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SECOND DIVISION

[G.R. No. 147724. June 8, 2004]

LORENZO SHIPPING CORP., *petitioner, vs.* **CHUBB AND SONS, INC., GEARBULK, LTD. and PHILIPPINE TRANSMARINE CARRIERS, INC.,** *respondents***.**

SYNOPSIS

Petitioner was the carrier of 581 bundles of ERW black steel pipes which were damaged by seawater while in transit. The consignee of the subject shipment, Sumitomo Corp. of San Francisco, California, claimed insurance therefor with respondent insurer, Chubb and Sons, Inc., who, in turn, filed a complaint against petitioner. The trial court and the appellate court both ruled in favor of respondent insurer and hence, this appeal.

On the issue of respondent insurer's capacity to sue, the Court ruled that Sumimoto Corp. may be a foreign corporation doing business in the Philippines without a license, but, it does not follow that respondent, as lawful subrogee to the claim of Sumimoto Corp. against petitioner, has no capacity to sue in our jurisdiction. Respondent insurer had alleged that it is not doing business in the Philippines but is suing under an isolated transaction. The law does not prohibit this. Foreign corporations need no license to perform a single act of business. On the issue of petitioner's negligence in the care and custody of the consignee's goods, the Court ruled that it was sufficiently established that petitioner had failed to keep its vessel in seaworthy condition. The tank top of the vessel was rusty, thinning and with several holes at different places.

SYLLABUS

1. COMMERCIAL LAW; INSURANCE; SUBROGATION; ELUCIDATED. — Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies

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or securities. The principle covers the situation under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means which the creditor could employ to enforce payment. The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted – he cannot acquire any claim, security, or remedy the subrogor did not have. In other words, a subrogee cannot succeed to a right not possessed by the subrogor. A subrogee in effect steps into the shoes of the insured and can recover only if insured likewise could have recovered. However, when the insurer succeeds to the rights of the insured, he does so only in relation to the debt. The person substituted (the insurer) will succeed to all the rights of the creditor (the insured), having reference to the debt due the latter. In the instant case, the rights inherited by the insurer, respondent Chubb and Sons, pertain only to the payment it made to the insured Sumitomo as stipulated in the insurance contract between them, and which amount it now seeks to recover from petitioner Lorenzo Shipping which caused the loss sustained by the insured Sumitomo. The capacity to sue of respondent Chubb and Sons could not perchance belong to the group of rights, remedies or securities pertaining to the payment respondent insurer made for the loss which was sustained by the insured Sumitomo and covered by the contract of insurance.

2. CIVIL LAW; PERSONS; CIVIL PERSONALITIES; CAPACITY TO SUE; ELUCIDATED. — Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any other disqualifications of a party.

3. COMMERCIAL LAW; CORPORATIONS; FOREIGN CORPORATIONS DOING BUSINESS IN THE PHILIPPINES WITHOUT LICENSE DEPRIVED FROM

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BRINGING ACTION; ISOLATED TRANSACTION NOT INCLUDED. — The law on corporation is clear in depriving foreign corporations which are doing business in the Philippines without a license from bringing or maintaining actions before, or intervening in Philippine courts. Art. 133 of the Corporation Code states: *Doing business without a license.* – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. The law does not prohibit foreign corporations from performing single acts of business. A foreign corporation needs no license to sue before Philippine courts on an isolated transaction. As held by this Court in the case of *Marshall-Wells Company vs. Elser & Company:* The object of the statute (Secs. 68 and 69, Corporation Law) was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts . . . the implication of the law (being) that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business for the Philippines, from seeking redress in the Philippine courts. Likewise, this Court ruled in *Universal Shipping Lines, Inc. vs. Intermediate Appellate Court* that: . . . The private respondent may sue in the 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, for it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license, which bars a foreign corporation from access to our courts.

4. ID.; ID.; ID.; ID.; ISOLATED TRANSACTION; ELUCIDATED. — We reject the claim of petitioner Lorenzo Shipping that respondent Chubb and Sons is not suing under an isolated transaction because the steel pipes, subject of this case, are covered by two (2) bills of lading; hence, two transactions. The stubborn fact remains that these two (2) bills of lading spawned from the single marine insurance policy that

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respondent Chubb and Sons issued in favor of the consignee Sumitomo, covering the damaged steel pipes. The execution of the policy is a single act, an isolated transaction. This Court has not construed the term "isolated transaction" to literally mean "one" or a mere single act. In *Eriks Pte. Ltd. vs. Court of Appeals*, this Court held that: . . . What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase *"isolated transaction*" has a definite and fixed meaning, *i.e. a transaction or series of transactions* set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions. In the case of *Gonzales vs. Raquiza, et al.,* three contracts, hence three transactions were challenged as void on the ground that the three American corporations which are parties to the contracts are not licensed to do business in the Philippines. This Court held that "one single or isolated business transaction does not constitute *doing business* within the meaning of the law. Transactions which are occasional, incidental, and casual — not of a character to indicate a purpose to engage in business — do not constitute the doing or engaging in business as contemplated by law. Where the three transactions indicate no intent by the foreign corporation to engage in a continuity of transactions, they do not constitute doing business in the Philippines."

5. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST; INSURER BY RIGHT OF SUBROGATION. — Rule 3, Section 2 of the 1997 Rules of Civil Procedure defines a real party in interest as one who is entitled to the avails of any judgment rendered in a suit, or who stands to be benefited or injured by it. Where an insurance company as subrogee pays the insured of the entire loss it suffered, the insurer-subrogee is the only real party in interest and must sue in its own name to enforce its right of subrogation against the third party which caused the loss. This is because the insurer in such case having fully compensated its insured,

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which payment covers the loss in full, is subrogated to the insured's claims arising from such loss. The subrogated insurer becomes the owner of the claim and, thus entitled to the entire fruits of the action. It then, thus possesses the right to enforce the claim and the significant interest in the litigation. In the case at bar, it is clear that respondent insurer was suing on its own behalf in order to enforce its right of subrogation.

6. CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; "CLEAN BILL OF LADING"; ELUCIDATED. — A bill of lading, aside from being a contract and a receipt, is also a symbol of the goods covered by it. A bill of lading which has no notation of any defect or damage in the goods is called a "clean bill of lading." A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.

7. ID.; ID.; ID.; VIGILANCE OVER GOODS; PRESUMPTION OF NEGLIGENCE IN CASE OF DAMAGE; CASE AT BAR. — The case law teaches us that mere proof of delivery of goods in good order to a carrier and the subsequent arrival in damaged condition at the place of destination raises a *prima facie* case against the carrier. In the case at bar, M/V Lorcon IV of petitioner Lorenzo Shipping received the steel pipes in good order and condition, evidenced by the clean bills of lading it issued. When the cargo was unloaded from petitioner Lorenzo Shipping's vessel at the Sasa Wharf in Davao City, the steel pipes were rusted all over. M/V San Mateo Victory of respondent Gearbulk, Ltd, which received the cargo, issued Bills of Lading covering the entire shipment, all of which were marked "ALL UNITS HEAVILY RUSTED." R.J. Del Pan Surveyors found that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was rusty, thinning and perforated, thereby exposing the cargo to sea water. There can be no other conclusion than that the cargo was damaged while on board the vessel of petitioner Lorenzo Shipping, and that the damage was due to the latter's negligence. In the case at bar, not only did the legal presumption of negligence attach to petitioner Lorenzo Shipping upon the occurrence of damage to the cargo. More so, the negligence of petitioner was sufficiently established. Petitioner Lorenzo Shipping failed to keep its vessel in seaworthy condition. R.J. Del Pan Surveyors found the tank top of M/V Lorcon IV to be "rusty, thinning, and with several holes at different places." Significantly, petitioner Lorenzo

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Shipping did not even attempt to present any contrary evidence. Neither did it offer any proof to establish any of the causes that would exempt it from liability for such damage. It merely alleged that the: (1) packaging of the goods was defective; and (2) claim for damages has prescribed.

8. COMMERCIAL LAW; COMMON CARRIERS; PRESCRIPTION OF CLAIM FOR DAMAGES. — Art. 366 of the Code of Commerce states: Within the twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average, which may be found therein upon the opening of the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such package, in which case the claim shall be admitted only at the time of the receipt. After the periods mentioned have elapsed, or transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. The twenty-four-hour period prescribed by Art. 366 of the Code of Commerce within which claims must be presented does not begin to run until the consignee has received such possession of the merchandise that he may exercise over it the ordinary control pertinent to ownership. In other words, there must be delivery of the cargo by the carrier to the consignee at the place of destination.

9. ID.; ID.; LAW ON PLACE OF DESTINATION APPLIES. — We find no merit to the contention of respondents Gearbulk and Transmarine that American law governs the contract of carriage because the U.S.A. is the country of destination. Petitioner Lorenzo Shipping, through its M/V Lorcon IV, carried the goods from Manila to Davao City. Thus, as against petitioner Lorenzo Shipping, the place of destination is Davao City. Hence, Philippine law applies.

