

TELENGTAN BROTHERS & SONS, INC. (LA SUERTE CIGAR & CIGARETTE FACTORY), PETITIONER, VS. THE COURT OF APPEALS, KAWASAKI KISHEN KAISHA, LTD. AND SMITH, BELL & CO., INC., RESPONDENTS.

G.R. No. 110581. September 21, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals,[1] in CA-G.R. CV No. 09514, affirming with modification the decision of the Regional Trial Court in a case for specific performance brought by petitioner.

Private respondent Kawasaki Kishen Kaisha, Ltd. (K-Line) is a foreign shipping company doing business in the Philippines, its shipping agent being respondent the Smith, Bell & Co., Inc. It is a member of the Far East Conference, the body which fixes rates by agreement of its member-ship owners. The conference is registered with the U.S. Federal Maritime Commission.[2]

On May 8, 1979, the Van Reekum Paper, Inc. entered into a contract of affreightment with the K-Line for the shipment of 468 rolls of container board liners from Savannah, Georgia to Manila. The shipment was consigned to herein petitioner La Suerte Cigar & Cigarette Factory. The contract of affreightment was embodied in Bill of Lading No. 602 issued by the carrier to the shipper. The expenses of loading and unloading were for the account of the consignee.

The shipment was packed in 12 container vans and loaded on board the carrier's vessel, SS Verrazano Bridge. At Tokyo, Japan, the cargo was transhipped on two vessels of the K-Line. Ten container vans were loaded on the SS Far East Friendship, while two were loaded on the SS Hangang Glory.

Shortly thereafter, the consignee (herein petitioner) received from the shipper photocopies of the bill of lading, consular invoice and packing list, as well as notice of the estimated time of arrival of the cargo.

On June 11, 1979, the SS Far East Friendship arrived at the port of Manila. Aside from the regular advertisements in the shipping section of the Bulletin Today announcing the arrival of its vessels, petitioner was notified in writing of the ship's arrival, together with information that container demurrage at the rate of P4.00 per linear foot per day for the first 5 days and P8.00 per linear foot per day after the 5th day would be charged unless the consignee took delivery of the cargo within ten days.

On June 21, 1979, the other vessel SS Hangang Glory, carrying petitioner's two other vans, arrived and was discharged of its contents the next day. On the same day the shipping agent Smith, Bell & Co. released the Delivery Permit for twelve (12) containers to the broker upon payment of freight charges on the bill of lading.

The next day, June 22, 1979, the Island Brokerage Co. presented, in behalf of petitioner, the shipping documents to the Customs Marine Division of the Bureau of Customs. But the latter refused to act on them because the

manifest of the SS Far East Friendship covered only 10 containers, whereas the bill of lading covered 12 containers.

The broker, therefore, sent back the manifest to the shipping agent with the request that the manifest be amended. Smith, Bell & Co. refused on the ground that an amendment, as requested, would violate § 1005 of the Tariff and Customs Code relating to unmanifested cargo. Later, however, it agreed to add a footnote reading "Two container vans carried by the SS Hangang Glory to complete the shipment of twelve containers under the bill of lading."

On June 29, 1979 the manifest was picked up from the office of respondent shipping agent by an employee of the IBC and filed with the Bureau of Customs. The manifest was approved for release on July 3, 1979. IBC wrote Smith, Bell & Co. to make of record that entry of the shipment had been delayed by the error in the manifest.

On July 11, 1979, when the IBC tried to secure the release of the cargo, it was informed by private respondents' collection agent, the CBCS Guaranteed Fast Collection Services, that the free time for removing the containers from the container yard had expired on June 26, 1979, in the case of the SS Far East Friendship, and on July 9, in the case of the SS Hangang Glory,[3] and that demurrage charges had begun to run on June 27, 1979 with respect to the 10 containers on the SS Far East Friendship and on July 10, 1979 with respect to the 2 containers shipped on board the SS Hangang Glory.

On July 13, 1979, petitioner, paid P47,680.00 representing the total demurrage charges on all the containers, but it was not able to obtain its goods. On July 16, 1979 it was able to obtain the release of two containers and on July 17, 1979 of one more container. It was able to obtain only a partial release of the cargo because of the breakdown of the arrastre's equipment at the container yard.

