

PHOENIX ASSURANCE CO., LTD., PLAINTIFF-APPELLANT, VS. UNITED STATES LINES, DEFENDANT-APPELLEE.

G.R. No. L-24033. February 22, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The facts antecedent to this appeal from a decision dated October 31, 1964 of the Court of First Instance of Manila, are as follows:

On June 29, 1962, General Motors shipped and con-signed on a CIF basis to Davao Parts and Service, Inc. at Davao City from New York aboard the United States Lines' vessel SS "Pioneer Moor" a cargo of truck' spare parts in 25 cases and 4 crates (2 pieces unboxed), for which Uni-ted States Lines issued a short form bill of lading No. T-1 (Annex "A" and Exh. "1"), and which shipment was in-sured against loss and damage with Phoenix' Assurance Co., Ltd. The short form bill of lading No. T-1 indicated Manila as the port of discharge and Davao City as the place where the goods were to be trans-shipped, and expressly incorporated by reference the provisions contained in the carrier's regular long form bill of lading (Annex "B" and Exh. "2").

The SS "Pioneer Moor" on July 28, 1962 discharged at Manila to the custody of the Manila Port Service which was then the operator of the arrastre service at the Port of Manila, the above described cargo, complete but with the exception of two cases, namely, Cases Nos. 3139 and 3148 valued at P1,498.25.

On July 30, 1962, the Luzon Brokerage Corporation, customs broker hired by the United States Lines, filed in behalf of the latter a provisional claim against the Manila Port Service for short-landed, short-delivered and/or landed in bad order cargo ex-United States Lines' vessel.

On August 30, 1962, the aforescribed cargo, with the exception of Crates Nos. 3139 and 3148 which were not discharged at the Manila Port, and Crates Nos. 3648 and 3649 which were discharged at the Manila Port hut were lost in the custody of the Manila Port Service, was transshipped by United States Lines to Davao through a vessel of its Davao agent, Columbian Rope Company, and duly received in good order by the Davao Parts and Service, Inc.

Davao Parts and Service, Inc. filed on December 26, 1962 a formal claim with the United States Lines through the latter's agent, Columbian Rope Company, for the value Crates Nos. 3139, 3148, 3648 and 3649 in the total sum of P2,010.37.

The United States Lines, after proper verification, paid Davao Parts and Service, Inc. the sum of 'P1,458.25, representing the value of Crates. Nos. 3139 and 3148, when it was discovered that these two crates had been overlanded in Honolulu, but refused to pay for the value of Crates Nos. 3648 and 3649 for the reason that these crates had been lost while in the custody of the Manila Port Service.

The two crates (Nos. 3139 and 3148) which were over?landed in Honolulu and for which United States Lines paid Davao Parts and Service, Inc. the sum of P1,458.25, were later recovered and returned to Davao Parts and

Service, Inc. and the latter refunded United States Lines for the sum it paid.

In view of United States Lines' refusal to pay for the two crates (Nos. 3648 and 3649)-which were lost while in the custody of the Manila Port Service, Ker Company, agent of Phoenix Assurance Co., Ltd., in the Philip-pines, and insurer of Davao Parts and Service Inc., paid to the latter the value of said crates in the sum of P552.12.

On March 25, 1963, the United States Lines, through the Columbian Rope Company, by letter informed the Davao Parts and Service, Inc. that it was filing a claim for the undelivered crates with the Manila Port Service. And true to its word, it filed on March 30, 1963 a formal Claim with the Manila Port Service for the value of Crates Nos. 3648 and 3649, but the latter declined to honor the same.

On June 26, 1963, United States Lines, through Colum-bian Rope Company, its Davao agent, informed the Davao Parts and Service, Inc., inter alia, that the Manila Port Service had not yet settled its claim, and that the one-year period provided by law within which to bring action against the Manila Port Service for the two crates (Nos. 3648 and 3649) would expire on July 28, 1963.

Phoenix Assurance Co., Ltd., through Ker & Company, Ltd., its agent in the Philippines, wrote on July 24, 1963 the United States Lines expressing its appreciation to the latter for taking action against the Manila Port Service. In the same letter it requested for an exten-sion of time to file suit against the United States Lines (the prescriptive period for doing so being set to expire on July 28, 1963), explaining that it could not file suit against any entity (including the Manila Port Service) except the United States Lines with whom its subrogee, the Davao Parts and Service, Inc., was in contract.

No reply having been received by It from the United States Lines, the Phoenix Assurance Co., Ltd. on July 29, 1963 filed a suit praying that judgment be rendered against the former for the sum of P552.12, with interest at the legal rate, plus attorneys fees and expenses of litigation.[1]

On August 16, 1963, the United States Lines filed its answer with counterclaim,[2] while Phoenix Assurance Co., Ltd. filed its answer to said counterclaim on August 26, 1963.

