



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

C.V. GASPAR SALVAGE & LIGHTERAGE CORPORATION,  
*Petitioner,* G.R. No. 206892

- versus -

LG INSURANCE COMPANY,  
LTD., (United States Branch) /WM  
H. MCGEE & CO., INC.,  
*Respondents.*

X-----X

FORTUNE BROKERAGE AND FREIGHT SERVICES, INC.,  
*Petitioner,* G.R. No. 207035

Present:

- versus -

LEONEN, J., *Chairperson,*  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
LOPEZ, J., *JJ.*

LG INSURANCE COMPANY,  
LTD. (United States Branch) and  
WM H. MCGEE & CO., INC.,  
C.V. GASPAR SALVAGE &  
LIGHTERAGE CORPORATION,  
and VENANCIO MESINA,

Promulgated:

*Respondents.*

February 3, 2021

MICRDCB/H

X-----X

## DECISION

**INTING, J.:**

Before the Court are two Petitions for Review on *Certiorari*.<sup>1</sup>

In G.R. No. 206892, C.V. Gaspar Salvage and Lighterage Corporation (C.V. Gaspar) assails in its petition the Decision<sup>2</sup> dated August 13, 2012 and the Resolution<sup>3</sup> dated April 23, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 91166. In G.R. No. 207035, Fortune Brokerage and Freight Services, Inc. (Fortune Brokerage) assails in its petition the same Decision and Resolution of the CA in CA-G.R. CV No. 91166. The CA affirmed with modification the Decision<sup>4</sup> dated January 21, 2008 of Branch 132, Regional Trial Court (RTC), Makati City in Civil Case No. 99-1864.

G.R. No. 206892 and G.R. No. 207035 were consolidated in the Court Resolution<sup>5</sup> dated July 29, 2013.

### *The Antecedents*

The facts, as stated in the assailed Decisions of the CA and the RTC are as follows:

On August 5, 1997, Sunkyong America, Inc. (Sunkyong) shipped 23,842 (1,207.50 MT) bags of Peruvian fishmeal for delivery from Chimbote, Peru to Great Harvest, its consignee in Manila. The shipment was insured against all risks for US\$753,117.75 with LG Insurance Company, Ltd. (LG Insurance), United States (U.S.) Branch, through its American Manager, WM H. McGee & Co., Inc. (WM H. McGee), a corporation organized and established under the laws of the United States of America. Great Harvest engaged Fortune Brokerage as its

<sup>1</sup> Filed under Rule 45 of the Rules of Court. *Rollo* (G.R. No. 206892), pp. 8-25; *rollo* (G.R. 207035), Vol. 1, pp. 9-51.

<sup>2</sup> *Rollo* (G.R. No. 206892), pp. 245-263; penned by Associate Justice Amy C. Lazaro-Javier (now a member of the Court) with Associate Justices Mariflor P. Punzalan-Castillo and Rodil V. Zalameda (now a member of the Court), concurring.

<sup>3</sup> *Id.* at 285-286.

<sup>4</sup> *Id.* at 144-162; penned by Judge Rommel O. Baybay.

<sup>5</sup> *Id.* at 288.

customs broker. The shipment was loaded and shipped on board the vessel MV Pearl Islands complete and in good order and condition.<sup>6</sup>

On September 16, 1997, the shipment arrived at the Port of Manila and was discharged into four barges owned by C.V. Gaspar for delivery to Great Harvest's warehouse in Valenzuela, Bulacan. While the barges were moored at the Pasig River, the cargo loaded on barge "AYNA-1" got wet resulting in the damage of 3,662 bags of fishmeal. Of the 3,662 bags of fishmeal, 2,085 bags were dumped into the Pasig River as they were already emitting strong foul odor, 877 bags were accepted by Great Harvest with 65% loss allowance, and 700 bags were disposed to salvors.<sup>7</sup>

Great Harvest filed separate claims against Fortune Brokerage and C.V. Gaspar for the damaged cargo. When both Fortune Brokerage and C.V. Gaspar ignored its claims, Great Harvest filed a claim against its insurance policy with LG Insurance. LG Insurance paid Great Harvest's claim.