This matter was reported by IBC in letters of complaint sent to the Philippine Ports Authority. In addition, on July 16, 1979, petitioner sent a letter dated July 12, 1979 (Exh. I) to Smith, Bell & Co., requesting reconsideration of the demurrage charges, on the ground that the delay in claiming the goods was due to the alleged late arrival of the shipping documents, the delay caused by the amendment of the manifest, and the fact that two of the containers arrived separately from the other ten containers.

On July 19, 1979 petitioner paid additional charges in the amount of P20,160.00 for the period July 14-19, 1979 to secure the release of its cargo, but still petitioner was unable to get any cargo from the remaining nine container vans. It was only the next day, July 20, 1979, that it was able to have two more containers released from the container yard, bringing to five the total number of containers whose contents had been delivered to it.

Subsequently, petitioner refused to pay any more demurrage charges on the ground that there was no agreement for their payment in the bill of lading and that the delay in the release of the cargo was not due to its fault but to the breakdown of the equipment at the container yard. In all, petitioner had paid demurrage charges from June 27 to July 19, 1979 in the total amount of P67,840.00, computed as follows:

A. Container demurrage paid on July 13, 1979

1. Far East Friendship (Exh. H-1) June 27 - July 13 (17 days)

1st 5 days @ P4/day/foot

5 days x P4 x 40 ft. x 10ctnrs P 8,000.00

Next 12 days @ P8/day/foot

12 days x P8 x 40 ft. x 10 ctnrs. P38,400.00

P46,400.00

2. Hangang Glory (Exh. H) July 10-July 13 (4 days)

1st 4 days:

4 days x P4 x 40 ft. x 2 ctnrs. P 1,280.00

TOTAL PAID ON JULY 13 P47,680.00

(Exh. H-2)

B. Container demurrage paid on July 19, 1979

1. Far East Friendship

a. on 2 containers released July 16

3 days x P8 x 40 ft. x 2 ctnrs. P 1,920.00

(Exh. L-2)

b. on 1 container released July 17

4 days x P8 x 40 ft. x 1 ctnr. P 1,280.00

(Exh. L-3)

c. remaining 7 containers as of July 19

6 days x P8 x 40 ft. x 7 ctnrs.

P 13,440.00

(Exh. L-1)

2. Hangang Glory

a. 5th day (July 14)

1 day x P4.00 x 40 ft. x 2 ctnrs. P 320.00

b. July 15-19:

5 days x P8.00 x 40 ft. x 2 ctnrs. P 3,200.00

(Exh. L)

TOTAL P20,160.00

(Exh. L-4)

OVERALL TOTAL P67,840.00

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On July 20, 1979 petitioner wrote private respondent for a refund of the demurrage charges, but private respondent replied on July 25, 1979 that, as member of the Far East Conference, it could not modify the rules or authorize refunds of the stipulated tariffs.

Petitioner, therefore, filed this suit in the RTC for specific performance to compel private respondent carrier, through its shipping agent, the Smith, Bell & Co., to release 7 container vans consigned to it free of charge and for a refund of P67,840.00 which it had paid, plus attorney's fees and other expenses of litigation. Petitioner also asked for the issuance of a writ of preliminary injunction to restrain private respondents from charging additional demurrage.

In their amended answer, private respondents claimed that collection of container charges was authorized by §§ 2, 23 and 29 of the bill of lading and that they were not free to waive these charges because under the United States Shipping Act of 1916 it was unlawful for any common carrier engaged in transportation involving the foreign commerce of the United States to charge or collect a greater or lesser compensation than the rates and charges specified in its tariffs on file with the Federal Maritime Commission.

Private respondents alleged that petitioner knew that the contract of carriage was subject to the Far East Conference rules and that the publication of the notice of reimposition of container demurrage charges published in the shipping section of the Bulletin Today and Businessday newspapers from February 19 - February 25, 1979 was binding upon petitioner. They contended further that the collection of container demurrage was an international practice which is widely accepted in ports all over the world and that it was in conformity with Republic Act No. 1407, otherwise known as the Philippine Overseas Shipping Act of 1955.

