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existing on the title of the subject property when the Notice of Levy on Execution and Certificate of Sale in favor of petitioner were inscribed thereon. Thus, petitioner's claim over the subject property must yield to the earlier encumbrance registered by respondent Garcia.

WHEREFORE, the petition is *DISMISSED*. The Decision dated August 12, 2004 and Resolution dated November 18, 2004 of the Court of Appeals in CA-G.R. CV No. 61591 are *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Carpio,[*] *Velasco, Jr.*, and *Nachura, JJ.*, concur.

THIRD DIVISION

[G.R. No. 171194. February 4, 2010]

ASIAN TERMINALS, INC., *petitioner, vs.* **DAEHAN FIRE AND MARINE INSURANCE CO., LTD.,** *respondent.*

SYLLABUS

CIVIL LAW; OBLIGATIONS; AN ARRASTRE OPERATOR SHOULD OBSERVE THE SAME DEGREE OF DILIGENCE AS THAT REQUIRED OF A COMMON CARRIER AND A WAREHOUSEMAN; BURDEN OF PROOF RESTS UPON THE ARRASTRE OPERATOR; CASE AT BAR. — Respondent, as insurer, was subrogated to the rights of the consignee, pursuant to the subrogation receipt executed by the latter in favor of the former. The relationship, therefore, between the consignee and the arrastre operator must be examined. This relationship is akin to that existing between

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[*] Designated to sit as an additional member in lieu of Associate Justice Jose C. Mendoza per Special Order No. 818 dated January 18, 2010.

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> the consignee and/or the owner of the shipped goods and the common carrier, or that between a depositor and a warehouseman. In the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. x x x In a claim for loss filed by the consignee (or the insurer), the burden of proof to show compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator. Since the safekeeping of the goods is its responsibility, it must prove that the losses were not due to its negligence or to that of its employees. To prove the exercise of diligence in handling the subject cargoes, petitioner must do more than merely show the possibility that some other party could be responsible for the loss or the damage. It must prove that it exercised due care in the handling thereof. x x x The stipulation requiring the consignee to inform the arrastre operator and to give advance notice of the actual invoice value of the goods to be put in its custody is adopted for the purpose of determining its liability, that it may obtain compensation commensurate to the risk it assumes, not for the purpose of determining the degree of care or diligence it must exercise as a depositary or warehouseman.

APPEARANCES OF COUNSEL

Cruz Capule Marcon & Nabaza Law Offices for petitioner.
Gaudioso C. De Lunas for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) September 14, 2005 Decision[1] and December 20, 2005

[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 25-47.

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Resolution[2] in CA-G.R. CV No. 83647. The assailed Decision reversed and set aside the Regional Trial Court (RTC)[3] August 4, 2004 Decision[4] in Civil Case No. 01-101309, while the assailed resolution denied petitioner Asian Terminals, Inc.'s motion for reconsideration.

The case stemmed from the following facts:

On July 8, 2000, Doosan Corporation (Doosan) shipped twenty-six (26) boxes of printed aluminum sheets on board the vessel *Heung-A Dragon* owned by Dongnama Shipping Co., Ltd. (Dongnama).[5] The shipment was covered by Bill of Lading No. DNALHMBUMN010010[6] and consigned to Access International, with address at No. 9 Parada St., San Juan, Metro Manila. Doosan insured the subject shipment with respondent Daehan Fire and Marine Insurance Co., Ltd. under an "all-risk" marine cargo insurance policy,[7] payable to its settling agent in the Philippines, the Smith Bell & Co., Inc. (Smith Bell).

On July 12, 2000, the vessel arrived in Manila and the containerized van was discharged and unloaded in apparent good condition, as no survey and exceptions were noted in the Equipment Interchange Receipt (EIR) issued by petitioner.[8] The container van was stored in the Container Yard of the Port. On July 18, 2000, Access International requested[9] from petitioner and the licensed Customs Broker, Victoria Reyes Lazo (V. Reyes Lazo), a joint survey of the shipment at the place of storage in the Container Yard, but no such inspection was conducted.

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[2] *Id.* at 49-52.

[3] Branch 21, Manila.

[4] Penned by Judge Amor A. Reyes; records, Vol. II, pp. 531-536.

[5] *Rollo,* p. 25.

[6] Exh. "C", records, Vol. I, p. 319.

[7] Policy No. 24010-A00058-0110; Exh. "E", records, Vol. I, p. 321.