Great Harvest executed a subrogation receipt in LG Insurance's favor. LG Insurance and WM H. McGee then demanded from Fortune Brokerage and C.V. Gaspar the amount paid to Great Harvest. Both Fortune Brokerage and C.V. Gaspar refused to pay LG Insurance and WM H. McGee prompting the filing by the latter of an action for damages against the former. The case was docketed as Civil Case No. 99-1864. Venancio Mesina (Mesina) was impleaded as Fortune Brokerage's authorized representative who signed the service contract, although he already retired from the service effective September 15, 1999.<sup>8</sup>

LG Insurance alleged that the damage/loss suffered by the shipment from wettage was attributable to the negligence of Fortune Brokerage in utilizing an unseaworthy barge, AYNA-1 and the negligence of C.V. Gaspar in supplying the unseaworthy barge that suffered a hole at the bottom of its plating in Hatch 1, through which the water gained entry and damaged the cargo.

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<sup>6</sup> *Id.* at 144-145.

<sup>7</sup> *Id.* at 145.

<sup>8</sup> *Id.* at 146-147.

*The Decision of the RTC*

In the Decision dated January 21, 2008, the RTC ruled in favor of LG Insurance and WM H. McGee.<sup>9</sup>

The RTC ruled that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary diligence over the goods it transported. It stressed that C.V. Gaspar has the burden of showing that it exercised extraordinary diligence in the transport of the goods on board AYNA-1 as well as the seaworthiness of the barge itself.<sup>10</sup>

The RTC elucidated that subrogation is present in this case. It held that subrogation accrues upon payment of the insurer of the insurance claim, evidenced in this case by the subrogation receipt issued by Great Harvest in favor of LG Insurance.<sup>11</sup> The RTC, however, declared that there was no evidence to prove Mesina's personal liability over the damaged cargo.<sup>12</sup>

The dispositive portion of the RTC Decision dated January 21, 2008 reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered in favor of the plaintiffs ordering defendants Fortune Brokerage and C.V. Gaspar to jointly and solidarily pay plaintiffs the sum of US\$100,688.82 representing the actual amount covering the subrogation receipt, or its equivalent in Philippine Currency at the conversion rate obtaining at the time of payment, and P1,200,000.00 as attorney's fees and litigation expenses.

SO ORDERED.<sup>13</sup>

Fortune Brokerage and C.V. Gaspar appealed the RTC Decision.

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<sup>9</sup> *Id.* at 162.

<sup>10</sup> *Id.* at 159-160.

<sup>11</sup> *Id.* at 161.

<sup>12</sup> *Id.* at 162.

<sup>13</sup> *Id.*

*The Decision of the CA*

The CA ruled that LG Insurance and WM H. McGee validly acquired the right to be subrogated for the purpose of collecting payment from Fortune Brokerage and C.V. Gaspar relative to the damaged goods of Great Harvest.<sup>14</sup> It also ruled that Fajardo Law Office, representing LG Insurance and WM H. McGee, through Atty. Beda Fajardo (Atty. Fajardo), has the authority to sign the verification and certification against forum shopping.<sup>15</sup>

The CA held that apart from its liability as a common carrier, Fortune Brokerage assumed full responsibility, under the service contract, for any and all damage to the cargo. As such, it could not escape from its liability by denying Mesina's authority to sign the service contract.<sup>16</sup>

However, the CA found no justification for the award of attorney's fees.

The dispositive portion of the CA Decision dated August 13, 2012 reads:

ACCORDINGLY, the appeal is DENIED and the Decision dated January 21, 2008, [is] AFFIRMED with modification, DELETING the award of attorney's fees.

SO ORDERED.<sup>17</sup>

C.V. Gaspar and LG Insurance filed their respective motions for reconsideration. In a Resolution promulgated on April 23, 2013, the CA denied both motions.

Hence, the petitions before the Court.