Thereafter, a writ was issued after petitioner had posted a bond of P50,000.00 and the container vans were released to the petitioner. On March 19, 1986, however, the RTC dismissed petitioner's complaint. It cited the bill of lading which provided:

23. The ocean carrier shall have a lien on the goods, which shall survive delivery, for all freight, dead freight, demurrage, damages, loss, charges, expenses and any other sums whatsoever payable or chargeable to or for the account of the Merchant under this bill of lading. . . .

It likewise invoked clause 29 of the bill of lading which provided:

29. . . . The terms of the ocean carrier's applicable tariff, including tariffs covering intermodal transportation on file with the Federal Maritime Commission and the Interstate Commission or any other regulatory body which governs a portion of the carriage of goods, are incorporated herein.

Rule 21 of the Far East Conference Tariff No. 28-FMC No. 12 Rules and Regulations, referred to above, provides:

(D) Free Time, Demurrage, and Equipment Detention at Ports in the Philippines.

Note: Philippine Customs Law prescribes all cargo discharged from vessels to be given into custody of the Government Arrastre Contractor, appointed by Philippine Customs who undertakes delivery to the consignee.

...

Demurrage charges on Containers with CY Cargo.

1. Free time will commence at 8:00 a.m. on the first working calendar day following completion of discharge of the vessel. It shall expire at 12:00 p.m. (midnight) on the tenth working calendar day, excluding Saturdays, Sundays and holidays.

Work stoppage at a terminal due to labor dispute or other force majeure as defined by the conference preventing delivery of cargo or containers shall be excluded from the calculation of the free time for the period of the work stoppage.

2. Demurrage charges are incurred before the container leaves the carrier's designated CY, and shall be applicable on the container commencing the next working calendar day following expiration of the allowable free time until the consignee has taken delivery of the container or has fully stripped the container of its contents in the carrier's designated CY.

Demurrage charges shall be assessed hereunder:

Ordinary containers - P4.00 per linear foot of the container per day for the first five days; P8.00 per linear foot of the container per day, thereafter.

The RTC held that the bill of lading was the contract between the parties and, therefore, petitioner was liable for demurrage charges. It rejected petitioner's claim of force majeure. It held:

This Court cannot also accord faith and credit on the plaintiff's claim that the delay in the delivery of the containers was caused by the breaking down of the equipment of the arrastre operator. Such claim was not supported with competent evidence. Let us assume the fact that the arrastre operator's equipment broke down still plaintiff has to pay the corresponding demurrage charges. The possibility that the equipment would break down was not only foreseeable, but actually, foreseen, and was not caso fortuito.[4]

The RTC, therefore, ordered:

WHEREFORE, finding the preponderance of evidence in favor of the defendants and against the plaintiff, judgment is hereby rendered dismissing the complaint with costs against it. Plaintiff is hereby ordered to pay defendants the sum of P36,480.00 representing demurrage charges for the detention of the seven (7) forty-footer container vans from July 20 to August 7, 1979, with legal interest commencing on August 7, 1979 until fully paid. And plaintiff has to pay the sum of P10,000.00, by way of attorney's fees.

SO ORDERED.

On appeal, the case was affirmed with modification by the Court of Appeals as follows:

WHEREFORE, modified as indicated above deleting the award of attorney's fees, the decision appealed from is hereby AFFIRMED in all other respects.

Costs against plaintiff-appellant.

SO ORDERED.[5]

Hence, this petition for review in which it is contended:

1. that no demurrage lies in the absence of any showing that the vessels had been improperly detained or that loss or damage had been incurred as a consequence of improper detention;
2. that respondent Court's finding that private respondent Smith Bell had promptly and on the same day amended the defective manifest is contrary to the evidence of record.
3. that respondent Court manifestly over-looked undisputed evidence presented by petitioner showing that the breakdown in the facilities and equipment of the arrastre operator further delayed petitioner's withdrawal of the cargo.[6]

Petitioner prays for a reversal of the decision of the Court of Appeals and the refund to it of the demurrage charges paid by it, with interest, as well as to pay attorney's fees and expenses of litigation.

Our decision will be presently explained, but in brief it is this: petitioner is liable for demurrage for delay in removing its cargo from the containers but only for the period July 3 to 13, 1979 with respect to ten containers and from July 10 to July 13, 1979, in respect of two other containers.

