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 6, 2019**, *which reads as follows:*

"G.R No. 213996 (PHILHUA SHIPPING, INC., *petitioner* v. HARBOUR CENTRE PORT TERMINAL, INC., *respondent*). — In a civil action, the defendant may move for the case's dismissal if the plaintiff, after filing the formal offer of evidence, fails to prove the right to relief.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which reversed the Regional Trial Court's grant of a Demurrer to Evidence and held that vessel agent Philhua Shipping, Inc. (Philhua Shipping) was solidarily liable with the vessel owner and the captain to Harbour Centre Port Terminal, Inc. (Harbour Centre) for the value of the latter's damaged forklift.

On May 28, 2007, Harbour Centre's forklift no. 10-09 was being lifted onto M/V Ho Yun using the vessel's crane, which was operated by Harbour Centre's personnel. However, the forklift fell onto the pavement and was completely damaged. Harbour Centre's safety officer prepared an Accident/Incident Investigation Report[4] on the incident that same day.[5]

On May 29, 2007, surveyor Schutter Philippines, Inc. (Schutter) conducted an investigation and concluded that the damage was the vessel's fault.[6] On the same day, Harbour Centre wrote a letter[7] to Captain Arnel P. Sumalpong (Captain Sumalpong) and the vessel agent, Philhua Shipping, demanding compensation for its damaged forklift, as well as incidental

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1 *Rollo*, pp. 11–38.
2 Id. at 40–50. The January 30, 2014 Decision was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba of the Fourth Division, Court of Appeals, Manila.
3 Id. at 52. The August 20, 2014 Resolution was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Noel G. Tijam (now a retired member of this Court) and Leoncia Real-Dimagiba of the Special Former Fourth Division, Court of Appeals, Manila.
4 Id. at 62.
5 Id. at 54.
6 Id. at 55.
7 Id. at 67.

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opportunity losses and additional expenses for the lease of another forklift. The demand, however, was not heeded.[8]

On July 19, 2007, Harbour Centre filed a Complaint[9] before the Regional Trial Court against the foreign charterer of M/V Ho Yun, Captain Sumalpong, and Philhua Shipping. It alleged that the damage to its forklift was a result of M/V Ho Yun's unseaworthiness, attributed to its poorly maintained crane.[10]

In their Answer, the foreign charterer of M/V Ho Yun, Captain Sumalpong, and Philhua Shipping alleged that M/V Ho Yun was seaworthy, as shown by a series of voyages to and from Harbour Centre's port. It also alleged that the proximate cause of the damage to the forklift was the "negligence, fault, or lack of skill"[11] of Harbour Centre's crane operator.[12]

During trial, Camilo Pelingon, Jr. (Pelingon), Harbour Centre's safety officer, testified that he prepared the Accident/Incident Investigation Report stating that the damage to the forklift was due to "the inadequate preventive maintenance of the hydraulic motor and lubrication of the cable wires by the vessel's crew[.]"[13] He also alleged that he took pictures of the crane, hydraulic motor, cable wires, and the forklift. On cross-examination, however, he admitted that he was not actually present when the incident happened.[14]

Orson Soldevilla (Soldevilla), Harbour Centre's operations manager, testified that at the time of the incident, the forklift was being hauled on the vessel through a crane operated by the company's winchman, Rufino Paja. When the incident happened, he added, he immediately instructed Schutter to investigate. Based on the investigation, he testified that the incident was caused by the defective crane, which could supposedly lift 25 tons but failed to lift a 10-ton forklift.[15]

Xavier Pena (Pena), Harbour Centre's purchasing supervisor, testified that the forklift was among the five (5) forklifts Harbour Centre purchased at JPY4,995,000.00 per unit, and that after the incident, the forklift was now unfit for use.[16]

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8 Id. at 55.
9 Id. at 53–61.
10 Id. at 55.
11 Id. at 41.
12 Id.
13 Id. at 42.
14 Id. at 41–42.
15 Id. at 42.
16 Id. at 42–43.