APPEARANCES OF COUNSEL

Roberto A. Abad for petitioner.

Castillo Laman Tan Pantaleon and San Jose for Chubbs & Sons, Inc.

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D E C I S I O N

PUNO, *J.*:

On appeal is the Court of Appeals' August 14, 2000 Decision[1] in CA-G.R. CV No. 61334 and March 28, 2001 Resolution[2] affirming the March 19, 1998 Decision[3] of the Regional Trial Court of Manila which found petitioner liable to pay respondent Chubb and Sons, Inc. attorney's fees and costs of suit.

Petitioner Lorenzo Shipping Corporation (Lorenzo Shipping, for short), a domestic corporation engaged in coastwise shipping, was the carrier of 581 bundles of black steel pipes, the subject shipment, from Manila to Davao City. From Davao City, respondent Gearbulk, Ltd., a foreign corporation licensed as a common carrier under the laws of Norway and doing business in the Philippines through its agent, respondent Philippine Transmarine Carriers, Inc. (Transmarine Carriers, for short), a domestic corporation, carried the goods on board its vessel M/V San Mateo Victory to the United States, for the account of Sumitomo Corporation. The latter, the consignee, is a foreign corporation organized under the laws of the United States of America. It insured the shipment with respondent Chubb and Sons, Inc., a foreign corporation organized and licensed to engage in insurance business under the laws of the United States of America.

The facts are as follows:

On November 21, 1987, Mayer Steel Pipe Corporation of Binondo, Manila, loaded 581 bundles of ERW black steel pipes worth US$137,912.84[4] on board the vessel M/V Lorcon IV, owned by petitioner Lorenzo Shipping, for shipment to Davao City. Petitioner Lorenzo Shipping issued a clean bill of lading

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[1] CA *Rollo*, pp. 148-158.

[2] *Id.*, p. 190.

[3] Records, vol. 2, pp. 591-593.

[4] Exhibit "D," Records, vol. 2, p. 108.

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designated as Bill of Lading No. T-3[5] for the account of the consignee, Sumitomo Corporation of San Francisco, California, USA, which in turn, insured the goods with respondent Chubb and Sons, Inc.[6]

The M/V Lorcon IV arrived at the Sasa Wharf in Davao City on December 2, 1987. Respondent Transmarine Carriers received the subject shipment which was discharged on December 4, 1987, evidenced by Delivery Cargo Receipt No. 115090.[7] It discovered seawater in the hatch of M/V Lorcon IV, and found the steel pipes submerged in it. The consignee Sumitomo then hired the services of R.J. Del Pan Surveyors to inspect the shipment prior to and subsequent to discharge. Del Pan's Survey Report[8] dated December 4, 1987 showed that the subject shipment was no longer in good condition, as in fact, the pipes were found with rust formation on top and/or at the sides. Moreover, the surveyor noted that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was "rusty, thinning, and with several holes at different places." The rusty condition of the cargo was noted on the mate's receipts and the checker of M/V Lorcon IV signed his *conforme* thereon.[9]

After the survey, respondent Gearbulk loaded the shipment on board its vessel M/V San Mateo Victory, for carriage to the United States. It issued Bills of Lading Nos. DAV/OAK 1 to 7,[10] covering 364 bundles of steel pipes to be discharged at Oakland, U.S.A., and Bills of Lading Nos. DAV/SEA 1 to 6,[11] covering 217 bundles of steel pipes to be discharged at Vancouver, Washington, U.S.A. All bills of lading were marked "ALL UNITS HEAVILY RUSTED."

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[5] Exhibit "F," Records, vol. 2, p. 109.

[6] Exhibits "J" to "J-1-A," Chubb Marine Policy No. JO 37000, Records, vol. 2, pp. 32-37.

[7] Exhibit "5," Records, vol. 2, p. 347.

[8] Exhibit "Y," Records, vol. 3, p. 50.

[9] Records, vol. 2, pp. 551-552.

[10] Exhibits "G-1" to "G-7," Records, vol. 2, pp. 9-15.

[11] Exhibits "N" to "N-5," Records, vol. 3, pp. 323-328.

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While the cargo was in transit from Davao City to the U.S.A., consignee Sumitomo sent a letter[12] of intent dated December 7, 1987, to petitioner Lorenzo Shipping, which the latter received on December 9, 1987. Sumitomo informed petitioner Lorenzo Shipping that it will be filing a claim based on the damaged cargo once such damage had been ascertained. The letter reads:

> Please be advised that the merchandise herein below noted has been landed in bad order ex-Manila voyage No. 87-19 under B/L No. T-3 which arrived at the port of Davao City on December 2, 1987.
>
> The extent of the loss and/or damage has not yet been determined but apparently all bundles are corroded. We reserve the right to claim as soon as the amount of claim is determined and the necessary supporting documents are available.
>
> Please find herewith a copy of the survey report which we had arranged for after unloading of our cargo from your vessel in Davao.
>
> We trust that you shall make everything in order.