In G.R. No. 206892, C.V. Gaspar alleges that:

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<sup>14</sup> *Id.* at 254-255.

<sup>15</sup> *Id.* at 255-256.

<sup>16</sup> *Id.* at 261.

<sup>17</sup> *Id.* at 262-263.

- (1) the complaint is fatally defective for having been filed in violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure;
- (2) AYNA-1 is not a common carrier;
- (3) the service contract between C.V. Gaspar and Fortune Brokerage is valid; and
- (4) C.V. Gaspar should not be held solidarily liable with Fortune Brokerage because it is not a party to the contract between Fortune Brokerage and Great Harvest.<sup>18</sup>

In G.R. No. 207035, Fortune Brokerage alleges that:

- (1) LG Insurance and WM H. McGee failed to prove their claim;
- (2) Fortune Brokerage is not a party to the service contract; and
- (3) The Complaint and the Amended Complaint suffer from defects and irregularities.<sup>19</sup>

#### *The Issues*

1. Whether Fajardo Law Office, through Atty. Fajardo, is authorized to file the Complaint and Amended Complaint and to sign the Verification and Certification on Non-Forum Shopping in behalf of LG Insurance and WM H. McGee;
2. Whether there was a valid subrogation of rights between Great Harvest and LG Insurance and WM H. McGee;
3. Whether AYNA-1 is a common carrier; and
4. Whether C.V. Garcia and Fortune Brokerage should be

<sup>18</sup> *Id.* at 15-16.

<sup>19</sup> *Rollo* (G.R. No. 207035), Vol. 1, pp. 19-20.

held solidarily liable to LG Insurance and WM H. McGee for the amount paid to Great Harvest.

*The Ruling of the Court*

The petitions have no merit.

*Verification and Certification  
of Non-Forum Shopping.*

Both C.V. Gaspar and Fortune Brokerage assail the authority of Fajardo Law Office and/or Atty. Fajardo to file the Complaint and Amended Complaint and sign the Verification and Certification on Non-Forum Shopping. C.V. Gaspar alleges that a foreign corporation has no personality to sue in the Philippines; and that Fajardo Law Office is not authorized to initiate, file, and prosecute the case for and in behalf of LG Insurance and WM H. McGee.

It is undisputed that LG Insurance is a corporation organized and established under U.S. Laws. It is a foreign corporation that is not doing business in the Philippines. However, it is a settled rule that a foreign corporation not doing business in the Philippines does not entirely lack capacity to sue in this jurisdiction. Thus, the Court ruled:

A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts. Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits. It may, however, bring suits on isolated business transactions, which is not prohibited under Philippine law. Thus, this Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license *per se*, which bars a foreign corporation from access to our courts.<sup>20</sup>

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<sup>20</sup> *Abotiz Shipping Corp. v. Insurance Co. of North America*, 583 Phil. 257, 270-271 (2008).  
Emphasis omitted.

In its transactions with Great Harvest and in filing the cases against C.V. Gaspar and Fortune Brokerage, LG Insurance acted through WM H. McGee, its American Manager. The authority of Fajardo Law Office and Atty. Fajardo to act for and in behalf of LG Insurance and WM H. McGee is established by the Special Power of Attorney designating Fajardo Law Office to act as WM H. McGee's resident agent and to represent it in a suit against Fortune Brokerage and C.V. Gaspar. WM H. McGee also designated Atty. Fajardo as its resident agent. The Court agrees with the CA that the designation necessarily includes signing the requisite Verification and Certification of Non-Forum Shopping.

C.V. Gaspar alleges that the Verification and Certification of Non-Forum Shopping was belatedly filed with the Amended Complaint. C.V. Gaspar argues that the late filing did not cure the defect in the original complaint.