[8] *Rollo,* p. 26.

[9] Exh. "M", records, Vol. I, pp. 337-338.

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On July 19, 2000, V. Reyes Lazo withdrew, and petitioner released, the shipment and delivered it to Access International's warehouse in Binondo, Manila.[10] While the shipment was at Access International's warehouse, the latter, together with its surveyor, Lloyd's Agency, conducted an inspection and noted that only twelve (12) boxes were accounted for, while fourteen (14) boxes were missing.[11] Access International thus filed a claim against petitioner and V. Reyes Lazo for the missing shipment amounting to $34,993.28.[12] For failure to collect its claim, Access International sought indemnification from respondent in the amount of $45,742.81.[13] On November 8, 2000, respondent paid the amount of the claim and Access International accordingly executed a Subrogation Receipt in favor of the former.[14]

On July 10, 2001, respondent, represented by Smith Bell, instituted the present case against Dongnama, Uni-ship, Inc. (Uni-ship), petitioner, and V. Reyes Lazo before the RTC.[15] Respondent alleged that the losses, shortages and short deliveries sustained by the shipment were caused by the joint fault and negligence of Dongnama, petitioner and V. Reyes Lazo.

Dongnama and Uni-ship filed a Motion to Dismiss[16] on the grounds that Daehan lacked legal capacity to sue and that the complaint stated no cause of action. The trial court, however, denied the motion in an Order dated August 31, 2001.[17]

Thereafter, Dongnama and Uni-ship filed their Answer with Counterclaim and Cross-Claim *Ad Cautelam* denying any liability

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[10] *Rollo*, p. 26.

[11] Records, Vol. I, pp. 323-330.

[12] Exhs. "H" and "I", *id.* at 331-332.

[13] Exh. "L", records, Vol. I, p. 336.

[14] Exh. "A", records, Vol. I, p. 317.

[15] Records, Vol. I, pp. 1-4.

[16] *Id.* at 18-25.

[17] *Id.* at 30.

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for the damages/losses sustained by the shipment, pointing out that it was on a "Full Container Load," "Said to Contain," and "Shipper's Load and Count" bases, under which they had no means of verifying the contents of the containers. They also alleged that the container van was properly discharged from the vessel with seals intact and no exceptions noted. Moreover, they claimed that the losses occurred while the subject shipment was in the custody, possession or control of the shipper, its trucker, the arrastre operator, or their representatives, or due to the consignee's own negligence. They further questioned the absence of notice of loss within the three (3)-day period provided under the Carriage of Goods by Sea Act. Finally, they averred that their liability, if there be any, should only be limited to US$500.00 per package or customary freight unit. [18]

For its part, petitioner denied liability, claiming that it exercised due diligence in handling and storing the subject container van. It, likewise, assailed the timeliness of the complaint, having been filed beyond the fifteen (15)-day period under its Contract for Cargo Handling Services with the Philippine Ports Authority (PPA). If at all, petitioner added, its liability should only be limited to ₱5,000.00.[19]

In her Answer, V. Reyes Lazo questioned respondent's capacity to sue in Philippine courts. She accused respondent of engaging in a fishing expedition since the latter could not determine with clarity the party at fault.[20]

On December 2, 2002, in their Joint Motion to Dismiss,[21] respondent, on one hand, and Dongnama and Uni-ship, on the other, prayed that the complaint be dismissed against the latter, alleging that they could not be held liable based on the EIR. The motion was granted on December 9, 2002.[22] Consequently, the case proceeded as against petitioner and V. Reyes Lazo.

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[18] *Rollo*, pp. 28-29.

[19] Records, Vol. I, pp. 43-46.

[20] *Id.* at 134-138.

[21] *Id.* at 255-258.

[22] *Id.* at 263.

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As no amicable settlement was reached during the pretrial, trial on the merits ensued.

