Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

"G.R. No. 209118 ***(Fortune Sea Carrier, Inc., also known as Fortune Sea Carrier vs. BPI/MS Insurance Corporation).*** – This petition under Rule 45 of the Rules of Court assails the February 21, 2013 Decision[1] and September 11, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 96535 which reversed and set aside the December 30, 2010 Decision[3] of the Regional Trial Court (RTC), Branch 149, Makati City in Civil Case No. 07-709. The RTC dismissed the action for collection of sum of money[4] filed by respondent BPI/MS Insurance Corporation against petitioner Fortune Sea Carrier, Inc.

Petitioner entered into a contract of carriage with Apo Cement Corporation (ACC). On August 3, 2006, petitioner received 20,000 bags of cement[5] valued at ₱3,388,999.98 which were to be transported to Antique Commercial at San Jose, Antique.[6] The cargo was loaded aboard M/V Sea Merchant. However, due to inclement weather conditions, not all the cargo was delivered in good order. Total loss was 8,077 bags of cement valued at ₱1,288,330.06.[7]

The foregoing shipment was insured by respondent.[8] Respondent paid ACC the value of damaged goods and filed the aforementioned action in the RTC. It essentially alleged that petitioner failed to exercise extraordinary diligence in safeguarding the 20,000 bags of cement while on board its vessel. In particular, respondent averred that the "hatch cover gasket of the cargo hold of the [M/V Sea Merchant] was found defective and/or not

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[1] *Rollo*, pp. 55-66. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Mario V. Lopez and Soccoro B. Inting.
[2] Id. at 53.
[3] Id. at 343-364. Penned by Presiding Judge Cesar O. Untalan.
[4] Id. at 343.
[5] Id. at 76.
[6] Id. at 76.
[7] Id. at 77.
[8] Id. at 76.

aligned,"[9] thus allowing water to seep into the cargo hold and in effect damage the 8,077 bags of cement.

Petitioner, in its answer, sought to dismiss the complaint on technical grounds[10] but it was denied.

After trial, the RTC dismissed the complaint for lack of cause of action[11] pursuant to Article 1734 of the Civil Code. This provision exempts common carrier such as respondent from liability for "loss, destruction or deterioration of goods" when the loss, destruction or deterioration was caused by "[f]lood, storm, earthquake, lightning or other natural disaster or calamity.[12]"

The trial court noted that [t]he vessel's cargo hold and hatch cover were in good operating condition [upon its arrival at San Jose, Antique].[13] The hatch cover was operated though an automatic hydraulic drive, which malfunctioned[14] after the said cover misaligned due to pounding by strong waves caused by two typhoons affecting the area.[15] Moreover, when the hatch covered misaligned, seawater entered the vessel's cargo hold. The crew's earnestly effort to contain the flooding by covering the openings with rags, "sakolin" and tarpaulin proved to be futile. The RTC concluded that "even with the exercise of extraordinary diligence, the damage to the shipment was beyond the control of [respondent]."[16]

On appeal, the CA reversed and set aside the decision of the RTC reasoning that "[t]o excuse the common carrier fully for any liability, the fortuitous event must have been the proximate and only case of the loss."[17] The appellate court noted that the crew did not inspect the cargo hold between August 7 to 9, 2006, and only checked on the bags of cement on August 10, 2006.[18] It concluded that respondent "failed to exercise due diligence to prevent or minimize the loss before and during the occurrence of such bad weather condition."[19] Thus, the CA ordered petitioner to pay ₱1,288,330.06 with legal interest at 6% per annum from the filing of the complaint until the finality of the (CA) decision, and thereafter, 12% per annum until the satisfaction of the judgment obligation.

Petitioner moved for reconsideration but it was denied.