The argument has no merit. The Court has distinguished between non-compliance with the requirements for certification of non-forum shopping and verification and substantial compliance with the requirements under the Rules of Court.<sup>21</sup> Thus, the Court has allowed the late filing of certification on the ground that it is a substantial compliance with the Rules of Court.<sup>22</sup> In this case, the Verification and Certification of Non-Forum Shopping were attached to the Amended Complaint, even as they were missing in the original Complaint. The Court explained that while the filing of a certification of non-forum shopping is a mandatory requirement under the Rules of Court, this requirement must not be interpreted too literally and defeat the objective of preventing the undesirable practice of forum shopping.<sup>23</sup> Clearly, LG Insurance and WM H. McGee substantially complied with the requirements of the Rules of Court.

#### *Subrogation.*

There is a valid subrogation in this case.

<sup>21</sup> *Varorient Shipping Co., Inc. v. NLRC (2<sup>nd</sup> Div.)*, 564 Phil. 119, 127 (2007).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 128, citing *Bernardo v. NLRC*, 325 Phil. 371 (1996).



Article 2207 of the Civil Code provides:

Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

There is no question in this case that Great Harvest insured the shipment of the bags of fishmeal against all risks with LG Insurance through WM H. McGee. It is likewise undisputed that when 7,952 bags of fishmeal got wet due to water that entered AYNA-1, Great Harvest demanded payment from Fortune Brokerage and C.V. Gaspar for the payment of the damaged cargo. Both Fortune Brokerage and C.V. Gaspar refused to pay. Hence, Great Harvest demanded payment under the insurance policy. Upon the payment of Great Harvest's insurance claim, LG Insurance was subrogated to its rights against Fortune Brokerage and C.V. Gaspar.

The Court explained the nature of subrogation under Article 2207 of the Civil Code in *Pan Malayan Insurance Corp. v. Court of Appeals*,<sup>24</sup> thus:

Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay. Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer x x x.<sup>25</sup>

<sup>24</sup> 262 Phil. 919 (1990).

<sup>25</sup> *Id.* at 923, citing *Compañia Maritima v. Insurance Co. of North America*, 120 Phil. 998, 1005-1006 (1964) and *Fireman's Fund Ins. Co., et al. v. Janila & Co. of the Phils., et al.*, 162 Phil. 421, 426 (1976).

The Court further explained in *Henson, Jr. v. UCPB General Insurance Co., Inc.*:<sup>26</sup>

x x x [S]ubrogation, under Article 2207 of the Civil Code, operates as a form of “equitable assignment” whereby “the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay.” It is characterized as an “equitable assignment” since it is an assignment of credit without the need of consent — as it was, in fact, mentioned in *Pan Malayan*, “[t]he right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.”<sup>27</sup> (Emphasis and underscoring omitted.)

Hence, from the time of payment for the damaged cargo under the insurance policy, subrogation took place and LG Insurance stepped into the shoes of Great Harvest.

#### *Common Carrier.*

Article 1732 of the Civil Code defines common carriers as “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.” Article 1732 does not make any distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does the carrying only an ancillary activity; between a person or enterprise offering transportation service on a regular or scheduled basis, and one offering the service on an occasional, episodic or unscheduled basis; and a carrier offering its services to the general public, and one who offers services or solicits business only from a narrow segment of the general population.<sup>28</sup>

The Court agrees with the CA that AYNA-1 is a common carrier within the definition under Article 1732 of the Civil Code because it is one of the four barges commissioned to transport 23,842 bags of fishmeal from the Port of Manila to Great Harvest’s warehouse in Valenzuela, Bulacan. As a common carrier, it is bound to observe

<sup>26</sup> G.R. No. 223134, August 14, 2019.

<sup>27</sup> *Id.*, citing *Pan Malayan Insurance Corp. v. Court of Appeals*, 262 Phil. 919, 923 (1990).

