



Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo Velasco
 WILFREDO VELASCO
 Division Clerk of Court
 Third Division

JAN 13 2016

THIRD DIVISION

FEDERAL PHOENIX
 ASSURANCE CO., LTD.,

Petitioner,

G.R. No. 188118

Present:

VELASCO, JR., J.,
 Chairperson,

PERALTA,

BERSAMIN,*

VILLARAMA, JR., and

REYES, JJ.

- versus -

FORTUNE SEA CARRIER, INC.,

Respondent.

Promulgated:

November 23, 2015

Wilfredo Velasco

X-----X

DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated February 10, 2009 and Resolution³ dated May 12, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 88607. The assailed decision reversed and set aside the Decision⁴ dated May 4, 2006 and the Order⁵ dated October 26, 2006 of the Regional Trial Court (RTC) of Makati City, Branch 143 finding respondent Fortune Sea Carrier, Inc. (Fortune Sea) liable to pay ₱260,000.00 as actual damages, attorney's fees and cost of suit.

* Designated as Acting Member per Special Order No. 2289 dated November 16, 2015 *vice* Associate Justice Francis H. Jardeleza.

¹ *Rollo*, pp. 9-26.

² Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Rebecca de Guia-Salvador and Sixto C. Marella, Jr. concurring; *CA rollo*, pp. 87-99.

³ *Id.* at 130-131.

⁴ Issued by Judge Zenaida T. Galapate-Laguilles; records (Vol. II), pp. 410-419.

⁵ *Id.* at 472-473.

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On March 9, 1994, Fortune Sea agreed to lease its vessel M/V Ricky Rey to Northern Mindanao Transport Co., Inc. (Northern Transport). The Time Charter Party agreement executed by the parties provides that the vessel shall be leased to Northern Transport for 90 days to carry bags of cement to different ports of destination. Later on, the parties extended the period of lease for another 90 days.⁶

Sometime in June 1994, Northern Transport ordered 2,069 bales of abaca fibers to be shipped on board M/V Ricky Rey by shipper Manila Hemp Trading Corporation, for delivery to consignee Newtech Pulp Inc. (Newtech) in Iligan City. The shipment was covered by Bill of Lading No. 1 and was insured by petitioner Federal Phoenix Assurance Co., Ltd. (Federal Phoenix).⁷

Upon arrival of M/V Ricky Rey at the Iligan City port on June 16, 1994, the stevedores started to discharge the abaca shipment the following day. At about 3:00 p.m., however, on June 18, 1994, the stevedores noticed smoke coming out of the cargo haul where the bales of abaca were located. Immediately, the fire was put off by the Iligan City Fire Department. Upon investigation, it was discovered that 60 bales of abaca were damaged.⁸

As a result of the losses, Newtech filed an insurance claim for ₱260,000.00 with Federal Phoenix. After evaluation, Federal Phoenix paid Newtech ₱162,419.25 for the losses it incurred due to the damaged and undelivered bales of abaca. Upon payment, Federal Phoenix was subrogated to the rights of Newtech and pursued its claim against Fortune Sea. Despite several demands to Fortune Sea, however, Federal Phoenix's claims were not settled. As a result, Federal Phoenix filed a Complaint⁹ for Sum of Money against Fortune Sea before the RTC of Makati.¹⁰

For its defense, Fortune Sea insisted that it was acting as a private carrier at the time the incident occurred. It alleged that the Time Charter Party agreement executed by the parties expressly provided that M/V Ricky Rey shall be under the orders and complete control of Northern Transport.¹¹

⁶ CA *rollo*, pp. 87-88.

⁷ Id. at 88.

⁸ Id.

⁹ Records (Vol. I), pp. 1-6.

¹⁰ CA *rollo*, pp. 88-89.

¹¹ Id. at 89.

Ruling of the RTC

On May 4, 2006, the RTC rendered a Decision in favor of Federal Phoenix and ordered Fortune Sea to pay the amount of ₱260,000.00 as actual damages, attorney's fees and cost of suit. Fortune Sea filed a Motion for Reconsideration¹² but was denied in an Order dated October 26, 2006.

Aggrieved, Fortune Sea appealed to the CA.