On January 17, 1988, M/V San Mateo Victory arrived at Oakland, California, U.S.A., where it unloaded 364 bundles of the subject steel pipes. It then sailed to Vancouver, Washington on January 23, 1988 where it unloaded the remaining 217 bundles. Toplis and Harding, Inc. of San Francisco, California, surveyed the steel pipes, and also discovered the latter heavily rusted. When the steel pipes were tested with a silver nitrate solution, Toplis and Harding found that they had come in contact with salt water. The survey report,[13] dated January 28, 1988 states:

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> We entered the hold for a close examination of the pipe, which revealed moderate to heavy amounts of patchy and streaked dark red/orange rust on all lifts which were visible. Samples of the shipment were tested with a solution of silver nitrate revealing both positive and occasional negative chloride reactions, indicating pipe had come in contact with salt water. In addition, all tension applied metal straps

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[12] Exhibit "1," Records, vol. 2, p. 342.

[13] Exhibit "I," Records, vol. 2, pp. 28-32.

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were very heavily rusted, and also exhibited chloride reactions on testing with silver nitrate.

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It should be noted that subject bills of lading bore the following remarks as to conditions of goods: "ALL UNITS HEAVILY RUSTED." Attached herein is a copy of a survey report issued by Del Pan Surveyors of Davao City, Philippines dated, December 4, 1987 at Davao City, Philippines, which describes conditions of the cargo as sighted aboard the vessel "LORCON IV," prior to and subsequent to discharge at Davao City. Evidently, the aforementioned rust damages were apparently sustained while the shipment was in the custody of the vessel "LORCON IV," prior to being laden on board the vessel "SAN MATEO VICTORY" in Davao.

Due to its heavily rusted condition, the consignee Sumitomo rejected the damaged steel pipes and declared them unfit for the purpose they were intended.[14] It then filed a marine insurance claim with respondent Chubb and Sons, Inc. which the latter settled in the amount of US$104,151.00.[15]

On December 2, 1988, respondent Chubb and Sons, Inc. filed a complaint[16] for collection of a sum of money, docketed as Civil Case No. 88-47096, against respondents Lorenzo Shipping, Gearbulk, and Transmarine. Respondent Chubb and Sons, Inc. alleged that it is not doing business in the Philippines, and that it is suing under an isolated transaction.

On February 21, 1989, respondents Gearbulk and Transmarine filed their answer[17] with counterclaim and cross-claim against petitioner Lorenzo Shipping denying liability on the following grounds: (a) respondent Chubb and Sons, Inc. has no capacity to sue before Philippine courts; (b) the action should be dismissed on the ground of *forum non conveniens*; (c) damage to the steel pipes was due to the inherent nature of the goods or to the insufficiency

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[14] Records, vol. 1, p. 4.

[15] Exhibits "A" and "B," Records, vol. 2, pp. 6-7.

[16] Records, vol. 1, pp. 1-4.

[17] Records, vol. 1, pp. 25-30.

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of packing thereof; (d) damage to the steel pipes was not due to their fault or negligence; and, (e) the law of the country of destination, U.S.A., governs the contract of carriage.

Petitioner Lorenzo Shipping filed its answer with counterclaim on February 28, 1989, and amended it on May 24, 1989. It denied liability, alleging, among others: (a) that rust easily forms on steel by mere exposure to air, moisture and other marine elements; (b) that it made a disclaimer in the bill of lading; (c) that the goods were improperly packed; and, (d) prescription, laches, and extinguishment of obligations and actions had set in.

The Regional Trial Court ruled in favor of the respondent Chubb and Sons, Inc., finding that: (1) respondent Chubb and Sons, Inc. has the right to institute this action; and, (2) petitioner Lorenzo Shipping was negligent in the performance of its obligations as a carrier. The dispositive portion of its Decision states:

> **WHEREFORE**, the judgment is hereby rendered ordering Defendant Lorenzo Shipping Corporation to pay the plaintiff the sum of US$104,151.00 or its equivalent in Philippine peso at the current rate of exchange with interest thereon at the legal rate from the date of the institution of this case until fully paid, the attorney's fees in the sum of ₱50,000.00, plus the costs of the suit, and dismissing the plaintiff's complaint against defendants Gearbulk, Ltd. and Philippine Transmarine Carriers, Inc., for lack of merit, and the two defendants' counterclaim, there being no showing that the plaintiff had filed this case against said defendants in bad faith, as well as the two defendants' cross-claim against Defendant Lorenzo Shipping Corporation, for lack of factual basis.[18]

Petitioner Lorenzo Shipping appealed to the Court of Appeals insisting that: (a) respondent Chubb and Sons does not have capacity to sue before Philippine courts; and, (b) petitioner Lorenzo Shipping was not negligent in the performance of its obligations as carrier of the goods. The appellate court denied the petition and affirmed the decision of the trial court.