<sup>28</sup> *Asia Lighterage & Shipping, Inc. v. Court of Appeals*, 456 Phil. 610, 616-617 (2003).

extraordinary diligence in the vigilance over the goods transported by it.<sup>29</sup> It bears to be reminded that common carriers are presumed to have been at fault or to have acted negligently if the goods are lost, destroyed, or deteriorated.<sup>30</sup> To overcome this presumption, common carriers must prove that it exercised extraordinary diligence in the transportation of the goods.<sup>31</sup>

Here, the CA found that there was a hole on the bottom plating of AYNA-1 that caused the seepage or ingress of water into one of its hatches; thus:

Results of Survey:

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Barge "AYNA-1" was inspected to determine/ascertain the seepage/ingress of water into Hatch No. 2. A hole or gap of about 50mm diameter was found in the bottom plating located at the starboard side of the center longitudinal T-frame and forward of No. 5 transverse T-frame, counting from the center bulkhead. x x x

Remarks

The loss sustained by subject shipment could be reasonably attributed to wetting due to the seepage/ingress of water through the hole or gap in the bottom plating of the barge in way of Hatch No. 2.

The barge's bottom plating in way of Hatch No. 2 may have come in contact with a hard/sharp object which caused the same to be holed probably during the towage upstream from Manila Bay to Pasig River and/or whilst alongside Romus Terminal.

xxx<sup>32</sup>

C.V. Gaspar failed to overcome the presumption of negligence in its handling and transporting of the bags of fishmeal. As pointed out by the CA, the bottom plating of AYNA-1 proved it to be unseaworthy when it carried the cargo.

<sup>29</sup> *Id.* at 618, citing Article 1733 of the Civil Code of the Philippines.

<sup>30</sup> *Id.*, citing Article 1735 of the Civil Code of the Philippines.

<sup>31</sup> *Id.* at 618-619.

<sup>32</sup> *Rollo* (G.R. No. 206892), pp. 259-260.

*Liability.*

Fortune Brokerage faulted the CA for holding it jointly and solidarily liable with C.V. Gaspar. However, as stressed by the CA, Fortune Brokerage assumed full liability, under its service contract with Great Harvest, for any and all damage to the cargo. Fortune Brokerage alleged that it was Great Harvest which hired C.V. Gaspar and that the service contract was signed by Mesina, one of its employees, instead of its President. The Service Contract,<sup>33</sup> however, is between Fortune Brokerage and C.V. Gaspar. With respect to the authority of Mesina, the RTC found that he was an employee of Fortune Brokerage entrusted with shipside permits. He was able to present Service Contracts from 1992 to 1997 proving that he was acting upon the orders of Fortune Brokerage that led the RTC to dismiss the third-party claim filed by Fortune Brokerage against him. Fortune Brokerage cannot use the same argument to justify its argument that Mesina has no authority to enter into a contract with C.V. Gaspar. As such, the CA did not err in holding Fortune Brokerage jointly and severally liable with C.V. Gaspar. A customs broker may also be regarded as a common carrier as the transportation of goods in an integral part of its business.<sup>34</sup> Fortune Brokerage cannot escape from its liability under the service contract it executed with C.V. Gaspar.

**WHEREFORE**, the petitions are **DENIED**. The Decision dated August 13, 2012 and the Resolution dated April 23, 2013 of the Court of Appeals in CA-G.R. CV No. 91166 are **AFFIRMED**.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

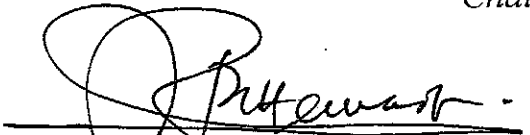
<sup>33</sup> *Rollo* (G.R. 207035), Vol. 1, p. 318.

<sup>34</sup> *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corp., et al.*, 654 Phil. 67, 76 (2011), citing *Schmitz Transport & Brokerage Corp. v. Transport Venture, Inc.*, 496 Phil. 437, 450, (2005) further citing *Calvo v. UCPB General Insurance Co., Inc.*, 429 Phil. 244 (2002).

WE CONCUR:



**MARVIC M.V.F. LEONEN**  
*Associate Justice*  
*Chairperson*



**RAMON PAUL L. HERNANDO**  
*Associate Justice*



**EDGARDO L. DELOS SANTOS**  
*Associate Justice*



**JHOSEP Y. LOPEZ**  
*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.



**MARVIC M.V.F. LEONEN**  
*Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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.



**DIOSDADO M. PERALTA**  
*Chief Justice*