After Harbour Centre had filed its Formal Offer of Exhibits, the foreign charterer of M/V Ho Yun, Captain Sumalpong, and Philhua Shipping filed a Demurrer to Evidence. They alleged that Harbour Centre failed to prove its claims by a preponderance of evidence.[17]

In a September 15, 2011 Order, the Regional Trial Court granted the Demurrer to Evidence and dismissed the Complaint. It found that since Harbour Centre's witnesses did not actually see the incident, their reports were "hearsay and self-serving."[18]

In its appeal before the Court of Appeals, Harbour Centre argued that the testimonies were not hearsay. It reasoned that Pelingon's report was based on an investigation he himself conducted, while Soldevilla's testimony was based on Schutter's investigation.[19]

In a January 30, 2014 Decision,[20] the Court of Appeals granted the appeal.[21]

According to the Court of Appeals, Pena, as Harbour Centre's purchasing supervisor, had personal knowledge of the acquisition and actual value of the damaged forklift.[22] As for Pelingon, it found that even though he did not witness the incident, he personally conducted the investigation. Thus, the Court of Appeals concluded that the testimonies of Harbour Centre's witnesses could not have been hearsay and would be admissible as evidence.[23]

The Court of Appeals, however, found that the forklift's acquisition cost in 2004 could not be used to compute actual damages without taking into account its depreciation rate due to wear and tear. Citing *Bulante v. Liante*,[24] and in the interest of equity, it set the depreciation rate of 30% to be subtracted from the original acquisition cost of JPY4,995,000.00.[25]

Thus, the foreign charterer of M/V Ho Yun, Captain Sumalpong, and Philhua Shipping were ordered to jointly and severally pay Harbour Centre the amount of JPY3,496,500.00 or its peso equivalent.[26] The dispositive portion of the Court of Appeals' Decision read:

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17 Id, at 43.
18 Id. at 43–44.
19 Id. at 45.
20 Id. at 40–50.
21 Id. at 49.
22 Id. at 46.
23 Id. at 47.
24 132 Phil. 87 (1968) [Per J. Makalintal, En Banc].
25 *Rollo*, p. 49.
26 Id.

> WHEREFORE, in view of the foregoing, the instant appeal is GRANTED. The order dated September 15, 2011 of the Regional Trial Court is REVERSED and SET ASIDE. Judgment is hereby rendered ORDERING the defendants-appellees, jointly and severally, TO PAY plaintiff-appellant Harbour Centre Port Terminal, Inc. the amount of JPY3,496,500.00 or its peso equivalent.
>
> SO ORDERED.[27]

The foreign charterer of M/V Ho Yun, Captain Sumalpong, and Philhua Shipping moved for reconsideration, but the Motion was denied by the Court of Appeals in its August 20, 2014 Resolution.[28] Hence, Philhua Shipping filed this Petition.[29]

Petitioner argues that the testimonies and evidence of respondent's witnesses were self-serving and hearsay, since there was no basis to conclusively prove that the forklift was damaged due to the vessel's crane.[30] It likewise asserts that there was no evidence to prove that there was total damage to the forklift and that there was no basis for setting the depreciation rate at 30%.[31]

Petitioner further contends that there was no basis to hold the vessel agent solidarily liable with the vessel's charterer for the unseaworthiness of the vessel. It cites Articles 586 and 587 of the Code of Commerce, under which a vessel agent may only be liable for the acts of the captain and those which may arise from the conduct of the captain in the care of the goods he or she loaded on the vessel.[32]

Respondent counters that it presented sufficient evidence, based on its witnesses' personal knowledge, to prove that the damage to its forklift was due to M/V Ho Yun's unseaworthiness.[33] It claims that the vessel agent and vessel owner are solidarily liable for any acts attributable to the captain, including the act of ensuring the seaworthiness of the vessel.[34] It also asserts that the Court of Appeals did not err in citing *Bulante* as a guideline for determining the depreciation rate of 30%.[35]

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27 Id.
28 Id. at 52.
29 Id. at 11–38. The Comment (*rollo*, pp. 77–84) was filed on April 6, 2015, while the Reply (*rollo*, pp. 103–123) was filed on August 3, 2017.
30 Id. at 21–23.
31 Id. at 23 and 33–34.
32 Id. at 29–33.
33 Id. at 79–81.
34 Id. at 82.
35 Id.

