of the termination of Sanchez through the letter faxed by Anne Generoso on February 13, 1998; that as proof of the notice, COSCO presented a facsimile confirmation; that the notification sent through fax was sufficient to inform ATI of the termination of COSCO's former terminal checker; that the CA erred in giving credence to ATI's averment that it did not receive the letter of COSCO dated February 13, 1998; that COSCO informed ATI of its appointment of Guerrero, Jr. as the replacement of Sanchez through its letter dated March 2, 1998 that was duly served on ATI with attached list of specimen signatures of the authorized signatories of COSCO; that because the name of Sanchez was no longer in the list of specimen signatures, his signature should not have been honored; and that ATI should not have allowed the withdrawal by Sanchez of the container vans; hence, ATI was liable for the unauthorized release of the vans.

Issue

Was ATI properly notified by COSCO of the termination of Sanchez? Was ATI liable for the release of the vans to Sanchez?

Ruling of the Court

The appeal has no merit.

[25] Id. at 31.

Although the matters raised by the petitioners involve questions of fact that are generally not reviewable on appeal by petition for review on *certiorari* due to the Court not being a trier of facts, we deem it best to resolve the appeal on its merits as an exceptional situation considering that the RTC and the CA differed on the findings of fact. For this reason, the Court is constrained to re-evaluate and review the evidence adduced by both parties to resolve the issues raised in this petition.

We stress that under the rules of evidence each party must prove its own affirmative allegations by the degree of evidence required by law. In civil cases, the degree of proof is preponderance of evidence, or that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.[26] Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to the complaint. Accordingly, it was incumbent upon the petitioners to prove that they were entitled to their claims by establishing that ATI was negligent in approving the release of the container vans to COSCO's former terminal checker when he was no longer so authorized.

After an extensive review of the records and documentary evidence, this Court rules that the petitioners did not discharge their burden of proof. In our view, the CA correctly found that COSCO did not satisfactorily prove its having duly notified ATI about Sanchez's termination and about the substitution of COSCO's authorized signatories.

Firstly, despite COSCO's assertion that it faxed the February 13, 1998 letter informing ATI of Sanchez's termination, the complaint did not allege the asserted fact, and contained only the following averments, among others:

> 7. On 2 March 1998, through a letter of the same date, COSCO notified ATI of above replacement of its terminal checker. Said letter was addressed to ATI's Senior Vice President and General Manager for Container Division, Mr. Paul S. Finley and was accompanied by names of the authorized personnel of COSCO to sign documents. This letter is attached as Annex "A" and the specimen signatures as Annexes "A-1", "A-2"; Said letter was duly received by defendant ATI on 3 March 1998.[27]

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[26] *Lolita Reyes doing business under the name and style, Solid Brothers West Marketing v. Century Canning Corporation*, G.R. No. 165377, February 16, 2010, 612 SCRA 562, 570.
[27] Records, p. 3.

The only notice referred to by COSCO in the complaint was the letter dated March 2, 1998 naming Guerrero, Jr. as one of its authorized personnel.

If COSCO had truly sent the February 13, 1998 letter to ATI, it should have specifically included and categorically stated that fact in its complaint as its primary proof of giving notice to respondent that Sanchez was no longer its employee and that respondent should no longer honor any transactions entered by Sanchez in behalf of COSCO. However, the petitioners mentioned the February 13, 1998 letter for the first time only in their memorandum filed in the RTC.[28] As such, the petitioners' claim of having notified ATI in writing about Sanchez's separation from COSCO's employment could only be a mere afterthought designed to make it appear that they had apprised ATI of Sanchez's termination before the container vans were withdrawn by Sanchez.