Petitioner now argues that extreme weather condition, that is the presence of two typhoons, was the sole and proximate cause of the loss or

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[9] Id.
[10] Id. at 97-98.
[11] Id. at 364.
[12] CIVIL CODE, Art. 1734(1).
[13] *Rollo*, p. 352.
[14] Id.
[15] Id. at 353.
[16] Id. at 363.
[17] Id. at 60.
[18] Id. at 62-63.
[19] Id. at 63.

damage to the cargo.[20] Respondent, on the other hand, insists that the assailed decision and resolution of the CA are consistent with fact and law.[21] It pointed out respondent left port and sailed to San Jose, Antique despite knowing that there were weather disturbances affecting the Philippines.[22] In its reply, petitioner addressed this issue by insisting that the Philippine Atmospheric Geophysical and Astronomical Services Administration issued a report that conditions would be normal in San Jose, Antique and was belatedly informed of the presence of a low pressure area in the Northern Philippines.[23]

We agree with the CA.

While the records of this case clearly establish that M/V Sea Merchant was damaged as result of extreme weather conditions, petitioner cannot be absolved from liability. As pointed out by this Court in *Lea Mer Industries, Inc. v. Malayan Insurance, Inc.*,[24] a common carrier is not liable for loss only when (1) the fortuitous event was the only and proximate cause of the loss and (2) it exercised due diligence to prevent or minimize the loss.[25] The second element is absent here. As a common carrier, petitioner should have been more vigilant in monitoring weather disturbances within the country and their (possible) effect on its routes and destination. More specifically, it should have been more alert on the possible attenuating and dysfunctional effects of bad weather on the parts of the ship. It should have foreseen the likely prejudicial effects of the strong waves and winds on the ship brought about by inclement weather and should have taken the necessary precautionary measures through extraordinary diligence to prevent the weakening or dysfunction of the parts of the ship to avoid or prune down the loss to cargo. Even if the inclement weather conditions are considered fortuitous events, the carrier, under Article 362 of the Code of Commerce, shall be liable for the losses and damages resulting therefrom if it is shown that they arose through its failure to take the precautions which usage has established among careful persons. Failing to do so, petitioner is indeed liable for the damage sustained by the ACC.[26]

Nonetheless, the February 21, 2013 Decision and September 11, 2013 Resolution must be modified to conform to our decision in *Nacar v. Gallery Frames, Inc.*[27] Pursuant to BSP Circular No. 799, an interest of 6% per annum shall be imposed on the judgment obligation from the finality of the concerned decision until its full satisfaction.

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20 Id. at 20.
21 Id. at 459.
22 Id. at 463.
23 Id. at 481.
24 G.R. No. 161745, 30 September 2005, (*Supreme Court*) <http://sc.judiciary.gov.ph/jurisprudence/2005/sep2005/161745.htm> accessed 20 October 2014.
25 Id.
26 *Arada v. Court of Appeals*, G.R. No. 98243, July 1, 1992.
27 G.R. No. 189871, 13 August 2013 (*Supreme Court*) <http://sc.judiciary.gov.ph/jurisprudence/2013/august2013/189871.pdf> accessed 20 October 2014.

ACCORDINGLY, the February 21, 2013 Decision and September 11, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 96535 is hereby **MODIFIED.** Petitioner Fortune Sea Carrier, Inc. is hereby ordered to pay the amount of ₱1,288,330.06 with legal interest of 6% per annum to be computed from the filing of this complaint until fully paid. Cost against petitioner. (Mendoza, *J.*, Acting Member in lieu of Reyes, *J.* per Special Order No. 1878)

SO ORDERED."

Very truly yours,

WILFREDO V. LAPITAN
Division Clerk of Court
12/10/14

Atty. Jason C. Esperante
Counsel for Petitioner
TIONGCO SIAO BELLO & ASSOCIATES LAW OFFICES
2105 Robinsons Equitable Tower
ADB Avenue, Ortigas Center
1605 Pasig City

COURT OF APPEALS
CA G.R. CV No. 96535
1000 Manila

Atty. Cresenciano R. Ragandac, Jr.
Counsel for Respondent
ASTORGA & REPOL LAW OFFICES
Unit 2105 Philippine AXA Life Centre
Sen. Gil Puyat Avenue cor. Ayala Avenue
1200 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 149, 1200 Makati City
(Civil Case No. 07-709)

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