In rebuttal, petitioner contends that even assuming that Pelingon's testimony was based on his personal knowledge, his conclusion that the crane malfunctioned due to inadequate preventive maintenance was unsupported by any other evidence.[36] It argues that Article 586 of the Code of Commerce specifies that a vessel agent can only be liable for acts related to provisioning and representing the vessel assigned to it by the foreign principal, which does not include ensuring the vessel's seaworthiness.[37]

For this Court's resolution is the issue of whether or not the Court of Appeals erred in finding that petitioner Philhua Shipping, Inc. was solidarily liable with the vessel owner and the captain for the damage to the forklift of respondent Harbour Centre Port Terminal, Inc. However, this Court must first pass upon the preliminary procedural issue of whether or not the Petition raises questions of fact.

Generally, petitions under Rule 45 of the Rules of Court must only raise questions of law.[38] Factual findings of the lower courts will be affirmed if they are supported by substantial evidence.[39] There are recognized exceptions to the general rule,[40] which the party seeking this Court's review "must demonstrate and prove[.]"[41]

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36 Id. at 105.

37 Id. at 110–112.

38 *See* RULES OF COURT, Rule 45, sec. 1:

SECTION 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

39 *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division] *citing Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division]; *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division]; and *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

40 *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division] states the following exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) The findings of the Court of Appeals are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
(10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

41 *Pascual v. Burgos*, 776 Phil. 167, 184 (2016) [Per J. Leonen, Second Division].

In this case, petitioner points out that a review of the Court of Appeals' judgment is warranted, as its findings were allegedly: (1) based on a misapprehension of facts; (2) contrary to or conflicting with the trial court's findings; (3) without citation of the specific evidence on which they are based; and (4) premised on a supposed absence of evidence.[42]

Plainly stated, petitioner seeks the review of the Court of Appeals judgment on the ground that its conclusions are not based on any substantial evidence. It reiterates that the trial court found that respondent "miserably failed to prove its allegations in the complaint":[43]

> Plaintiff alleged that the damage on the forklift was directly caused by the unseaworthiness of defendants' vessel particularly its poorly maintained crane/derrick No. 2 which was even operated by an employee of the plaintiff. No iota of evidence to buttress this was, however, offered. Mere allegation without proof cannot be accepted. The crane operator, Rufino Paja, who could have given a personal account of the incident, was not even presented as a witness.[44]

This is in direct contradiction to the Court of Appeals' finding that Pelingon's report sufficiently proves that the cause of the forklift's damage was the vessel's malfunctioning crane.[45]

An examination of the evidence presented shows that the trial court did not err in its assessment.

In the Accident/Incident Investigation Report,[46] respondent's Safety Officer Pelingon stated under "ACT AND/OR CONDITION CONTRIBUTED MOST DIRECTLY TO THIS INCIDENT":

> Inadequate preventive maintenance by the vessel crew that cause (*sic*) the hydraulic motor to malfunction and lubrication of the cable wires.[47]

However, while Pelingon testified on the report's preparation and presented the pictures taken during his investigation, no other evidence was presented to support his conclusion. There is no basis, other than Pelingon's testimony, that there was "inadequate preventive maintenance by the vessel crew[.]"

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42 *Rollo*, pp. 17–18.
43 Id. at 44.
44 Id.
45 Id. at 47.
46 Id. at 62.
47 Id.

The report of respondent's surveyor, Schutter, could have corroborated its safety officer's findings. Its Inspection Report[48] stated that the incident happened "when Crane No. 2 cable runner motor malfunctioned."[49] This report, however, has little evidentiary weight since the attending surveyor, Roderick M. Sison, was never presented in court to testify on the conduct of investigation and to attest to the report's due execution. Respondent merely presented the testimony of Operations Manager Soldevilla, who could only attest that he ordered the investigation to be conducted by Schutter.

