

**SAMAR MINING COMPANY, INC., PLAINTIFF-APPELLEE, VS.
NORDEUTSCHER LLOYD AND C.F. SHARP & COMPANY, INC.,
DEFENDANTS-APPELLANTS.**

G.R. No. L-28673. October 23, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

This is an appeal taken directly to Us on certiorari from the decision of the defunct Court of First Instance of Manila, finding defendants carrier and agent, liable for the value of goods never delivered to plaintiff consignee. The issue raised is a pure question of law, which is, the liability of the defendants, now appellants, under the bill of lading covering the subject shipment.

The case arose from an importation made by plaintiff, now appellee, SAMAR MINING COMPANY, INC., of one (1) crate Optima welded wedge wire sieves through the M/S SCHWABENSTEIN, a vessel owned by defendant-appellant NORDEUTSCHER LLOYD, (represented in the Philippines by its agent, C.F. SHARP & CO., INC.), which shipment is covered by Bill of Lading No. 18 duly issued to consignee SAMAR MINING COMPANY, INC.. Upon arrival of the aforesaid vessel at the port of Manila, the aforementioned importation was unloaded and delivered in good order and condition to the bonded warehouse of AMCYL.[1] The goods were however never delivered to, nor received by, the consignee at the port of destination - Davao.

When the letters of complaint sent to defendants failed to elicit the desired response, consignee herein appellee, filed a formal claim for P1,691.93, the equivalent of \$424.00 at the prevailing rate of exchange at that time, against the former, but neither paid. Hence, the filing of the instant suit to enforce payment. Defendants-appellants brought in AMCYL as third party defendant.

The trial court rendered judgment in favor of plaintiff, ordering defendants to pay the amount of P1,691.93 plus attorney's fees and costs. However, the Court stated that defendants may recoup whatever they may pay plaintiff by enforcing the judgment against third party defendant AMCYL which had earlier been declared in default. Only the defendants appealed from said decision.

The issue at hand demands a close scrutiny of Bill of Lading No. 18 and its various clauses and stipulations which should be examined in the light of pertinent legal provisions and settled jurisprudence. This undertaking is not only proper but necessary as well, because of the nature of the bill of lading which operates both as a receipt for the goods; and more importantly, as a contract to transport and deliver the same as stipulated therein.[2] Being a contract, it is the law between the parties thereto,[3] who are bound by its terms and conditions[4] provided that these are not contrary to law, morals, good customs, public order and public policy.[5]

Bill of Lading No. 18 sets forth in page 2 thereof[6] that one (1) crate of Optima welded wedge wire sieves was received by the carrier NORDEUTSCHER LLOYD at the "port of loading" which is Bremen, Germany, while the freight had been prepaid up to the port of destination or the "port of discharge of goods", in this case, Davao, the carrier undertook to transport the goods in its vessel, M/S SCHWABENSTEIN, only up to the "port of discharge

from ship" - Manila. Thereafter, the goods were to be transshipped by the carrier to the port of destination or "port of discharge of goods". The stipulation is plainly indicated on the face of the bill which contains the following phrase printed below the space provided for the "port of discharge from ship", thus:

"if goods are to be transshipped at port of discharge, show destination under the column for 'description of contents' "[7]

As instructed above, the following words appeared typewritten under the column for "description of contents":

"PORT OF DISCHARGE OF GOODS: DAVAO FREIGHT PREPAID"[8]

It is clear, then, that in discharging the goods from the ship at the port of Manila, and delivering the same into the custody of AMCYL, the bonded warehouse, appellants were acting in full accord with the contractual stipulations contained in Bill of Lading No. 18. The delivery of the goods to AMCYL was part of appellants' duty to transship the goods from Manila to their port of destination - Davao. The word "transship" means:

"to transfer for further transportation from one ship or conveyance to another"[9]

The extent of appellant carrier's responsibility and/or liability in the transshipment of the goods in question are spelled out and delineated under Section 1, paragraph 3 of Bill of Lading No. 18, to wit:

"The carrier shall not be liable in any capacity whatsoever for any de-lay, loss or damage occurring before the goods enter ship's tackle to be loaded or after the goods leave ship's tackle to be discharged, transshipped or forwarded x x x." (Italics supplied)

and in Section 11 of the same Bill, which provides:

