

CONTINENTAL CEMENT CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND MANILA INTEROCEAN LINES, INC., RESPONDENTS.

G.R. No. L-52196. December 14, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for certiorari to review the majority decision of the Court of Appeals promulgated on June 11, 1979 in CA-G.R. No. 59777-R entitled "Continental Cement Corporation, plaintiff-appellant vs. Manila Interocean Lines, Inc., defendant-appellee,"[1] affirming the decision of the Court of First Instance of Rizal, Quezon City, Branch IV, in Civil Case No. 12252, the dispositive part of which reads:

"WHEREFORE, this Court hereby finds the plain-tiff liable to the defendant and hereby renders judgment ordering the plaintiff to pay the defendant the following (1) The amount of U.S.\$78,017.68 as the balance of the freight charges due from plain-tiff to the defendant with interest at 6% computed from November 28, 1967 until fully paid; (2) The amount in Philippine currency must be computed at the prevailing rate of exchange on the date of payment; (3) The amount of P25,000 as attorney's fees is deemed reasonable compensation in defendant's favor.

SO ORDERED.

Pasay City, Philippines, July 18, 1975."[2]

The motion for reconsideration of Continental Cement Corporation was denied.[3]

The petitioner Continental Cement Corporation is a domestic corporation engaged in the manufacture and sale of cement for domestic use and exportation.

The private respondent Manila Interocean Lines, Inc. is also a domestic corporation engaged in interocean shipping.

The petitioner was the awardee or end-user of heavy machineries and equipment for cement manufacture as reparations from Japan through the Philippine Reparations Commission.

The private respondent, as a shipping company, was also a re-cipient of inter-cargo vessels as reparations.

In 1967, the petitioner shipped on board the private respondent's vessel M/V "Irene 1,469 packages of cement machineries and equipment, through the Reparations Commission consisting of machineries and equipment for a cement plant, all consigned to the Reparations Commission and which arrived at the Port of Manila on June 20, 1967.

Under the contract of affreightment,[4] the petitioner was bound to pay freight charges in the amount of about P300,000.00 including all necessary expenses and normal charges after unloading at the piers within a period of 120 days from the arrival of the vessel M/V "Irene" at the Port of Manila on June 20, 1967 with a freight rebate of

not less than 30% on the basic freight rates.

When the shipment arrived in the Port of Manila, a dispute arose between the petitioner and the private respondent on the time and manner of payment of the freight charges.

The petitioner demanded that the shipment be unloaded shipside on barges for delivery to a customs bonded warehouse, invoking the right to the period of 120 days within which to pay the freight charges. The private respondent refused to release said shipment until the full payment of the freight charges. Hence, the shipment was unloaded ship-side on the pier, as a result of which stevedoring, arrastre, storage, conduction and other charges and fees were unduly incurred and accumulated.

The private respondent finally decided, after due notice to the parties concerned by publication, to sell at public auction the reparation machineries in the total amount of P573,401.56 plus interest and costs of sale to cover the alleged unpaid freight charges.

In view thereof, the petitioner Continental Cement Corporation filed a complaint on July 18, 1968 in the Court of First Instance of Rizal at Quezon City; Branch IV, against the private respondent, Manila Interocean Lines, Inc. for damages, seeking the following relief:

"WHEREFORE, it is most respectfully prayed this Hon. Court that judgment be rendered sentencing defendant to pay plaintiff the sum of P200,000.00 as actual damages and attorney's fees of P20,000.00, aside from costs.

It is likewise respectfully prayed that pending the hearing on the merits hereof and by reason of the urgency of the relief prayed for, a writ of preliminary injunction, ex-parte if necessary, or at least a restraining order, be issued upon filing by herein plaintiff of a bond in an amount to be determined by this Hon. Court executed in favor of the defendant conditioned for the payment of whatever damages said defendant may sustain should plaintiff be found later as not entitled thereto, commanding defendants, its agents and/or representatives, to desist and refrain from conducting and carrying out the sale at public auction of the 1,469 packages of cement plant machineries and equipment presently located at plaintiff's bonded warehouse at the Atlas Textile Mills Compound at Novaliches, Quezon City starting July 22, 1968 at 10:00 in the morning and everyday thereafter, until further orders from this Hon. Court, and to make said injunction permanent.

