

REPARATIONS COMMISSION, PLAINTIFF-APPELLEE, VS. COMPAÑIA MARITIMA, DEFENDANT-APPELLANT.

G.R. No. L-28741. March 20, 1984

Ponente: PLANA, J.

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PLANA, J.:

Years back, the Reparations Commission (REPACOM) filed a complaint in the Court of First Instance of Manila against Compañia Maritima (MARITIMA), Zenith Insurance Corporation and the Customs Arrastre Service to recover P160,002.77 representing the value of eight lost crates of reparations goods. The lost crates, which contained machinery and equipment for the end-use of San Jose Cement Corporation, were part of the shipment of reparations goods from Japan on board MARITIMA's vessel, M/V MACTAN, consigned to REPACOM at Manila.

In its answer, MARITIMA set up a counterclaim against REPACOM for unpaid freight not only for the shipment in question but also for reparations shipments on board other MARITIMA vessels.

After hearing, the trial court rendered a decision absolving MARITIMA upon a finding that the lost cargo had actually been discharged from its vessel in good order and turned over to the custody of the Customs Arrastre Service in the name of REPACOM. But the Court declined to rule on the counterclaim of MARITIMA, saying:

"Notwithstanding the evidence adduced by defendant Compañia Maritima on its counterclaim against the plaintiff, the Court does not consider it proper to make a ruling on the same in this proceedings; and counsel for defendant Compañia Maritima may institute a separate action for such claim."

It is the refusal of the trial court to decide MARITIMA's counterclaim that is the subject of this appeal.

Ordinarily, we would remand this case to the court a quo for it to decide the permissive counterclaim in question. Such a step, however, would further prolong the proceedings which have already been protracted. We have therefore opted to write finis to the case by deciding the counterclaim here and now.

The evidence discloses that on various occasions, there were shipped on freight-collect basis by Japanese suppliers (as shippers) on board MARITIMA's vessels reparations goods from Japan consigned to REPACOM at Manila. Except for a small amount, the freight charges (P357,055.51) for all these shipments have not been paid.

REPACOM does not dispute the existence of the unpaid freight but disclaims liability therefor by invoking Section 11 of the Reparations Act (Rep. Act. No. 1789, as amended), the pertinent portion of which reads:

"Sec. 11. Terms of procurement. - x x x The insurance, ocean freight and other expenses incident to importation (of reparations goods) shall be paid by the end-user in accordance with usual business practices."
(Italics supplied)

On the other hand, MARITIMA contends that the quoted law applies only as between the REPACOM and the end-users, but not when the carrier seeks to collect freight from REPACOM as consignee with which

MARITIMA has privity, unlike the end-user who is a complete stranger to the carrier. MARITIMA invokes the bills of lading and the provisions of the Code of Commerce, particularly Article 686 thereof, which both provide that it is the consignee who must pay the freight upon delivery to him of the cargo.

The issue raised is not new. In a prior case involving the very same parties who are involved in the instant appeal, the question before the Court was whether REPACOM, as consignee of reparations goods, was liable for freight. Speaking through the then Associate Justice, now Chief Justice, Enrique M. Fernando, this Court absolved the REPACOM, thus:

"The rule is that the law forms part of, and is read into, every contract, unless clearly excluded therefrom in those cases where such exclusion is allowed * * *. What is the law that forms part of, and is to be read into, the contract between plaintiff-appellant and defendant-appellee? It is, to repeat, Section 11 of Republic Act No. 1789 as amended. More specifically: 'The insurance, ocean freight and other, expenses incident to importation shall be paid by the end-user in accordance with usual business practice.' The last sentence is equally plain: 'Nothing herein shall be construed as exempting the end-user from paying in full all the necessary costs, charges and expenses incident to the application for and the procurement, production, delivery and acquisition of, the goods concerned.' The above provisions, then, form part of and must be read into the shipping contracts between plaintiff-appellant and defendant-appellee, unless they could be 'clearly excluded therefrom', assuming 'such exclusion is allowed.'

"There is thus no persuasive force to the first error imputed to the lower court for their being applied to the contractual relationship between the parties. There is no showing that the shipping contracts between them are clearly excluded from the law, much less that such exclusion could be allowed. The lower court had no choice then. It yielded obedience to the law. What it did certainly cannot be stigmatized as error.

"It is in that sense that reliance by plaintiff-appellant on the force and effect to be given the usual contracts between shipper and carriers, while finding support in the applicable provisions both of the Civil Code and the Code of Commerce, is far from persuasive. As was pointed out in the equally forceful brief of defendant-appellee, to so view the matter is to ignore what has been explicitly set forth in Section 11 of the Reparations Act which is controlling."

WHEREFORE, MARITIMA's counterclaim is dismissed.

SO ORDERED

Melencio-Herrera, (Acting Chairman), Relova, Gutierrez, Jr. and De La Fuente, JJ., concur.

Teehankee, J., (Chairman), on official leave.

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