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[18] Records, vol. 2, p. 596.

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The Court of Appeals likewise denied petitioner Lorenzo Shipping's Motion for Reconsideration[19] dated September 3, 2000, in a Resolution[20] promulgated on March 28, 2001.

Hence, this petition. Petitioner Lorenzo Shipping submits the following issues for resolution:

(1) Whether or not the prohibition provided under Art. 133 of the Corporation Code applies to respondent Chubb, it being a mere subrogee or assignee of the rights of Sumitomo Corporation, likewise a foreign corporation admittedly doing business in the Philippines without a license;

(2) Whether or not Sumitomo, Chubb's predecessor-in-interest, validly made a claim for damages against Lorenzo Shipping within the period prescribed by the Code of Commerce;

(3) Whether or not a delivery cargo receipt without a notation on it of damages or defects in the shipment, which created a *prima facie* presumption that the carrier received the shipment in good condition, has been overcome by convincing evidence;

(4) Assuming that Lorenzo Shipping was guilty of some lapses in transporting the steel pipes, whether or not Gearbulk and Transmarine, as common carriers, are to share liability for their separate negligence in handling the cargo.[21]

In brief, we resolve the following issues:

(1) whether respondent Chubb and Sons has capacity to sue before the Philippine courts; and,

(2) whether petitioner Lorenzo Shipping is negligent in carrying the subject cargo.

Petitioner argues that respondent Chubb and Sons is a foreign corporation not licensed to do business in the Philippines, and is not suing on an isolated transaction. It contends that because

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[19] CA *Rollo,* pp. 162-181.

[20] *Id*., p. 190.

[21] *Rollo,* pp. 16-17.

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the respondent Chubb and Sons is an insurance company, it was merely subrogated to the rights of its insured, the consignee Sumitomo, after paying the latter's policy claim. Sumitomo, however, is a foreign corporation doing business in the Philippines without a license and does not have capacity to sue before Philippine courts. Since Sumitomo does not have capacity to sue, petitioner then concludes that, neither the subrogee-respondent Chubb and Sons could sue before Philippine courts.

We disagree with petitioner.

In the first place, petitioner failed to raise the defense that Sumitomo is a foreign corporation doing business in the Philippines without a license. It is therefore estopped from litigating the issue on appeal especially because it involves a question of fact which this Court cannot resolve. Secondly, assuming *arguendo* that Sumitomo cannot sue in the Philippines, it does not follow that respondent, as subrogee, has also no capacity to sue in our jurisdiction.

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities.[22] The principle covers the situation under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy.[23] It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means which the creditor could employ to enforce payment.[24]

The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted

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[22] *Black's Law Dictionary* (6th ed., 1990).

[23] *Id.*, (7th ed., 1999).

[24] *Riemer vs. Columbia Medical Plan, Inc.*, 358 Md. 222, 747 A.2d 677 (2000).

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— he cannot acquire any claim, security, or remedy the subrogor did not have.[25] In other words, a subrogee cannot succeed to a right not possessed by the subrogor.[26] A subrogee in effect steps into the shoes of the insured and can recover only if insured likewise could have recovered.

However, when the insurer succeeds to the rights of the insured, he does so only in relation to the debt. The person substituted (the insurer) will succeed to all the rights of the creditor (the insured), having reference to the debt due the latter.[27] In the instant case, the rights inherited by the insurer, respondent Chubb and Sons, pertain only to the payment it made to the insured Sumitomo as stipulated in the insurance contract between them, and which amount it now seeks to recover from petitioner Lorenzo Shipping which caused the loss sustained by the insured Sumitomo. The capacity to sue of respondent Chubb and Sons could not perchance belong to the group of rights, remedies or securities pertaining to the payment respondent insurer made for the loss which was sustained by the insured Sumitomo and covered by the contract of insurance. Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any other disqualifications of a party.[28] Respondent Chubb and Sons who was plaintiff in the trial court does not possess any of these disabilities. On the contrary, respondent Chubb and Sons has

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[25] *Heritage Mut. Ins. Co. vs. Truck Ins. Exchange*, 184 Wis. 2d 247, 516 N.W.2d 8 (Ct. App. 1994).