Secondly, even assuming *arguendo* that the COSCO's February 13, 1998 letter existed, the petitioners still did not convincingly establish having duly sent it and ATI having received it. The facsimile confirmation presented by the petitioners did not conclusively show or prove that the February 13, 1998 letter mentioned thereat was the same document sent to ATI. Indeed, as the CA aptly observed, the facsimile confirmation did not indicate if the faxed document had been the supposed letter of February 13, 1998. The affidavit of Anne Generoso stating that she had faxed the letter to ATI deserved scant consideration due to its being self-serving and because it did not state who had received the letter on the part of ATI. The petitioners also made no effort to verify or ascertain and confirm from ATI if the February 13, 1998 letter had been received. Consequently, the facsimile confirmation presented by COSCO did not show that due notice of Sanchez's termination was ever sent to ATI.

Thirdly, contrary to the petitioners' assertion, the March 2, 1998 letter of authority in favor of Guerrero, Jr. did not state that he was the replacement of Sanchez. The letter is reproduced verbatim as follows:

> Dear Sir:
>
> This is to inform your good office that MR. DANIEL D. GUERRERO, JR. is now one of the authorized signatories of our Delivery Order, Overtime Receiving Request and Reefer Service Order. Below is his specimen signature.
>
> Daniel D. Guerrero, Jr. _____
>
> For your information and proper guidance.
>
> x x x x[29]

[28] Id. at 97.
[29] Id. at 124.

The letter indicates that Guerrero, Jr. was to be only an additional authorized signatory of COSCO and did not replace Sanchez as terminal checker. Given its tenor, the letter was not proof that the petitioners had apprised ATI of the termination of Sanchez; or that COSCO had intended Guerrero, Jr. to be the replacement of Sanchez.

And, fourthly, the petitioners' insistence that ATI should not have honored Sanchez's signature as basis to release the container vans to him because his name was no longer included in the new list of COSCO's authorized signatories attached to the March 2, 1998 letter of authority of Guerrero, Jr. was unfounded and not persuasive. In COSCO's February 12, 1998 letter to the Bureau of Customs, COSCO enumerated the names of its authorized signatories and appended the list of the specimen signatures. In the March 2, 1998 letter of authority of Guerrero, Jr., there was no reference in the body of the letter that COSCO had attached a new and updated list of its authorized signatories. Such omission to indicate in the letter that a list of specimen signatures was attached warranted the conclusion that no list of specimen signatures was appended to the March 2, 1998 letter.

Noteworthy are the CA's findings on the matter, *viz*:

> It is undisputed that ATI had received the letter dated March 2, 1998 of COSCO's Operations Supervisor, Benson S. Chua. **But We are not convinced that appended thereto was the February 13, 1998 list of specimen signatures with the name of Daniel D. Guerrero, Jr. This lends credit to appellant ATI's conclusion that the tenor of Daniel D. Guerrero's authorization was merely in information that he was to be included as one of the authorized signatories. From the foregoing, the inescapable conclusion is that, what was given to ATI was only the letter itself, without the list of specimen signatures.** Benson S. Chua would have referred to the said list in the body of his letter, but no mention was made by him about the matter.
>
> x x x x
>
> x x x As earlier discussed, it was not established with all certainty that ATI had, indeed, received COSCO's letter dated February 13, 1998. It may be logical to state that, since ATI had no knowledge of Emmanuel Sanchez' termination, coupled with the fact that the tenor of Daniel D. Guerrero's authorization was merely an information that he was to be included as one of the authorized signatories, ATI did not err in honoring the signature and representation of Emmanuel Sanchez on the disputed delivery order receipts.[30] (emphasis ours)

[30] *Rollo*, pp. 76-77.

In fine, the CA did not err in holding ATI not liable for allowing the withdrawal and release of COSCO's container vans. The evidence adduced by the petitioners did not support their claim of having apprised ATI of Sanchez's termination. Without such proper and timely notification, ATI had no reason to refuse and disallow the withdrawal of the container vans by Sanchez.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on September 5, 2003; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED." PERLAS-BERNABE, J., on leave; **VILLARAMA, JR., J.,** acting member per S.O. No. 1885 dated November 24, 2014.

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court
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