Likewise, respondent's Complaint[50] does not state any specific act that would make petitioner, as the vessel agent, liable for the alleged malfunctioning crane. Respondent, however cites the following provisions of the Code of Commerce as the basis for petitioner's liability:

> ARTICLE 586. The owner of a vessel and the agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.
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> By agent is understood the person intrusted with the provisioning of a vessel, or who represents her in the port in which she happens to be.
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> ARTICLE 587. The agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the voyage.

Article 586 of the Code of Commerce holds the vessel owner and agent civilly liable for the captain's acts in repairing, equipping, and provisioning the vessel. Article 587, on the other hand, holds the vessel agent liable for indemnity which may arise from the conduct of the captain in the care of goods loaded on the vessel.

Respondent, however, failed to explain any specific act or conduct by Captain Sumalpong that caused the vessel's crane to malfunction, or the cable wires to be unlubricated. It presented no evidence to show that his negligence caused the incident. Likewise, the Court of Appeals neither cited these Code of Commerce provisions as basis for its Decision nor explained why there should be solidary liability among the parties. Petitioner's liability as the vessel agent, therefore, has not been sufficiently established.

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48 Id. at 66.
49 Id.
50 Id. at 53–61.

Worse still, the Court of Appeals set a depreciation rate of the damaged forklift at an arbitrary value of 30%, citing *Bulante*.

In *Bulante*,[51] this Court was tasked with determining the value of a truck after it had figured in a road crash. In computing the value to be compensated, it held:

> Coming now to the damage to the truck itself, the award to Chu Liante in the sum of ₱4,004.00 consists of the acquisition cost of the truck in 1954 (₱9,904.00) minus the amount of insurance (₱3,100.00) and the price received when the truck was sold after the accident (₱2,800.00). The acquisition cost should not have been made the basis of computation, considering the depreciation of the truck in the meantime. Allowing a depreciation of 25% up to the time of the accident in April 1955, the basis should be ₱7,426.00. Deducting therefrom the sums realized by the owner from the insurance and the sale of the truck, he should be entitled to ₱1,526.00 which, added to the other items allowed, make a total of ₱4,513.50.[52]

This Court presented a thorough computation of the truck's value in *Bulante*. Here, by contrast, the Court of Appeals held:

> Similarly, this Court, in the exercise of our sound discretion, finds that a depreciation rate of thirty percent (30%) from the time the forklift was purchased in May, 2004 until the time it was rendered totally damaged on May 28, 2007 is reasonable under the premises. Hence, the defendants-appellees must indemnify HCPTI the amount of JPY3,496,500.00 or its peso equivalent.[53] (Citation omitted)

The Court of Appeals did not explain how a 30% depreciation rate was "reasonable under the premises." It did not state whether inflation could have influenced the increase in the rate. No evidence was presented as to whether there was still a salvage value which could be subtracted from the acquisition cost. Thus, the depreciation rate of 30% has no legal basis.

Finally, petitioner submitted a Demurrer to Evidence after respondent had filed its Formal Offer of Exhibits. The trial court granted this Demurrer since "[t]he alleged act or omission of [petitioner] that caused damage to the forklift was has not been sufficiently shown."[54]

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51 132 Phil. 87 (1968) [Per J. Makalintal, En Banc].
52 Id. at 94.
53 *Rollo*, p. 49.
54 Id. at 44.

Rule 33 of the Rules of Court provides:

RULE 33
Demurrer to Evidence

SECTION 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

Respondent, in filing its Complaint before the trial court, had the burden of proving its allegations by a preponderance of evidence. However, after finding that respondent failed to discharge its burden, petitioner filed the appropriate Demurrer to Evidence. Considering that "upon the facts and the law[,] the [respondent] has shown no right to relief[,]" the trial court did not err in granting the Demurrer. The Complaint should have been dismissed.

WHEREFORE, the Petition is **GRANTED**. The January 30, 2014 Decision and August 20, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 98960 is **REVERSED** and **SET ASIDE**. The September 15, 2011 Order of the Regional Trial Court in Civil Case No. 07-117581 is **REINSTATED**.

SO ORDERED." (Gesmundo, *J.*, on leave.)

Very truly yours,

Misael DC Batt
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12/4/19

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