Plaintiff finally prays for such other and further relief as this Hon. Court may deem just and equitable in the premises.

Manila, for Quezon City, July 17, 1968."[5]

The trial court issued a temporary restraining order to stop the sale of the machineries at public auction upon the filing by the plaintiff, petitioner herein, of a bond in the amount of P50,000.00 and set for hearing the petition for preliminary injunction.[6]

However, before a preliminary injunction was issued, the parties submitted the following partial compromise agreement:

"COME NOW the parties, plaintiff and defendant Manila Interocean Lines, Inc., by their respective undersigned counsels, and by way of partial compromise agreement of the subject-matter of this case, to this Hon. Court respectfully manifest:

"1. That, defendant Manila Interocean Lines, Inc., claims that the total freight payable by plaintiff in its favor for the shipment on board its vessel M/V "Irene" of 1,469 packages of reparations cargo subject-matter of this case is P573,401.56, plus interest and other charges;

"2. That on the other hand, herein plaintiff disputes liability for freight charges to the extent of said amount of P573,401.56, plaintiff maintaining that its liability for these freight charges is only to the extent of

P269,132.58;

"3. That plaintiff is ready and willing to tender payment as it hereby tenders payment of said amount of P269,132.58 which it considers as the net undisputed freight charges subject-matter of this case in favor of the defendant Manila Interocean Lines, Inc., leaving the matter of the balance from the total amount being claimed by said defendant as hereinabove stated, subject of final adjudication in this case, without defendant waiving any defenses and counterclaims which it may have;

"4. That in consideration of the payment by plain-tiff of the aforesaid amount of P269,132.58, defendant Manila Interocean Lines, Inc., hereby binds and obligates itself, simultaneously with the receipt of the payment of said amount, to issue in favor of the plaintiff the corresponding delivery permits addressed to and in the form furnished by the Bureau of Customs covering the aforesaid cargo of 1,469 packages of machineries for a cement plant described in two (2) bills of lading Nos. MM-2 issued on May 29, 1967 and YM-6 issued June 16, 1967 to enable herein plaintiff to withdraw said cargoes from the customs bonded warehouse where they are present-ly deposited, without prejudice to the continuation of this action with respect to the balance of said freight that the parties herein dispute and with prejudice further to the continuing vitality of any lien which defendant may have on this cargo.

"WHEREFORE, it is respectfully prayed this Hon. Court that an order issue approving the foregoing partial compromise agreement and enjoining the parties herein to adhere strictly to the terms thereof.

"Manila for Quezon City, November, 1968

"CONTINENTAL CEMENT CORPORATION

"By:

ERIBERTO D. IGNACIO

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Escolta, Manila

"MANILA INTEROCEAN

LINES, INC.

"By:

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Messrs. Manguera & Associates

Reparations Commission

NMI Building, Buendia & Ayala Ave.

Makati, Rizal[7]

In its original answer to the petitioner's complaint filed on December 22, 1969, the Manila Interocean Lines, Inc. interposed only a counterclaim for actual and other damages in the amount of P300,000.00 allegedly because the plaintiff's suit was unjustified and for attorney's fees in the sum of P30,000.00 which the defendant allegedly incurred by virtue of plaintiff's unwarranted filing of the complaint.[8]

On February 23, 1971, the defendant Manila Interocean Lines, Inc. filed a motion for leave to amend the answer allegedly because the said defendant "had inadvertently failed to include in its answer by way of counterclaim its claim for P573,401.56 less P269,132.58 as freight charges. In the amended answer, the defendant interposed an additional counterclaim for the balance of the freight charges.[9]

The amended answer was admitted by the trial court.