On March 9, 1964, the parties submitted a Partial Stipulation of Facts.[3]

After trial, the lower court on October 31, 1964 ren-dered a decision dismissing plaintiff's complaint.[4]

Thus this appeal, raising the sole issue of whether or not the lower court erred in dismissing the complaint and in exonerating defendant-appellee from liability for the value of the two undelivered crates Nos. 3648 and 3649.

It must be stated at the outset that a bill of lading operates both as a receipt and as a contract. It is a re-ceipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks and condition, quality, and value. As a contract, it names the contracting parties, which include the con-signee, fixes the route, destination, and freight rate or charges, and stipulates the rights and obligations assumed by the parties.[5]

In this jurisdiction, it is a statutory and decisio-nal rule of law that a contract is the law between the contracting parties,[6] and where there is nothing in it which is contrary to law, morals, good customs, public policy, or public order, the validity of the contract must be sustained.[7]

The Bill of Lading (short form) No. T-1 dated June 29, 1962 (Annex "A" and Exh. "1") provides under Section thereof (Exh. "1-a") that, "It is agreed that the re-ceipt, custody, carriage, delivery and transshipping of the goods are subject to the terms appearing on the face and back hereof and also to the terms contained in the carrier's regular long form bill of lading, used in this service, including any clauses presently, being stamped or endorsed

thereon which shall be deemed to be incorporated in this bill of lading, which shall govern the relations, whatsoever they may be, between shipper, consignee, carrier and ship in every contingency, wheresoever and whensoever occurring and whether the carrier be acting as such or as bailee, x x x." (Underscoring supplied)

On the other hand, the regular long form Bill of Lading (Annex "B" and Exh. "2") provides, inter alia that:

"The carrier shall not be liable in any capacity whatsoever for any loss or damage to the goods while the goods are not in its actual custody." (Par. 2, last subpar., Underscoring supplied)

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"The carrier or master, in the exercise of its or his discretion and altho' trans-shipment or forwarding of the goods may not have been contemplated or provided for here-in, may at port of discharge or any other place whatsoever transship or forward the goods or any part thereof by any means at the risk and expense of the goods and at any time, whether before or after loading on the ship named herein and by any route, whether within or outside the scope of the voyage or beyond the port of discharge or destination of the goods and without notice to the shipper or consignee. The carrier or master may delay such transshipping or forwarding for any reason, including but not limited to awaiting a vessel or other means of transportation whether by the carrier or others.

"The carrier or master in making arrangements with any person for or in connection with transshipping or forwarding of the goods or the use of any means of transportation not used or operated carrier, shall be considered solely the agent of the shipper and consignee and without any other responsibility whatsoever or for the cost thereof. The receipt, custody, carriage and delivery of the goods by any such person or on-carrier and all transshipping and forwarding shall be subject to all the provisions whatsoever of such person's or on-carrier's form of bill of lading or agreement then in use, whether or not issued and even though such provisions may be less favorable to the shipper or consignee in any respect than the provisions of this bill of lading. The shipper and consignee authorize the carrier or master to arrange with any such person or on-carrier that the lowest valuation or limitation of liability contained in the bill of lading or other agreement of such person on on-carrier shall apply.

"All responsibility of the carrier in any capacity shall altogether cease and the goods shall be deemed delivered by it and this contract of carriage shall be deemed fully performed on actual or constructive delivery of the goods to itself as such agent of the shipper and consignee or to any such person or on-carrier at port of discharge from ship or elsewhere in case of an earlier transshipment.

"The shipper and consignee shall be liable to this carrier for and shall indemnify it against all expense of forwarding and transshipping, including any increase in or additional freight or other charges whatsoever.

"Pending or during forwarding or transshipping this carrier or the master may store the goods ashore or afloat solely as agent of the shipper and at the risk and expense of the goods and this carrier shall not be responsible for the acts, neglect, delay or failure to act of anyone to whom the goods are entrusted or delivered for storage, handling, or any service incidental thereto.

"In case the carrier issues a bill of lading covering transportation by a local or other carrier prior to the goods being delivered to and put into the physical custody of the carrier, it shall not be under any responsibility or liability whatsoever for any loss or damage to the goods occurring prior to or until the actual receipt or custody of the goods by it at the port or place of transshipment and in arranging for the transportation to such port or place where the goods are put in its physical custody, it acts solely as the agent of the shipper." (Par. 16, Underscoring supplied)

It is admitted by both parties that the crates subject matter of this action were lost while in the possession and custody of the Manila Port Service. Since the long form of Bill of Lading (Annex "B" and Exh. "2") provides

that "The carrier shall not be liable in any capacity whatsoever for any loss or damage to the goods while the goods are not in its actual custody", appellee cannot be held responsible for the loss of said crates. For as correctly observed by the lower court, it is hardly fair to make appellee accountable for a loss not due to its acts or omissions or over which it had no control.[8]