Ruling of the CA

On February 10, 2009, the CA issued a Decision reversing and setting aside the Decision dated May 4, 2006 of the RTC and ordered the dismissal of the complaint for sum of money filed by Federal Phoenix against Fortune Sea for lack of merit. According to the CA, although the agreement between Fortune Sea and Northern Transport was denominated as Time Charter Party, it found compelling reasons to hold that the contract was one of bareboat or demise. Hence, Federal Phoenix filed this instant petition.

Ruling of the Court

The main issue in this case is whether or not the CA erred in declaring that Fortune Sea was converted into a private carrier by virtue of the charter party agreement it entered into with Northern Transport.¹³

Admittedly, Fortune Sea is a corporation engaged in the business of transporting cargo by water and for compensation, offering its services to the public. As such, it is without a doubt, a common carrier.

Fortune Sea, however, entered into a time-charter with Northern Transport. Now, had the time-charter converted Fortune Sea into a private carrier?

This Court rules in the affirmative.

Time and again, this Court have ruled that “[i]n determining the nature of a contract, courts are not bound by the title or name given by the parties. The decisive factor in evaluating an agreement is the intention of the parties, as shown, not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and

¹² Records (Vol. II), pp. 420-438.

¹³ *Rollo*, p. 10.

immediately after executing the agreement.”¹⁴

As correctly observed by the CA, the Time Charter Party agreement executed by Fortune Sea and Northern Transport clearly shows that the charter includes both the vessel and its crew thereby making Northern Transport the owner *pro hac vice* of M/V Ricky Rey during the whole period of the voyage, to wit:

A perspicacious scrutiny of the *Time Charter Party* disclosed the following provisions evincing that Northern Transport became the owner *pro hac vice* of M/V Ricky Rey during the whole period of the voyage—

“VI. OTHER TERMS AND CONDITIONS:

- F. Upon delivery of the vessel(s) and during the period of the charter, SECOND PARTY (Northern Transport) assumes operational control for the dispatch and direction of voyage of the vessel(s).
- H. The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the vessel(s) crew. The Master to be under the orders of the SECOND PARTY (Northern Transport) as regards employment of the other arrangements.
- N. The SECOND PARTY (Northern Transport) to furnish MASTER with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the SECOND PARTY (Northern Transport) or their Supercargo.

To Our mind, the *Time Charter Part[y]* unequivocally established that appellant Fortune Sea had completely and exclusively relinquished possession, command and navigation of M/V Ricky Rey to Northern Transport.¹⁵ (Citation omitted)

Conformably, M/V Ricky Rey was converted into a private carrier notwithstanding the existence of the Time Charter Party agreement with Northern Transport since the said agreement was not limited to the ship only but extends even to the control of its crew. Despite the denomination as Time Charter by the parties, their agreement undoubtedly reflected that their intention was to enter into a Bareboat Charter Agreement.

Moreover, the CA likewise correctly ruled that the testimony of Captain Alfredo Canon (Capt. Canon) of M/V Ricky Rey confirmed that when the whole vessel was leased to Northern Transport, the entire command and control over its navigation was likewise transferred to it, to

¹⁴ *Aguirre v. CA*, 380 Phil. 736, 741 (2000), citing *Zamora v. CA*, 328 Phil. 1106, 1115 (1996).

¹⁵ *CA rollo*, pp. 91-92.

wit:

Q: Mr. Witness, you said awhile ago that as far as you know, the purpose is to transport cement, now, you also mentioned that in two or three instances goods other than cement, abaca and fertilizer were transported during your watch. Now, you mentioned that this was [sic] happened sometime in 1994, my question was [sic], why did you transport abaca?

A I have [sic] received an order from [Northern Transport] through radio and through its representative which [sic] was on board our super cargo boat to proceed to Natu to load abaca fiber and bring it to the port of Iligan, sir.

Q You were ordered by [Northern Transport]?

A Yes, sir, through its representative which [sic] was on board super cargo to pick up abaca sir at Natu point [sic], Camarines Sur.

Court:

Q Was the order done verbally or in writing?

A Verbally, aside from that Ma'am, we received written through radio.

Q Let us clarify that, was it done verbally or in writing?

A Two ways Ma'am, verbally and in writing Ma'am.

Q And you received the verbal order yourself?

A Ma'am yes.

Q How about the written order?

A The radio operator received the order Ma'am and informed the super cargo through its representative of the [Northern Transport] Ma'am.

x x x x

Q After being ordered by [Northern Transport], what did you do?

A Sir, I told the super cargo that the abaca is a combustible cargo, sir.