On August 4, 2004, the RTC dismissed the complaint for insufficiency of evidence.[23] It found the complaint fatally flawed, having been signed by a person who had no authority from complainant (respondent herein) corporation to act for and on behalf of the latter.[24] The RTC, likewise, held that respondent failed to prove that the loss/damage of the subject cargoes was due to the fault or negligence of petitioner or V. Reyes Lazo. It added that the cargoes were damaged when they were already in Access International's possession, considering that an inspection was conducted in the latter's warehouse.[25]

On appeal, the CA reversed and set aside the RTC decision. The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated August 4, 2004 of the Regional Trial Court of Manila, Branch 21 in Civil Case No. 01-101309 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered ordering the defendants-appellees Asian Terminals, Inc. and V. Reyes Lazo to pay, jointly and severally, the plaintiff-appellant Daehan Fire & Marine Insurance Co., Ltd. the sums of ₱2,295,374.20 with interest at the legal rate (6% per annum) from the date of the filing of the complaint and ₱229,537.42 by way of attorney's fees.
>
> No pronouncement as to costs.
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> SO ORDERED.[26]

Applying the principle of substantial compliance, the CA recognized the validity of respondent's complaint after the submission, *albeit* late, of the board resolution, indicating the authority of the signatory to represent the corporation.[27] Pursuant

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[23] Records, Vol. II, pp. 531-536.

[24] *Id.* at 534-535.

[25] *Id.* at 536.

[26] *Rollo*, pp. 46-47.

[27] *Id.* at 34-37.

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to the Management Contract between petitioner and the PPA, the former may not disclaim responsibility for the shortage of the subject cargoes while the container van remained in its custody for seven (7) days, despite the withdrawal of the subject shipment by the broker's representative without any complaint. Applying *E. Razon, Inc. v. Court of Appeals*,[28] the CA refused to impose the ₱5,000.00 limitation, considering that petitioner was aware of the value of the subject goods shown in the pertinent shipping documents.[29] The CA added that petitioner could not disclaim any liability, having refused or ignored Access International's request for a joint survey at the time when the goods were still in the possession and custody of the former.[30] Lastly, V. Reyes Lazo was also made liable jointly and severally with petitioner in negligently withdrawing the container van from the premises of the pier, notwithstanding Access International's request for a joint survey.[31]

Aggrieved, petitioner comes before us in this petition for review on *certiorari*, raising the following issues:

1. WHETHER OR NOT PETITIONER ATI IS LIABLE FOR THE LOSS TO THE SUBJECT SHIPMENT NOTWITHSTANDING THE ACKNOWLEDGMENT BY THE CONSIGNEE'S BROKER/ REPRESENTATIVE IN THE EQUIPMENT INTERCHANGE RECEIPT THAT THE SHIPMENT WAS RECEIVED IN GOOD ORDER AND WITHOUT EXCEPTION.

2. WHAT IS THE EXTENT OF PETITIONER ATI'S LIABILITY, IF ANY?[32]

Simply put, we are tasked to determine the propriety of making petitioner, as arrastre operator, liable for the loss of the subject shipment, and if so, the extent of its liability.

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[28] 244 Phil. 375 (1988).

[29] *Rollo*, pp. 41-44.

[30] *Id.* at 45-46.

[31] *Id.* at 46.

[32] *Id.* at 228.

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Petitioner denies liability for the loss of the subject shipment, considering that the consignee's representative signified receipt of the goods in good order without exception. This being the case, respondent, as subrogee, is bound by such acknowledgment. As to the extent of its liability, if there be any, petitioner insists that it be limited to ₱5,000.00 per package, as provided for in its Management Contract with the PPA.[33]

We do not agree with petitioner.

Respondent, as insurer, was subrogated to the rights of the consignee, pursuant to the subrogation receipt executed by the latter in favor of the former. The relationship, therefore, between the consignee and the arrastre operator must be examined. This relationship is akin to that existing between the consignee and/or the owner of the shipped goods and the common carrier, or that between a depositor and a warehouseman.[34] In the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[35]

The loss of 14 out of 26 boxes of printed aluminum sheets is undisputed. It is, likewise, settled that Dongnama (the shipping company) and Uni-ship were absolved from liability because respondent realized that they had no liability based on the EIR issued by Dongnama. This resulted in the withdrawal of the complaint against them. What remained was the complaint against petitioner as the arrastre operator and V. Reyes Lazo as the customs broker. Records show that the subject shipment was discharged from the vessel and placed under the custody of petitioner for a period of seven (7) days. Thereafter, the same

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[33] *Id.* at 228-233.

[34] *Summa Insurance Corporation v. CA*, 323 Phil. 214 , 222 (1996); see *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*, G.R. No. 83613, February 21, 1990, 182 SCRA 455.

[35] *Summa Insurance Corporation v. CA*, *supra* note 34, at 222-223.

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was withdrawn from the container yard by the customs broker, then delivered to the consignee. It was after such delivery that the loss of 14 boxes was discovered. Hence, the complaint against both the arrastre operator and the customs broker.