Contrary to appellant's stand, the appellee did not undertake to carry and deliver safely the cargo to the consignee in Davao City. The short form Bill of Lading (Annex "A" and Exh. "1") states in no uncertain terms that the port of discharge of the cargo is Manila, but that the same was to be transshipped beyond the port of discharge to Davao City. Pursuant to the terms of the long form Bill of Lading (Annex "B" and Exh. "2"), appellee's responsibility as a common carrier ceased the moment the goods were unloaded in Manila; and in the matter of transshipment, appellee acted merely as an agent of the shipper and consignee. Contrary likewise to appellant's contention, the cargo was not transshipped with the use of transportation used or operated by appellee. It is true that the vessel used for transshipment is owned and operated by appellee's Davao agent, the Columbian Rope Company, but there is no proof that said vessel is owned or operated by appellee. The vessels of appellee's agent are being erroneously presumed by appellant to be owned and operated by appellee.

Appellant argues that the provisions of the Bill of Lading exculpating the appellee from liability for cargo losses, do not apply where full cargo freight is paid up to and beyond the point of stipulated discharge, and here defendant-appellee agreed to absorb all costs of forwarding and transshipment - freight having been prepaid up to Davao City. But the receipt of full cargo freight up to Davao City cannot render inoperative, the provisions of the Bill of Lading relied upon by appellee inasmuch as such a situation is not provided therein as an exception. In fact, one searches the Bills of Lading (short and long forms) in vain for such an exception. Besides, it is for the convenience of both parties that full freight up to Davao City, had been prepaid, otherwise there would have been need to make further arrangements regarding the transshipment of the cargo to Davao City. After all, the long form Bill of Lading provides that, "The shipper and consignee shall be liable to this carrier for and shall indemnify it against all expense of forwarding and transshipping, including any increase in or additional freight or other charges whatsoever." (Annex "B" and Exh. "2", par. 6, subpar. 4)

The filing of a claim by defendant-appellee with the Manila Port Service for the value of the losses cannot be considered an indication that it is answerable for cargo losses up to Davao City. On the contrary, it is a convincing proof that said party was not remiss in its duties: as agent or the consignee. That appellee captioned its claim against the Manila Port Service as "SS 'Pioneer Moor' Voy. 25 Reb. 1067 New York/Davao via Manila B/L T-1 31 Package's Truck Spare Parts Cons: Davao Parts and Service", likewise, is no proof that appellee knowingly assumed liability for cargo losses up to Davao City. It merely showed that the goods would have to be, as indeed they were, first unloaded in Manila and thereafter transshipped to Davao City.

Through the short form Bill of Lading (Annex "A" and Exh. incorporating by reference the terms of the regular long form bill of lading (Annex "B" and Exh. "2"), the United States Lines acknowledged the receipt of the cargo of truck spare parts that it carried, and stated the conditions under which it was to carry the cargo, the place where it was to be transshipped, the entity to which delivery is to be made, and the rate of compensation for the carriage. This it delivered to the Davao Parts and Services, Inc as evidence of a contract between them. By receiving the bill of lading, Davao Parts and Services, Inc. assented to the terms of the consignment contained therein, and became bound thereby, so far as the conditions named are reasonable in the eyes of the law. Since neither appellant nor appellee alleges that any provision therein is contrary to law, morals, good customs, public policy, or public order, - and indeed we found none - the validity of the Bill of Lading must be sustained and the provisions therein properly applied to resolve the conflict between the parties.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Record on Appeal, pp. 1-4.

[2] Record on Appeal, pp. 4-12.

[3] Record on Appeal, pp. 14-20.

[4] Record on Appeal, pp. 21-34.

[5] 13 Am. Jur. 2d, p. 782; Almario's Transportation and Public Service Law, 1966 Ed., p 6.

[6] Art. 1159, Civil Code; Co-Tiangco v. To-Jamco, 3 Phil. 210; Borromeo v. Franco, 5 Phil. 49; Alcantara v. Alinea, 8 Phil. 111; Compañia General de Tabacos v. Obed, 13 Phil. 391; Ollendorf v. Abrahamson, 38 Phil. 585; Puyat & Sons v. Arco 72 Phi. 402; Quizana v. Redugerio, 50 O.G. 2444, May 7, 1954; Iñigo, et al, v. National Abaca & other Fibers Corp. and Philippine National Bank, L-5295, Sept. 29, 1954.

[7] Art. 1306, Civil Code;.Borromeo v. Franco, supra; Icaza v. Ortega, 5 Phil. 166; Roxas v. Mijares, 9 Phil. 252; Jimeno v. Gacilago, 14 Phil. 16; Jose v. Damian, 14 Phil. 104; Tañido v. Jumauan, 17 Phil. 335; Yu Tek & Co. v. Gonzales, 29 Phil. 384.

[8] Record on Appeal, p. 32.

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