Q So, what was its reaction to your statement?

A He told me just to follow orders. That was the order of their company, sir.

Q Mr. Witness, what do you think is the basis of the [Northern Transport] for giving you such an order?

A I think sir, it was the chartered party sir.¹⁶

x x x x

Q Mr. Witness, what happened next after the order was given to you?

A We proceeded to the Natu Port to load abaca fiber sir and bring it to the port of Iligan sir. Natu Port sir is under the Camarines Sur province sir.

¹⁶ TSN, April 29, 2004, pp. 28-34.

Q Mr. Witness, upon reaching the port of Iligan as you mentioned, do you recall any unusual incident that happened?

A Yes, [s]ir.

Q What was this incident?

A A fire broke while unloading the cargo at the port of Iligan, sir.

Q Which portion of the port did the fire occur?

A At the cargo haul [sic] sir.

Q Is that part of the ship?

A Yes, sir.

Q So, what happened when the fire broke out?

A We tried our best sir to put out the fire. With the help of the Iligan City Firemen, we put out the fire in about twenty minutes sir.

Q During the twenty minutes, was [sic] there any damaged incurred by the ship or any to its contents?

A Only the abaca fiber sir. Some abaca fibers were partially burned.

Q As far as you know Mr. Witness, what was the caused [sic] of this fire?

A The caused [sic] of the fire was the cigarette butts improperly dispatched by one of the stevedores unloading the cargo sir.

Q Are these stevedores under your employment?

A No, sir.

[A] No, sir. It was under the stevedoring company, sir.

Q Not [Fortune Sea]?

A Yes, sir.¹⁷

The above-cited testimonies of Capt. Canon undoubtedly show that Northern Transport effectively subjected not only the ship but including its crew under its own exclusive control.

Moreover, although the master and crew of the vessel were those of the shipowner, records show that at the time of the execution of the charter party, Fortune Sea had completely relinquished possession, command, and navigation of M/V Ricky Rey to Northern Transport.

As such, the master and all the crew of the ship were all made subject to the direct control and supervision of the charterer. In fact, the instructions on the voyage and other relative directions or orders were handed out by Northern Transport. Thus, the CA correctly ruled that the nature of the vessel's charter is one of bareboat or demise charter.

¹⁷ Id. at 40-44.

WHEREFORE, the Court hereby **AFFIRMS** the Decision of the Court of Appeals dated February 10, 2009 in CA-G.R. CV No. 88607 finding the Time Charter Party agreement entered into by Fortune Sea Carrier, Inc. and Northern Mindanao Transport Co., Inc. as in reality a Bareboat Charter which effectively converted the subject M/V Ricky Rey as a private carrier. As such, this Court likewise **AFFIRMS** the decision of the CA in dismissing the Complaint for Sum of Money filed by petitioner Federal Phoenix Assurance Co., Ltd. for lack of merit.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

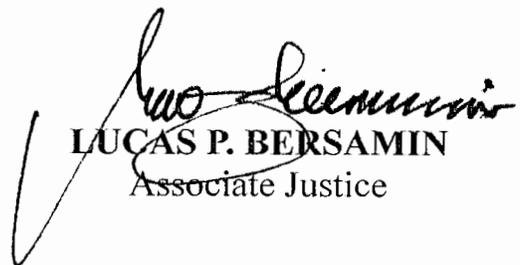
WE CONCUR:



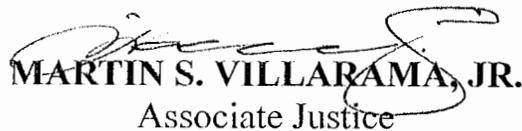
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



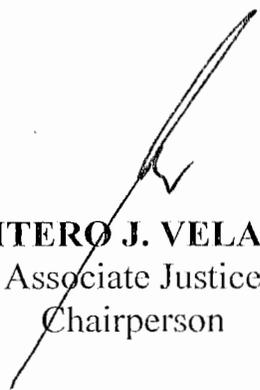
LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

ATTESTATION

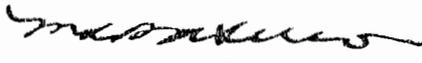
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



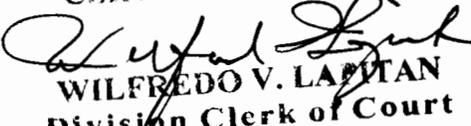
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JAN 13 2016