In a claim for loss filed by the consignee (or the insurer), the burden of proof to show compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator. Since the safekeeping of the goods is its responsibility, it must prove that the losses were not due to its negligence or to that of its employees.[36] To prove the exercise of diligence in handling the subject cargoes, petitioner must do more than merely show the possibility that some other party could be responsible for the loss or the damage. It must prove that it exercised due care in the handling thereof.[37] Petitioner failed to do this. Instead, it insists that it be exonerated from liability, because the customs broker's representative received the subject shipment in good order and condition without exception. The appellate court's conclusion on this matter is instructive:

> ATI may not disclaim responsibility for the shortage/pilferage of fourteen (14) boxes of printed aluminum sheet while the container van remained in its custody for seven (7) days (at the Container Yard) simply because the alleged representative of the customs broker had withdrawn the shipment from its premises and signed the EIR without any complaint. The signature of the person/broker representative merely signifies that said person thereby frees the ATI from any liability for loss or damage to the cargo so withdrawn while the same was in the custody of such representative to whom the cargo was released. It does not foreclose any remedy or right of the consignee to prove that any loss or damage to the subject shipment occurred while the same was under the custody, control and possession of the arrastre operator.[38]

Clearly, petitioner cannot be excused from culpability simply because another person could be responsible for the loss. This

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[36] *International Container Terminal Services, Inc. v. Prudential Guarantee & Assurance Co., Inc.*, 377 Phil. 1082, 1091 (1999).

[37] *Calvo v. UCPB General Insurance Co., Inc.*, 429 Phil. 244, 254 (2002).

[38] *Rollo*, p. 41.

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is especially true in the instant case because, while the subject shipment was in petitioner's custody, Access International requested[39] that a joint survey be conducted at the place of storage. And as correctly observed by the CA:

> There is no dispute that it was the customs broker who in behalf of the consignee took delivery of the subject shipment from the arrastre operator. However, the trial court apparently disregarded documentary evidence showing that the consignee made a written request on both the appellees ATI and V. Reyes Lazo for a joint survey of the container van on July 18, 2000 while the same was still in the possession, control and custody of the arrastre operator at the Container Yard of the pier. Both ATI and Lazo merely denied being aware of the letters (Exhibits "M" and "N"). The fact remains that the consignee complained of short-delivery and while inspection of the cargo was made only at its warehouse after delivery by the customs broker, the arrastre ATI together with said broker both refused or ignored the written request for a joint survey at the premises of the arrastre. Instead of complying with the consignee's demand, the broker withdrew and the arrastre released the shipment the very next day, July 19, 2000 without even acting upon the consignee's request for a joint survey.[40]

Moreover, it was shown in the Survey Report prepared by Access International's surveyor that petitioner was remiss in its obligations to handle the goods with due care and to ensure that they reach the proper party in good order as to quality and quantity. Specifically, the Survey Report states:

> DELIVERY
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> On July 19, 2000, V. Reyes-Lazo (Licensed Customs Broker) effected delivery of the 1 x 20' Van Container from the Container Yard of said port to the Consignee's designated warehouse at No. 622 Asuncion Street, Binondo, Manila.
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> Prior to withdrawal from the said port, the Broker's representative noticed that the padlock secured to the doors of the Van Container was forcibly pulled-out resulting to its breakage. He then immediately

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[39] Embodied in a letter dated July 18, 2000; records, Vol. I, p. 337.

[40] *Rollo*, p. 45.

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informed the Arrastre Contractors (ATI) and requested that Van Container be opened and inventory of its contents be made as he suspected the contents might have been pilfered.

However, his request was denied averring that stripping of "FCL Van Containers" are not allowed inside the Customs Zone. As all efforts exerted proved futile, he instead bought new padlock and secured same to the Van. He then informed the Consignee about the incident upon delivery of the Container at the Consignee's designated warehouse, who immediately requested for survey.[41]

Considering that both petitioner and V. Reyes Lazo were negligent in the performance of their duties in the handling, storage and delivery of the subject shipment to the consignee, resulting in the loss of 14 boxes of printed aluminum sheets, both shall be solidarily liable for such loss.