"Whenever the carrier or master may deem it advisable or in any case where the goods are placed at carrier's disposal at or consigned to a point where the ship does not expect to load or discharge, the carrier or master may, without notice, forward the whole or any part of the goods before or after loading at the original port of shipment, x x x This carrier, in making arrangements for any transshipping or forwarding vessels or means of transportation not operated by this carrier shall be considered solely the forwarding agent of the shipper and without any other responsibility whatsoever even though the freight for the whole transport has been collected by him. x x x Pending or during forwarding or transshipping the carrier may store the goods ashore or afloat solely as agent of the shipper and at risk and expense of the goods and the carrier shall not be liable for detention nor responsible for the acts, neglect, delay or failure to act of any-one to whom the goods are entrusted or delivered for storage, handling or any service incidental thereto." (Underscoring supplied)[10]

Defendants-appellants now shirk liability for the loss of the subject goods by claiming that they have discharged the same in full and good condition unto the custody of AMCYL at the port of discharge from ship - Manila, and therefore, pursuant to the aforementioned stipulation (Sec. 11) in the bill of lading, their responsibility for the cargo had ceased.[11]

We find merit in appellants' stand. The validity of stipulations in bills of lading exempting the carrier from liability for loss or damage to the goods when the same are not in its actual custody has been upheld by Us in PHOENIX ASSURANCE CO., LTD. vs. UNITED STATES LINES, 22 SCRA 674(1968). Said case matches the present controversy not only as to the material facts but more importantly, as to the stipulations contained in the bill of lading concerned: As if to underline their awesome likeness, the goods in question in both cases were destined for Davao, but were discharged from ship in Manila, in accordance with their respective bills of lading.

The stipulations in the bill of lading in the PHOENIX case which are substantially the same as the subject stipulations before Us, provides:

"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.)

x x x x x

The carrier or master, in making arrangements with any person for or in connection with all transshipping or forwarding of the goods or the use of any means of transportation or forwarding of goods not used or operated by the carrier, shall be considered solely the agent of the shipper and consignee and without any other responsibility whatsoever or for the cost thereof x x x (Par. 16)."[12]

Finding the above stipulations not contrary to law, morals, good customs, public order or public policy, We sustained their validity.[13] Applying said stipulations as the law between the parties in the aforecited case, the Court concluded that:

"x x x The short form Bill of Lading () 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 (), appellee's responsibility as a common carrier ceased the moment the goods were unloaded in Manila; and in the matter of trans-shipment, appellee acted merely as an agent of the shipper and consignee. x x x." (Italics supplied)[14]

Coming now to the case before Us, We hold, that by the authority of the above pronouncement, and in conformity with the pertinent provisions of the New Civil Code, Section 11 of Bill of Lading No. 18 and the third paragraph of Section 1 thereof are valid stipulations between the parties insofar as they exempt the carrier from liability for loss or damage to the goods while the same are not on the latter's actual custody.

The liability of the common carrier for the loss, destruction or deterioration of goods transported from a foreign country to the Philippines is governed primarily by the New Civil Code.[15] In all matters not regulated by said Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws.[16] A careful perusal of the provisions of the New Civil Code on common carriers (Section 4, Title VIII, Book IV) directs our attention to Article 1736 thereof, which reads:

"Article 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of article 1738."

Article 1738 referred to in the foregoing provision runs thus:

"Article 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them."

There is no doubt that Art. 1738 finds no applicability to the instant case. The said article contemplates a situation where the goods had already reached their place of destination and are stored in the warehouse of the carrier. The subject goods were still awaiting transshipment to their port of destination, and were stored in the warehouse of a third party when last seen and/or heard of. However, Article 1736 is applicable to the instant suit. Under said article, the carrier may be relieved of the responsibility for loss or damage to the goods upon actual or constructive delivery of the same by the carrier to the consignee, or to the person who has a right to receive them. In sales, actual delivery has been defined as the ceding of corporeal possession by the seller, and the actual apprehension of corporeal possession by the buyer or by some person authorized by him to receive the goods as his representative for the purpose of custody or disposal.[17] By the same token, there is actual delivery in

contracts for the transport of goods when possession has been turned over to the con-signee or to his duly authorized agent and a reason-able time is given him to remove the goods.[18] The court a quo found that there was actual delivery to the consignee through its duly authorized agent, the carrier.