[26] *Ohio Mut. Ins. Assn., United Ohio Ins. Co. v. Warlaumont*, 124 Ohio App. 3d 473, 706 N.E.2d 793 (12th Dist. Brown County 1997).

[27] *Home Owners' Loan Corp. vs. Henson*, 217 Ind. 554, 29 N.E.2d 873 (1940).

[28] *Columbia Pictures, Inc. vs. Court of Appeals*, 261 SCRA 144 (1996).

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satisfactorily proven its capacity to sue, after having shown that it is not doing business in the Philippines, but is suing only under an isolated transaction, *i.e.*, under the one (1) marine insurance policy issued in favor of the consignee Sumitomo covering the damaged steel pipes.

The law on corporations is clear in depriving foreign corporations which are doing business in the Philippines without a license from bringing or maintaining actions before, or intervening in Philippine courts. Art. 133 of the Corporation Code states:

> *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The law does not prohibit foreign corporations from performing single acts of business. A foreign corporation needs no license to sue before Philippine courts on an isolated transaction.[29] As held by this Court in the case of *Marshall-Wells Company vs. Elser & Company*:[30]

> The object of the statute (Secs. 68 and 69, Corporation Law) was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts . . . the implication of the law (being) that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business for the Philippines, from seeking redress in the Philippine courts.

Likewise, this Court ruled in *Universal Shipping Lines, Inc. vs. Intermediate Appellate Court*[31] that:

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[29] *Eastboard Navigation Ltd. vs. Juan Ismael & Co., Inc.*, 102 Phil 1 (1957); *Aetna Casualty & Surety Co. vs. Pacific Star Lines*, 80 SCRA 635 (1977); *Facilities Management Corp. vs. De la Osa*, 89 SCRA 131 (1979); *Hatibhai Bulakhidas vs. Navarro*, 142 SCRA 1 (1986).

[30] 46 Phil. 70, 74 (1924).

[31] 188 SCRA 170 (1990).

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> . . . The private respondent may sue in the 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, for it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license, which bars a foreign corporation from access to our courts.

We reject the claim of petitioner Lorenzo Shipping that respondent Chubb and Sons is not suing under an isolated transaction because the steel pipes, subject of this case, are covered by two (2) bills of lading; hence, two transactions. The stubborn fact remains that these two (2) bills of lading spawned from the single marine insurance policy that respondent Chubb and Sons issued in favor of the consignee Sumitomo, covering the damaged steel pipes. The execution of the policy is a single act, an isolated transaction. This Court has not construed the term "isolated transaction" to literally mean "one" or a mere single act. In *Eriks Pte. Ltd. vs. Court of Appeals*, this Court held that:[32]

> . . . What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "*isolated transaction*" has a definite and fixed meaning, *i.e. a transaction or series of transactions* set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions. [Italics supplied.]

In the case of *Gonzales vs. Raquiza, et al.*,[33] three contracts, hence three transactions were challenged as void on the ground that the three American corporations which are parties to the contracts are not licensed to do business in the Philippines. This

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[32] 267 SCRA 567 (1997); 13 Words and Phrases, Permanent Edition 195 *citing Brandtjen & Kluge vs. Nanson*, 115 P2d 731, 733, 9 Wash. 2d 362.

[33] 180 SCRA 254 (1989), *citing Antam Consolidated, Inc. v. Court of Appeals*, 143 SCRA 288 (1986).

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Court held that "one single or isolated business transaction does not constitute *doing business* within the meaning of the law. Transactions which are occasional, incidental, and casual — not of a character to indicate a purpose to engage in business — do not constitute the doing or engaging in business as contemplated by law. Where the three transactions indicate no intent by the foreign corporation to engage in a continuity of transactions, they do not constitute doing business in the Philippines."

Furthermore, respondent insurer Chubb and Sons, by virtue of the right of subrogation provided for in the policy of insurance,[34] is the real party in interest in the action for damages before the court *a quo* against the carrier Lorenzo Shipping to recover for the loss sustained by its insured. Rule 3, Section 2 of the 1997 Rules of Civil Procedure defines a real party in interest as one who is entitled to the avails of any judgment rendered in a suit, or who stands to be benefited or injured by it. Where an insurance company as subrogee pays the insured of the entire loss it suffered, the insurer-subrogee is the only real party in interest and must sue in its own name[35] to enforce its right of subrogation against the third party which caused the loss. This is because the insurer in such case having fully compensated its insured, which payment covers the loss in full, is subrogated to the iAnsured's claims arising from such loss. The subrogated insurer becomes the owner of the claim and, thus entitled to the entire fruits of the action.[36] It then, thus possesses the right to enforce the claim and the significant interest in the litigation.[37] In

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[34] Exhibit "J," Records, vol. 2, p. 55.