At the hearing in the trial court on September 24, 1973, counsels for both parties made a joint manifestation that the only issue for resolution of the Court was the counterclaim. With the conformity of plaintiff's counsel, the defendant's motion to dismiss the complaint was granted.[10]

With the dismissal of the complaint, the only remaining issue to be resolved was whether the defendant's claim for freight charges had been fully liquidated.

The plaintiff claimed that full payment had been made to the de-fendant with the acceptance by the latter of P269,132.58 on November 22, 1968.

In support of this claim the plaintiff, petitioner herein, presented in evidence a voucher marked as Exhibit "6" which showed that the Manila Interocean Lines, Inc. had received the sum of P269,132.58 as full payment. Above the signature of Atty. Nordy P. Diploma, counsel and vice-president of Manila Interocean Lines, Inc. are the following particulars:

- a. Full payment to ANTONIO MARTEL, BOTELHO SHIPPING CO. & MANILA INTEROCEAN LINES for freight charges on Cement Machineries & Equipment shipped ex. S/S "Irene".

The defendant contended that the alleged acknowledgment that the Manila Interocean Lines, Inc. had received the sum of P269,132.58 as full payment typewritten in the voucher marked as Exhibit "6" was an interpolation and therefore spurious.[11]

The trial court concluded, in the light of the evidence adduced by the parties, that the plaintiff's claim that full payment had been made was not substantiated by clear and convincing evidence and that the plaintiff still owes the defendant the balance on the freight charges as stated in the defendant's counterclaim and ordered the plaintiff to pay the defendant the amount of U.S.\$78,017.68 with interest at 6% com-puted from November 28, 1967 until fully paid and the amount of P25,000.00 as attorney's fees.[12]

The trial court ordered the immediate execution of the judgment pending appeal. To stay immediate execution, the Continental Cement Corporation had to file a supersedeas bond in the amount of P899,656.18.

The plaintiff Continental Cement Corporation appealed to the Court of Appeals assigning the following errors:

"1

THE LOWER COURT GRIEVOUSLY ERRED IN NOT FINDING THAT PLAINTIFF-APPELLANT HAD ALREADY PAID IN FULL THE FREIGHT CHARGES BEING CLAIMED BY THE DEFENDANT-APPELLEE IN ITS COUNTERCLAIM AGAINST PLAINTIFF-APPELLANT CONTAINED IN BOTH SAID DEFEND-ANT-APPELLEE'S ORIGINAL AND AMENDED ANSWERS.

"2

ASSUMING HYPOTHETICALLY THAT THE PAYMENT MADE BY PLAINTIFF-APPELLANT TO DEFENDANT-APPELLEE ON ACCOUNT OF THE FREIGHT CHARGES WAS NOT BY WAY OF FULL PAYMENT, THE LOWER COURT NEVERTHELESS SERIOUSLY ERRED IN ORDERING THE PLAIN-TIFF-APPELLANT TO PAY DEFENDANT-APPELLEE AS UNPAID FREIGHT CHARGES THE AMOUNT OF US\$78,017.68 AS SUPPOSED BALANCE OF THE FREIGHT CHARGES DUE TO THE DEFENDANT-APPELLEE WITH INTEREST THEREON AT SIX PER CENT PER ANNUM COMPUTED FROM NOVEMBER 28, 1967 UNTIL FULLY PAID WITH SAID DOLLAR PAYMENT TO BE COMPUTED AT THE PREVAILING RATE OF EXCHANGE WITH , THE PESO AT THE DATE OF PAYMENT.

"3

THE LOWER COURT THEREBY ERRED IN NOT DISMISSING THE COUNTERCLAIM IN THE AMENDED ANSWER."[13]

The majority of a Division of Five of the Court of Appeals affirmed in all respects the decision of the trial court.[14]

Hence this petition for certiorari to review the decision of the majority of the Court of Appeals.