It becomes necessary at this point to dissect the complex relationship that had developed between appellant and appellee in the course of the transact-ions that gave birth to the present suit. Two under-takings appeared embodied and/or provided for in the Bill of Lading[19] in question. The first is FOR THE TRANSPORT OF GOODS from Bremen, Germany to Manila. The second, THE TRANSSHIPMENT OF THE SAME GOODS from Manila to Davao, with appellant acting as agent of the consignee.[20] At the hiatus between these two undertakings of appellant which is the moment when the subject goods are discharged in Manila, its persona-lity changes from that of carrier to that of agent of the consignee. Thus, the character of appellant's possession also changes, from possession in its own name as carrier, into possession in the name of con-signee as the latter's agent. Such being the case, there was, in effect, actual delivery of the goods from appellant as carrier to the same appellant as agent of the consignee. Upon such delivery, the appellant, as erstwhile carrier, ceases to be responsible for any loss or damage that may befall the goods from that point onwards. This is the full import of Article 1736, as applied to the case before Us.

But even as agent of the consignee, the appel-lant cannot be made answerable for the value of the missing goods. It is true that the transshipment of the goods, which was the object of the agency, was not fully performed. However, appellant had commenced said performance, the completion of which was aborted by circumstances beyond its control. An agent who carries out the orders and instructions of the princi-pal without being guilty of negligence, deceit or fraud, cannot be held responsible for the failure of the principal to accomplish the object of the agency.[21] This can be gleaned from the following provisions of the New Civil Code on the obligations of the agent:

"Article 1884. The agent is bound by his acceptance to carry out the agen-cy, and is liable for the damages which, through his non-performance, the princi-pal may suffer.

x x x x

Article 1889. The agent shall be liable for damages if, there being a con-flict between his interests and those of the principal, he should prefer his own.

Article 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substi-tute:

(1) When he was not given the power to appoint one;

(2) When he was given such power but without designating the person and the person appointed was notoriously incompetent or in-solvent.

x x x x

Article 1909. The agent is respon-sible not only for fraud, but also for negligence which shall be judged with more or less rigor by the courts, accor-ding to whether the agency was or was not for a compensation."

The records fail to reveal proof of negligence, deceit or fraud committed by appellant or by its representa-tive in the Philippines. Neither is there any showing of notorious incompetence or insolvency on the part of AMCYL which acted as appellant's substitute in storing the goods awaiting transshipment.

The actions of appellant carrier and of its representative in the Philippines being in full faith with the lawful stipulations of Bill of Lading No. 18 and in conformity with the provisions of the New Civil Code on common

carriers, agency and contracts, they incur no liability for the loss of the goods in question.

WHEREFORE, the appealed decision is hereby REVERSED. Plaintiff-appellee's complaint is hereby DISMISSED.

No costs.

SO ORDERED.

Makasiar (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur.

Aquino, J., in the result.

Concepcion, Jr., J., no part.

[1] Transcript of Stenographic Notes, August 3, 1967, pp. 1-2.

[2] 12 Am Jur 2d p. 782; Phoenix Ass. Co., Ltd. vs. United States Lines, 22 SCRA 674, 678.

[3] Article 1159, New Civil Code.

[4] Article 1308, New Civil Code.

[5] Article 1306, New Civil Code.

[6] Exhibit "A".

[7] Ibid.

[8] Ibid.

[9] Webster's Third International Dictionary, (unabridged).

[10] Op. cit.

[11] Appellants' Brief, page 5.

[12] Phoenix Assurance Co., Ltd. vs. United States Lines, 22 SCRA 674, 679-680.

[13] Ibid., page 682.

[14] Ibid., page 681.

[15] Articles 1732, 1753 and 1766, New Civil Code.

[16] Article 1766, New Civil Code.

[17] Moreno, Philippine Law Dictionary, citing Andrada vs. Argel, 65 O.G. 1054.

[18] 11 Words and Phrases 676, citing Yazoo & MVR Company vs. Altman, 187 SW 656, 657.

[19] Bill of Lading No. 18, page 2.

[20] Bill of Lading No. 18, Section 11.

[21] Gutierrez Hermanos vs. Oria Hermanos, 30 Phil. 491.

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