[35] *United States v. Aetna Casualty & Surety Co., 338 U.S.* 366, 380-81, 70 S.Ct. 207, 215, 94 L.Ed. 171 (1949); *Frank Briscoe Co. v. Georgia Sprinkler Co.* (1983, CA11 Ga) 713 F2d 1500; *Royal Ins. Co. of America v. U.S.*, 998 F. Supp. 351 (S.D.N.Y. 1998).

[36] *Land v. Tall House Bldg. Co*., 563 S.E.2d 8 (N.C. App. 2002), *citing Burgess v. Trevathan*, 236 N.C. 157, 160, 72 S.E.2d 231, 233 (1952); *Metropolitan Property & Cas. v. Harper*, 7 P.3d 541, 168 Or. App. 358 (Or. App. 2000); *Shambley v. Jobe-Blackley Plumbing and Heating Co*., 142 S.E.2d 18, 264 N.C. 456, 13 A.L.R.3d 224 (N.C. 1965).

[37] *Virginia Elec. & Power Co. v. Westinghouse Elec. Corp.*, 485 F.2d 78, 83 (4th Cir. 1973).

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the case at bar, it is clear that respondent insurer was suing on its own behalf in order to enforce its right of subrogation.

On the second issue, we affirm the findings of the lower courts that petitioner Lorenzo Shipping was negligent in its care and custody of the consignee's goods.

The steel pipes, subject of this case, were in good condition when they were loaded at the port of origin (Manila) on board petitioner Lorenzo Shipping's M/V Lorcon IV en route to Davao City. Petitioner Lorenzo Shipping issued clean bills of lading covering the subject shipment. A bill of lading, aside from being a contract[38] and a receipt,[39] is also a symbol[40] of the goods covered by it. A bill of lading which has no notation of any defect or damage in the goods is called a "clean bill of lading."[41] A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.[42]

The case law teaches us that mere proof of delivery of goods in good order to a carrier and the subsequent arrival in damaged condition at the place of destination raises a *prima facie* case against the carrier.[43] In the case at bar, M/V Lorcon IV of petitioner Lorenzo Shipping received the steel pipes in good order and condition, evidenced by the clean bills of lading it issued. When the cargo was unloaded from petitioner Lorenzo Shipping's vessel at the Sasa Wharf in Davao City, the steel pipes were rusted all over. M/V San Mateo Victory of respondent Gearbulk, Ltd, which received the cargo, issued Bills of Lading

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[38] Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* vol. IV, 1987 ed., p. 119, citing *Government vs. Ynchausti & Co.,* 40 Phil. 219 (1919).

[39] 28 Am Jur 2d 264.

[40] Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* vol. IV, 1987 ed., p. 119, citing *Williston on Contracts,* Sec. 405 b.

[41] *Id.,* p. 121, *citing* 2 *Williston on Sales,* Sec. 405 c.

[42] *Westway Coffee Corp. vs. M/V Netuno,* 675 F.2d 30, 32 (1982).

[43] *Coastwise Lighterage Corp. vs. Court of Appeals,* 245 SCRA 796 (1995).

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Nos. DAV/OAK 1 to 7 and Nos. DAV/SEA 1 to 6 covering the entire shipment, all of which were marked "ALL UNITS HEAVILY RUSTED." R.J. Del Pan Surveyors found that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was rusty, thinning and perforated, thereby exposing the cargo to sea water. There can be no other conclusion than that the cargo was damaged while on board the vessel of petitioner Lorenzo Shipping, and that the damage was due to the latter's negligence. In the case at bar, not only did the legal presumption of negligence attach to petitioner Lorenzo Shipping upon the occurrence of damage to the cargo.[44] More so, the negligence of petitioner was sufficiently established. Petitioner Lorenzo Shipping failed to keep its vessel in seaworthy condition. R.J. Del Pan Surveyors found the tank top of M/V Lorcon IV to be "rusty, thinning, and with several holes at different places." Witness Captain Pablo Fernan, Operations Manager of respondent Transmarine Carriers, likewise observed the presence of holes at the deck of M/V Lorcon IV.[45] The unpatched holes allowed seawater, reaching up to three (3) inches deep, to enter the flooring of the hatch of the vessel where the steel pipes were stowed, submerging the latter in sea water.[46] The contact with sea water caused the steel pipes to rust. The silver nitrate test, which Toplis and Harding employed, further verified this conclusion.[47] Significantly, petitioner Lorenzo Shipping did not even attempt to present any contrary evidence. Neither did it offer any proof to establish any of the causes that would exempt

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[44] Article 1735, Civil Code. 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.

