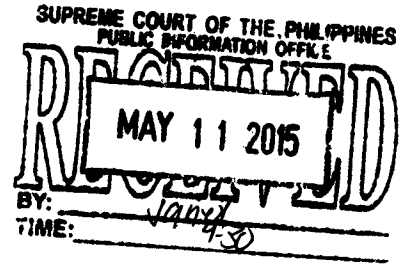




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2015** which reads as follows:*

“G.R. No. 167837 – JAIME SABENIANO, JR., DOING BUSINESS AS PUMA CUSTOMS BROKERAGE, Petitioner, v. THE COURT OF APPEALS, AND AMERICAN HOME ASSURANCE COMPANY, Respondents.

This case concerns a claim for shortages and breakages caused to a shipment of goods prior to the arrival of the carrying vessel in the jurisdictional waters of the Philippines.

The CA summarized the antecedents in its assailed decision thusly:

It appears that on April 27, 1983, upon payment of the appropriate freight and shipping charges for shipment to Manila, the carrier SS Korrigan/Scandutch Asiatic, in Glasgow, Scotland took on board a consignment of cargoes including twenty-one (21) cases of # 3530 MO – MAR High Speed Steel Ground Tool Bits and List # 3560 Super MO – MAX Cobalt Tool Bits EP – 695, 41 – 08. Bill of Lading No. LO-0009 was issued by the vessel consigned to Metropolitan Bank and Trust Co. with arrival notice to Brink Hardware, 1024 C.M. Recto Avenue, Manila. SS Korrigan arrived in Manila on May 20, 1983. Said cargoes were discharged from the vessel to the custody of Metroport Services, Inc. which turned over said cargoes to customs broker Jaime Sabeniano, Jr. doing business under the style Puma Brokerage. The customs broker processed the papers and delivered the cargoes to Brink Hardware in the latter's place of business.

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Upon receipt of the cargoes in the port of Manila, Metroport Services, Inc., on June 7, 1983, made a request for bad order survey. Said survey was conducted in the premises of the customs representatives. A report containing actual findings as to the condition of the goods was prepared in the presence of the consignee's representative. The report contained entries as to shortages and breakages sustained prior to the arrival of the vessel in the jurisdictional waters of the Philippines. Evidence was also established that the cargoes remained in the custody of Metroport Services, Inc. from June 7, 1983 until July 7, 1983 when the same cargoes were delivered to Brink Hardware. After delivery[,] another survey was conducted by Efren A. Pela of Port Cargo Surveyor. Therein[,] the quantity of the missing/damaged cargoes was ascertained. Something like 5,092 pieces valued at One Hundred Four Thousand Nine Hundred Seventy Three Pesos and Sixty One Centavos (₱104,973.61) were unaccounted for. The shipment was insured with plaintiff American Homes Assurance Co. which paid Brink Hardware the sum of ₱104,973.61 corresponding to the loss x x x.¹

Respondent American Home Assurance Company thus brought this suit in the Regional Trial Court in Manila (RTC) to recover on the basis of subrogation, impleading as defendants Scandutch, the East Asiatic Co., Ltd., Metro Port Service, Inc. and petitioner Jaime Sabeniano, Jr., doing business as Puma Customs Brokerage.

On March 20, 1995, the RTC rendered its judgment dismissing the complaint, and granting the petitioner's counterclaim,² to wit:

WHEREFORE, for insufficiency of evidence and for the admitted payment made by a defendant solidarily liable in the payment of the obligation, complaint is hereby ordered dismissed. Defendant Jaime Sabeniano Jr.'s counterclaim is hereby given due course. Consequently, judgment is hereby rendered ordering plaintiff American Homes Assurance Company, Inc., to pay defendant Jaime Sabeniano, Jr., doing business under the name and style Puma Customs Brokerage the following:

₱30,000.00 (THIRTY THOUSAND PESOS) by way of moral damages and ₱15,000.00 (FIFTEEN THOUSAND PESOS) by way of attorney's fees and to pay the costs of suit.

SO ORDERED.³

On appeal, the respondent assigned the following errors, namely:

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¹ *Rollo*, pp. 104-105.

² *Id.* at 67-78.

³ *Id.* at 77-78.

1. The trial court erred in absolving Jaime Sabeniano, Jr. from joint and several liability for the losses/damage to the cargoes.
2. The trial court erred in dismissing the complaint against Jaime Sabeniano, Jr. and holding plaintiff liable for attorney's fees.⁴

On January 19, 2005, the CA promulgated its decision,⁵ holding:

WHEREFORE, the decision of the trial court dated March 20, 1995 is **REVERSED** and **SET ASIDE**.

Defendant-appellee Jaime Sabeniano, Jr. is **declared** jointly and severally **liable** with the carrier Scandutch, The East Asiatic Co., Ltd. and Metro Port Services, Inc. for the claim of plaintiff-appellant and is accordingly **directed** to pay the latter the sum of ₱74,972.61⁶ with interest at the legal rate until settled in full.

The counterclaim of Jaime Sabeniano, Jr. is hereby ordered **DISMISSED**.

The award of moral damages and attorney's fees is **DELETED**.

No pronouncement as to costs.