The petitioner contends that the majority of the Division of Five of the Court of Appeals committed the following errors:

"I

"THE RESPONDENT COURT OF APPEALS THROUGH THE MAJORITY OF THE SPECIAL DIVISION OF FIVE GRIEVOUSLY ERRED IN ENTIRELY IGNORING AND DISREGARDING THE INDISPUTABLE EVIDENCE OF FULL PAYMENT BY THE PETITIONER OF THE BALANCE OF THE UNPAID FREIGHT AND OTHER CHARGES TO PRIVATE RESPONDENT (EXH. 6); NOT-WITHSTANDING THE FACT THAT THE GENUINE-NESS THEREOF IS ADMITTED, ON THE GROUND THAT ITS CONTENTS SUPPOSEDLY DID NOT REFLECT THE TRUE INTENT OF THE PARTIES, AGAIN DESPITE THE OVERWHELMING EVIDENCE TO THE CONTRARY, THEREBY LEADING RES-PONDENT COURT OF APPEALS INTO AN ERRONEOUS APPRECIATION OF THE EVIDENCE ON RECORD AMOUNTING TO A SERIOUS ERROR OF LAW;

"II

"ASSUMING PURELY HYPOTHETICALLY, THOUGH NEVERTHELESS DENYING, AS WE HAVE ABOVE DISCUSSED THAT HEREIN PE-TITIONER STILL OWES PRIVATE RESPONDENT BY WAY OF BALANCE OF ALLEGED UNPAID FREIGHT AND OTHER CHARGES THE SUM OF P304,268.98 BEING THE DIFFERENCE OF WHAT PRIVATE RESPONDENT CLAIMS TO BE THE UNPAID FREIGHT CHARGES OF P573,401.56 LESS P269,132.58 THAT PETITIONER PAID, RESPONDENT COURT OF APPEALS LIKEWISE GRIEVOUSLY ERRED IN AFFIRMING THE DECISION OF RESPONDENT TRIAL COURT THAT WHAT PETITIONER SHOULD PAY IS \$78,017.68 COMPUTED IN PHILIPPINE PESOS AT THE PRE-VAILING RATE OF EXCHANGE ON THE DATE OF PAYMENT OR P899,656.18 AS OF JUNE 14, 1976, NOTWITHSTANDING THE FACT THAT THE ONLY AMOUNT CLAIMED BY PRIVATE RESPONDENT COMPANY IN THE ALLEGATIONS AND PRAYER IN BOTH ITS ORIGINAL AND AMENDED COUNTER-CLAIMS (PP. 40-53, REC. ON APP., ANNEX F HEREOF), AND WHAT IT SOUGHT TO PROVE DURING THE TRIAL IN THE COURT A QUO, BY DOCUMENTARY AND TESTIMONIAL EVIDENCE WAS ONLY P304,268.98, NOT DOLLAR, THEREBY GROSSLY VIOLATING AND IGNORING THE IM-PERATIVE MANDATE OF THIS H ON.

COURT IN THE LEADING CASE OF MALAYAN INSURANCE CO., INC. VS. THE MANILA PORT SERVICE, ET AL., L-23128, SEPT. 30, 1978;

"III

"THE RESPONDENT COURT OF APPEALS THEREBY PALPABLY ERRED ON DECIDING QUESTIONS OF LAW IN OPEN DISREGARD OF THE ACCEPTED NORMS LAID DOWN BY THIS HON. COURT IN ITS LEADING DECISIONS WARRANTING THE REVERSAL OF ITS DECISION ANNEX "A" HEREOF CONFIRMATORY OF THE APPEALED DECISION OF THE COURT A QUO."[15]

In resolving the issues involved, the following undisputed facts of record are decisive.

The letter-agreement on the time and manner of payment of the freight charges is an actionable document attached to the complaint as Annex "A".