[45] Deposition, Pablo M. Fernan, 16 April 1996, pp. 94-95.

[46] Deposition, Edgar C. Aduna, 20 February 1990, pp. 7-8, 32; Deposition, Segundo Grande, 15 April 1996, pp. 8-10.

[47] Deposition, Bernard Wormgoor, 05 December 1989, pp. 16-17, 33-34.

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it from liability for such damage.[48] It merely alleged that the: (1) packaging of the goods was defective; and (2) claim for damages has prescribed.

To be sure, there is evidence that the goods were packed in a superior condition. John M. Graff, marine surveyor of Toplis and Harding, examined the condition of the cargo on board the vessel San Mateo Victory. He testified that the shipment had superior packing "because the ends were covered with plastic, woven plastic. Whereas typically they would not go to that bother . . . Typically, they come in with no plastic on the ends. They might just be banded, no plastic on the ends . . ."[49]

On the issue of prescription of respondent Chubb and Sons' claim for damages, we rule that it has not yet prescribed at the time it was made.

Art. 366 of the Code of Commerce states:

> Within the twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average, which may be found therein upon the opening of the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such package, in which case the claim shall be admitted only at the time of the receipt.

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[48] 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 or omission of the shipper or owner of the goods;

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

(5) Order or act of competent public authority.

[49] Deposition, John M. Graff, 05 December 1989, pp. 12-13, 36.

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After the periods mentioned have elapsed, or transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

A somewhat similar provision is embodied in the Bill of Lading No. T-3 which reads:[50]

NOTE: No claim for damage or loss shall be honored twenty-four (24) hours after delivery.

(Ref. Art. 366 C Com.)

The twenty-four-hour period prescribed by Art. 366 of the Code of Commerce within which claims must be presented does not begin to run until the consignee has received such possession of the merchandise that he may exercise over it the ordinary control pertinent to ownership.[51] In other words, there must be delivery of the cargo by the carrier to the consignee at the place of destination.[52] In the case at bar, consignee Sumitomo has not received possession of the cargo, and has not physically inspected the same at the time the shipment was discharged from M/V Lorcon IV in Davao City. Petitioner Lorenzo Shipping failed to establish that an authorized agent of the consignee Sumitomo received the cargo at Sasa Wharf in Davao City. Respondent Transmarine Carriers as agent of respondent Gearbulk, Ltd., which carried the goods from Davao City to the United States, and the principal, respondent Gearbulk, Ltd. itself, are not the authorized agents as contemplated by law. What is clear from the evidence is that the consignee received and took possession of the entire shipment only when the latter reached the United States' shore. Only then was delivery made and completed. And only then did the 24-hour prescriptive period start to run.

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[50] Exhibit "2," Records, vol. 2, p. 343.

[51] Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* vol. IV, 1987 ed., p. 138, *citing Cordoba vs. Warner, Barnes and Co.*, 1 Phil 7, 10 (1901).

[52] *Ibid., citing New Zealand Ins. Co., Ltd. vs. Choa Joy*, 97 Phil. 646 (1955).

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Finally, we find no merit to the contention of respondents Gearbulk and Transmarine that American law governs the contract of carriage because the U.S.A. is the country of destination. Petitioner Lorenzo Shipping, through its M/V Lorcon IV, carried the goods from Manila to Davao City. Thus, as against petitioner Lorenzo Shipping, the place of destination is Davao City. Hence, Philippine law applies.

IN VIEW THEREOF, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 61334 dated August 14, 2000 and its Resolution dated March 28, 2001 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr. and *Tinga, JJ.*, concur.

THIRD DIVISION

[G.R. No. 148233. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUISITO D. BUSTINERA,** *appellant*.

SYNOPSIS

Appellant was hired as taxi driver of ESC Transport and assigned to drive a Daewoo Racer with plate no. PWH-266. On December 25, 1996, appellant reported for work and drove the taxi but failed to return it on the same day as he was supposed to. The taxi was later recovered on January 9, 1997 in Lagro, Quezon City. The trial court ruled appellant guilty of qualified theft and hence, this appeal.

Appellant was guilty of carnapping under a special law, RA 6539, and not qualified theft under the Revised Penal Code. Carnapping is defined as the taking, with intent to gain, of a