SO ORDERED.⁷

On April 13, 2005, the CA denied the petitioner's motion for reconsideration.⁸

Hence, this appeal, with the petitioner contending that the CA committed grave error in reversing the judgment of the RTC by declaring him jointly and severally liable for the loss of the goods despite the loss having clearly occurred prior to the arrival of the goods in the Philippines, and despite the impossibility of the goods sustaining further losses during the time that he had delivered them to the consignee because the goods had been escorted/accompanied by the adjuster; and by dismissing his counterclaim for damages and attorney's fees.

Ruling

The petition for review is bereft of merit.

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⁴ Id. at 105.

⁵ Id. at 103-109; penned by Associate Justice Arcangelita M. Romilla-Lontok (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Danilo B. Pine (retired).

⁶ Amount should be ₱74,973.61, the claim being for ₱104,973.61 less the ₱30,000.00 already paid.

⁷ Id. at 108-109.

⁸ Id. at 121.

Firstly, the petitioner's contention, that he should not be held liable because the damage caused to the goods had occurred prior to their arrival in the jurisdictional waters of the Philippines, and that the goods did not incur further damage while already in his custody, is unworthy of consideration. He could not deny that his duty as customs broker was not only to process the import entry of the subject goods at the customs, but also to deliver the goods to the consignee's warehouse. He was then regarded as a common carrier, therefore, because the transportation of goods became an integral part of his business.⁹ This characterization of his business as that of a common carrier is based on Article 1732 of the *Civil Code*, viz.:

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.

As a common carrier, the petitioner was bound to observe extraordinary diligence in the vigilance over the goods transported by him, pursuant to clear text of Article 1733 of the *Civil Code*, which states:

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.

It is pertinent to mention that the extent of the extraordinary diligence covered the loss, destruction, or deterioration of the goods, except where the loss, destruction, or deterioration was due to any of the causes enumerated in Article 1734 and Article 1735 of the *Civil Code*, to wit:

Art. 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:

- (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 of omission of the shipper or owner of the goods;

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⁹ *Schmitz Transport and Brokerage Corporation v. Transport Venture, Inc.*, G.R. No. 150255, April 22, 2005, 456 SCRA 557, 570.

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.

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 in Article 1733.

Extraordinary diligence is “that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights.”¹⁰ The petitioner did not observe extraordinary diligence in the handling of the goods, for the CA found that:

In instant case, while the initial survey report showed that there were shortages and breakages on the good[s] prior to the arrival of the carrier in the jurisdictional waters of the Philippines, the actual extent thereof was not ascertained at that time. The merchandise remained in the custody of Metroport Services, Inc. from June 7, 1983 to July 7, 1983. It was only upon delivery to Brink Hardware that another survey which pegged the value of the loss at ₱104,973.61 was conducted. Appellee Jaime Sabeniano, Jr., however, never introduced evidence as to his exercise of extraordinary diligence in the vigilance over the goods transported by them as required by Art. 1733 of the New Civil Code. Despite being aware that the cargoes subject matter of this controversy were actually damaged, appellee Sabeniano did not take precautionary measures to avert further damage. There is no evidence on record whatsoever that said appellee caused reconditioning of said cargoes nor of their repacking after they were found to be in bad condition. Thus, when the goods arrived at Brink’s warehouse in damaged condition, the presumption arose against the carrier, arrastre operator and the customs broker of their joint failure to observe that requisite diligence. There need not be any express finding to hold them jointly and severally liable. For failure, thus, of appellee Sabeniano to adduce evidence that the cargoes did not incur damage during their transport from the warehouse of the arrastre operator to the Brink Hardware Warehouse in C. M. Recto, Manila, the presumption of failure to exercise extraordinary diligence stands. This Court is left without recourse but to hold defendant-appellee jointly and severally liable with the carrier and the arrastre operator.¹¹

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¹⁰ *Republic v. Lorenzo Shipping Corporation*, G.R. No. 153563, February 7, 2005, 450 SCRA 550, 556 (quoting Black’s Law Dictionary 5th Edition, 1979).

¹¹ *Rollo*, p. 108.


The solidary liability thus decreed was proper. Although solidary liability should not be lightly inferred, the CA correctly held that the circumstances necessitated its ruling so. The impossibility of determining the amount of actual damage caused to the goods of the consignee while they were in the possession of the shipper and the amount of the actual damage incurred while the goods were in the hands of the petitioner was due to the petitioner's failure to exercise the degree of diligence required of it. In other words, he did not preponderantly show his observance of the extraordinary diligence required of him in the care of the goods entrusted to his custody as the customs broker. Hence, pursuant to Article 1735 of the *Civil Code*, he was presumed liable for the loss or damage to the goods in question.

The RTC valued the damage to the goods of the consignee at ₱104,973.61,¹² but the CA decreed the petitioner liable only for ₱74,972.61.¹³ The difference in the amount of liability was due to the fact that – as both the RTC and the CA found – the shipper had already paid ₱30,000.00 to the respondent.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on January 19, 2005; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.”

Very truly yours,


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Deputy Division Clerk of Court
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No. 12-7-1-SC)

¹² Id. At 75.

¹³ Id. At 109 (The correct amount should be ₱74,973.61).