As to the extent of petitioner's liability, we cannot sustain its contention that it be limited to ₱5,000.00 per package. Petitioner's responsibility and liability for losses and damages are set forth in Section 7.01 of the Management Contract drawn between the PPA and the Marina Port Services, Inc., petitioner's predecessor-in-interest, to wit:

CLAIMS AND LIABILITY FOR LOSSES AND DAMAGES

Section 7.01. Responsibility and Liability for Losses and Damages; Exceptions. — The CONTRACTOR shall, at its own expense, handle all merchandise in all work undertaken by it, hereunder, diligently and in a skillful, workman-like and efficient manner. The CONTRACTOR shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (₱5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods. This amount of

[41] Records, Vol. I, p. 328.

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Five Thousand Pesos (₱5,000.00) per package may be reviewed and adjusted by the AUTHORITY from time to time. The CONTRACTOR shall not be responsible for the condition or the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by *force majeure* or other causes beyond the CONTRACTOR'S control or capacity to prevent or remedy; PROVIDED that a formal claim together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and Computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRACTOR within fifteen (15) days from day of issuance by the CONTRACTOR of a certificate of non-delivery; PROVIDED, however, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) day period within which to file the claim commences; PROVIDED, finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the package to the consignee.

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The CONTRACTOR shall be solely responsible for any and all injury or damage that may arise on account of the negligence or carelessness of the CONTRACTOR, its agent or employees in the performance of the undertaking under the Contract. Further, the CONTRACTOR hereby agrees to hold free the AUTHORITY, at all times, from any claim that may be instituted by its employee by reason of the provisions of the Labor Code, as amended.[42]

As clearly stated above, such limitation does not apply if the value of the cargo shipment is communicated to the arrastre operator before the discharge of the cargoes.

It is undisputed that Access International, upon arrival of the shipment, declared the same for taxation purposes, as well as for the assessment of arrastre charges and other fees. For the purpose, the invoice, packing list and other shipping documents

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[42] Records, Vol. II, pp. 410-411.

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were presented to the Bureau of Customs as well as to petitioner for the proper assessment of the arrastre charges and other fees. Such manifestation satisfies the condition of declaration of the actual invoices of the value of the goods before their arrival, to overcome the limitation on the liability of the arrastre operator.[43] Then, the arrastre operator, by reason of the payment to it of a commensurate charge based on the higher declared value of the merchandise, could and should take extraordinary care of the special or valuable cargo.[44] What would, indeed, be unfair and arbitrary is to hold the arrastre operator liable for the full value of the merchandise after the consignee has paid the arrastre charges only on a basis much lower than the true value of the goods.[45]

What is essential is knowledge beforehand of the extent of the risk to be undertaken by the arrastre operator, as determined by the value of the property committed to its care. This defines its responsibility for loss of or damage to such cargo and ascertains the compensation commensurate to such risk assumed. Having been duly informed of the actual invoice value of the merchandise under its custody and having received payment of arrastre charges based thereon, petitioner cannot therefore insist on a limitation of its liability under the contract to less than the value of each lost cargo.[46]

The stipulation requiring the consignee to inform the arrastre operator and to give advance notice of the actual invoice value of the goods to be put in its custody is adopted for the purpose of determining its liability, that it may obtain compensation commensurate to the risk it assumes, not for the purpose of determining the degree of care or diligence it must exercise as a depositary or warehouseman.[47]

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[43] *E. Razon, Inc. v. Court of Appeals*, *supra* note 28, at 380.

[44] *Summa Insurance Corporation v. CA*, *supra* note 34, at 226.

[45] *Id.*

[46] *E. Razon, Inc. v. Court of Appeals*, *supra* note 28, at 380.

[47] *Id.* at 381.

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WHEREFORE, premises considered, the petition is hereby *DENIED* for lack of merit. The Court of Appeals September 14, 2005 Decision and December 20, 2005 Resolution in CA-G.R. CV No. 83647 are *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Corona (Chairperson), Velasco, Jr.,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 176464. February 4, 2010]

EDWARD N. LIM, *petitioner, vs.* **MA. CHERYL STA. CRUZ-LIM,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; DISSOLUTION OF MARRIAGE; PSYCHOLOGICAL INCAPACITY AS A GROUND; REQUISITES. — The seminal ruling in *Santos v. Court of Appeals* cites three (3) factors characterizing psychological incapacity to perform the essential marital obligations: (1) gravity, (2) juridical antecedence, (3) incurability. We expounded on the foregoing, to wit: The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved. Given the foregoing stringent requisites and without going into the non-exclusive list found in *Republic v. Court of Appeals,* petitioner, as the party alleging his own

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[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 818 dated January 18, 2010.