In its answer the defendant averred that the alleged contract of affreightment (Annex "A") is null, void, non-existent and of no effect because (a) the same was subject to plaintiff's acceptance which acceptance was never made, and (b) granting, arguendo, plaintiff accepted it, the alleged Contract of Affreightment to be valid and effective was still subject to the fulfillment of certain conditions sine qua non, which conditions were never complied with.[16]

It appears from Annex "A" that the same was confirmed and accepted by Gregory T. Lim, the then executive vice president of the plaintiff Continental Cement Corporation.[17]

Moreover, the defendant did not deny under oath the letter-agreement. Hence the genuineness and due execution of said contract of affreightment had been deemed admitted.[18]

The defendant, Manila Interocean Lines, Inc. did not allege, much less prove, the "certain conditions sine qua non" to which the contract of affreightment was subject to.

The letter-agreement is a complete contract of affreightment. There is no allegation that the same does not express the true intent of the parties. Hence the said contract of affreightment is to be considered as containing all such terms and there can be between the parties no evidence of the terms thereof other than the contents of the writing.[19]

On the contention of the petitioner that it was entitled to a rebate of 30% of the basic freight charges, the following provisions of the letter-agreement, Annex "A", are pertinent:

"B. Regardless of whatever Conference Freight Tariff rate you or your Associates actually have to pay on the shipment of the above cargo on vessels to be designated by me, I will arrange to give you the following benefits from the operational profits due to me: –

"1) My basic freight rate to you will be US\$18.90 per Revenue Ton Berth terms on the 6,500 tons of Cement machinery and equipments as per schedule attached plus US\$1.00 per revenue ton Manila surcharge and standard heavy lift and overlength tariff charges, on all these charges, I will grant you a rebate of thirty (30%) per cent.

"2) US\$7.70 per revenue Ton Berth Terms on the 1500 tons of steel products plus US\$1.00 per revenue ton surcharge and standard heavy lift overlength tariff charges; on all these charges I will grant you a rebate of 30%."[20]

Anent the defendant's agreement to grant the plaintiff, petitioner herein, a period 120 days credit for payment of

the freight due, the following provision of the letter-agreement, Annex "A" is applicable:

"D. For payment of freight, it is agreed that you will give me first option to purchase various stocks of cement and steel belonging to you and your Associates at such preferred prices and terms that will be considered most competitive in the market, and which you undertake to match for price and terms. Should I for any reason be unable to absorb sufficient quantities of your stocks of cement and steel that you will have available for me, I will then agree to grant you up to one hundred twenty (120) days credit for payment of any of your remaining balance of freight due, calculated from time of arrival of the vessel in Manila." [21]

It is a fact that the defendant Manila Interocean Lines, Inc. reneged on the terms of the contract of affreightment by demanding full payment of the freight charges before releasing the shipment to the Continental Cement Corporation. In fact, had the petitioner not filed Civil Case No. 12252 of the Court of First Instance of Rizal, the Manila Interocean Lines, Inc. would have sold at public auction the shipment to pay the freight charges. As a consequence of the breach by the defendant, the petitioner Continental Cement Corporation had to pay customs storage charges and handling charges in the total amount of P100,598.46.

It is also a fact that when the original answer was filed on December 22, 1969 the defendant did not include in its counterclaim the alleged balance of the freight charges. It was only on February 23, 1971, after the lapse of one year and two months, that the defendant thought of amending its answer to include in the counter-claim the alleged balance of the freight charges. The reason given in the motion for leave to amend the answer was that the defendant had inadvertently failed to include in the counterclaim in its answer the claim of P573,401.56 less P269,132.58, the amount paid by the plaintiff under their November 1968 Partial Compromise Agreement. It is highly incredible that the defendant could have overlooked such a large amount demanded in the additional counterclaim. The failure of the defendant to demand in the original answer the alleged balance of the freight charges supports the contention of the Continental Cement Corporation that its payment of the amount of P269,132.58 is a full discharge of the liability for freight charges as clearly indicated in the receipt-voucher, Exhibit "6".

Moreover, it is a fact that upon payment by the Continental Cement Corporation of the P269,132.58 to the Manila Interocean Lines, Inc. the entire shipment was released to the plaintiff, petitioner herein.

