

Judgment: Establishing Liability of the Custodian of things

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Summary

The Insurance company (the Appellant) sought recourse against the Respondent (an oil company) for the value of compensation paid by it to the insured on the basis that the cause of the damage to the Respondent's property (and its neighbours) was caused by things under the Respondent's control. In this case, the Insurance Company's claim was rejected by the Federal Court of First Instance. The decision was confirmed by the Federal Court of Appeal and the Federal Supreme Court.

The Court of First Instance argued that if the cause is unknown and the investigation reports can not confirm the cause, liability of the custodian of the thing will be avoided only if he proves that the occurrence of the damage occurred through a cause that could not have been prevented (Article 316 of the Civil Code).

Article 316 provides that:

"Any person who has things under his control which require special care in order to prevent their causing harm, or mechanical equipment, shall be liable for any harm done by such things or equipment, save to the extent that harm could not have been averted. The above is without prejudice to any special provisions laid down in this regard."

It was considered appropriate to expressly exclude damage that could not have been averted because the law imposes an obligation only in respect of what can be done. In this case, the Court of First Instance recognised that the fire started in the area of the oil company's premises (its warehouse) but the source of that fire was unknown. The oil company's warehouse and storage of oil can not be considered a 'thing,' the custodianship of which justifies the requirement of any special care. The court believed that the oil, in its natural state, did not impose a danger and confirmed that the causal connection between the harm suffered by the Appellant's insured and the thing in the custodianship of the defendant, could not be established.

In addition, a finding of fact as to the causal connection between the default and the harm, or a finding that there was no such action, and the assessment of the elements of harm giving rise to compensation, are matters of fact within the independent discretion of the trial court and should not be raised before the Supreme Court.

Court of First Instance

The Court of First Instance dismissed the Appellant's case and found the Respondent not liable for damages (as one liable for things) under Article 316 of the Civil Code and not liable in tort under Article 282 of the Civil Code because there was no proof of its fault or its liability under Article 283 of the Civil Code as a direct actor as there was no element of deliberateness or wrongdoing in order for it to give rise to liability.

Court of Appeal

The Court of Appeal confirmed the Court of First Instance's decision and dismissed the appeal.

Supreme Court

The Supreme Court confirmed the Court of Appeal's decision. The effect of Article 316 of the Civil Code is that if damage is caused, and it arises out of a thing the custodianship of which requires special care to prevent it from doing damage, and the aggrieved party demonstrates that there is a causal connection between the harm suffered by him and the thing in the custodianship of the defendant, then the liability of the latter will be made out, not on the basis of presumed fault on his part, but on the basis of the rule that the burden accompanies the benefit. In this case, it was not established that the oil company's warehouse played a positive part in the causing of the damage. In addition, as mentioned in the summary above, a finding of fact as to the causal connection between the default and the harm, or a finding that there was no such action, and the assessment of the elements of harm giving rise to compensation, are matters of fact within the independent discretion of the trial court and should not be raised before the Supreme Court. Accordingly, the Supreme Court dismissed the case.