As counter-claimant, the defendant, Manila Interocean Lines, Inc. had the burden to prove its claim for the alleged balance of the freight charges still owed by the Continental Cement Corporation.

Confronted with the receipt-voucher, Exhibit "6", which clearly shows full payment by the Continental Cement Corporation of the freight charges, the Manila Interocean Lines, Inc. averred that the words indicating full payment were interpolated after the voucher was signed. To prove this contention, the Manila Interocean Lines, Inc. presented as witness Atty. Nurdy P. Diploma who declared that "when I signed that original it does not seem to bear this Particulars." (p. 20, t.s.n., Feb. 4, 1974)

The defendant contends that the words indicating full payment of the freight is an interpolation and amounts to a charge of the crime of falsification committed by the Continental Cement Corporation. The Manila Interocean Lines, Inc. has the burden of proving such a serious charge.

The Continental Cement Corporation is presumed to be innocent of crime or wrong. [22]

Against this presumption and the positive testimony of Danilo A. Morales, executive assistant of Continental Cement Corporation, that the voucher, Exhibit "6", represents full payment of the freight charges to the defendant, (pp. 20-21, t.s.n., January 3, 1974) the Manila Interocean Lines, Inc. presented only the uncertain testimony of Atty. Nurdy P. Diploma.

The voucher, Exhibit "6" is regular on its face. There is no indication in the spacing of the typewritten words acknowledging full payment of the freight charges that said words were inter-polated. Indeed, if said words are eliminated, the voucher would be incomplete.

The private respondent failed to rebut the evidence of the petitioner that it had fully paid the freight charges. In view of this finding, it is no longer necessary to pass upon the other errors assigned in the petition.

WHEREFORE, the decision of the Court of Appeals sought to be reviewed is hereby SET ASIDE and the decision of the trial court ordering the Continental Cement Corporation to pay the Manila Inter ocean Lines, Inc. the sum of US\$78,017.68 as the balance of the freight charges with interest at 6% from November 28, 1967 until fully paid and the amount of P25,000.00 as attorney's fees is here-by REVERSED and the counterclaim of the defendant, private respondent herein, is DISMISSED, without pronouncement as to costs.

The supersedeas bond in the amount of P899,656.18 filed by the petitioner to stay the immediate execution of the judgment pending appeal is declared CANCELLED.

SO ORDERED.

Barredo, (Chairman), De Castro, Ericta, and Escolin, JJ., concur.
Aquino and Abad Santos, JJ., no part.

[1] Rollo, pp. 47-61.

[2] Record on Appeal, pp. 63-64, Rollo, p. 107.

[3] Resolution promulgated on December 12, 1979, Rollo, pp. 72-78.

[4] Letter-Agreement, Annex "A", Record on Appeal, pp. 12-17, Rollo, p. 107.

[5] Record on Appeal, pp. 10-11, Rollo, p. 107.

[6] Ibid., pp. 23-24, Rollo, p. 107.

[7] Ibid., pp. 25-58, Rollo, p. 107.

[8] Ibid., pp. 29-38, Rollo, p. 107.

[9] Ibid., pp. 40-54, Rollo, p. 107.

[10] Ibid., p. 57, Rollo, p. 107.

[11] Ibid., pp. 58-59, Rollo, p. 107.

[12] Ibid., pp. 62-64, Rollo, p. 107.

[13] Appellant's Brief, pp. 1-2, Rollo, p. 108.

[14] Rollo, pp. 47-61.

[15] Petition for Review, pp. 7-9, Rollo, pp. 12-14.

[16] Record on Appeal, pp. 29-38, Rollo, p. 107.

[17] Ibid., pp. 12-17.

[18] Section 8, Rule 8, Revised Rules of Court.

[19] Section 7, Rule 130, Revised Rules of Court.

[20] Record on Appeal, pp. 14-15, Rollo, p. 107.

[21] Ibid., p. 16, Rollo, p. 107.

[22] Section 5(a), Rule 132, Revised Rules of Court.

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