First. With respect to petitioner's liability for demurrage, petitioner's contention is that the bill of lading does not provide for the payment of container demurrage, as Clause 23 of the bill of lading only says "demurrage," i.e., damages for the detention of vessels, and here there is no detention of vessels. Petitioner invokes the ruling in *Magellan Manufacturing Marketing Corp. v. Court of Appeals*[7], where we defined "demurrage" as follows:

Demurrage, in its strict sense, is the compensation provided for in the contract of affreightment for the detention of the vessel beyond the time agreed on for loading and unloading. Essentially, demurrage is the claim for damages for failure to accept delivery. In a broad sense, every improper detention of a vessel may be considered a demurrage. Liability for demurrage, using the word in its strictly technical sense, exists only when expressly stipulate in the contract. Using the term in [its broader sense, damages in the] nature of demurrage are recoverable for a breach of the implied obligation to load or unload the cargo with reasonable dispatch, but only by the party to whom the duty is owed and only against one who is a party to the shipping contract.

Whatever may be the merit of petitioner's contention as to the meaning of the word "demurrage" in clause 23 of the bill of lading, the fact is that clause 29(a) also of the bill of lading, in relation to Rule 21 of the Far East Conference Tariff No. 28-FMC No. 12, as quoted above, specifically provides for the payment by the consignee of demurrage for the detention of containers and other equipment after the so-called "free time."

Now a bill of lading is both a receipt and a contract. As a contract, its terms and conditions are conclusive on the parties, including the consignee. What we said in one case *mutatis mutandis* applies to this case:

A bill of lading operates both as a receipt and a contract. . . . As a contract, it names the contracting parties which include the consignee, fixes the route, destination, freight rate or charges, and stipulates the rights and obligations assumed by the parties . . . 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 applies to resolve the conflict between the parties.[8]

As the Court of Appeals pointed out in its appealed decision, the enforcement of the rules of the Far East Conference and the Federal Maritime Commission is in accordance with Republic Act No. 1407, § 1 of which declares that the Philippines, in common with other maritime nations, recognizes the international character of shipping in foreign trade and existing international practices in maritime transportation and that it is part of the national policy to cooperate with other friendly nations in the maintenance and improvement of such practices.

Petitioner's argument that it is not bound by the bill of lading issued by K-Line because it is a contract of adhesion, whose terms as set forth at the back are in small prints and are hardly readable, is without merit. As we held in *Servando v. Philippine Steam Navigation*:[9]

While it may be true that petitioner had not signed the plane ticket (Exh. 12), he is nevertheless bound by the provisions thereof. "Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation". It is what is known as a contract of "adhesion," in regards to which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he

adheres, he gives his consent. (Tolentino, Civil Code, Vol. IV, 1962 Ed., p. 462, citing Mr. Justice JBL Reyes, Lawyer's Journal, Jan. 31, 1951, p. 49).

Second. With respect to the period of petitioner's liability, private respondents' position is that the "free time" expired on June 26, 1979 and demurrage began to toll on June 27, 1979, with respect to 10 containers which were unloaded from the SS Far East Friendship, while with respect to the 2 containers which were unloaded from the SS Hangang Glory, the free time expired on July 9, 1979 and demurrage began to run on July 10, 1979.

This contention is without merit. Petitioner cannot be held liable for demurrage starting June 27, 1979 on the 10 containers which arrived on the SS Far East Friendship because the delay in obtaining release of the goods was not due to its fault. The evidence shows that because the manifest issued by the respondent K-Line, through the Smith, Bell & Co., stated only 10 containers, whereas the bill of lading also issued by the K-Line showed there were 12 containers, the Bureau of Customs refused to give an entry permit to petitioner. For this reason, petitioner's broker, the IBC, had to see the respondents' agent (Smith, Bell & Co.) on June 22, 1979 but the latter did not immediately do something to correct the manifest. Smith, Bell & Co. was asked to "amend" the manifest, but it refused to do so on the ground that this would violate the law. It was only on June 29, 1979 that it thought of adding instead a footnote to indicate that two other container vans - to account for a total of 12 container vans consigned to petitioner - had been loaded on the other vessel SS Hangang Glory.

It is not true that the necessary correction was made on June 22, 1979, the same day the manifest was presented to Smith, Bell & Co. There is nothing in the testimonies of witnesses of either party to support the appellate court's finding that the footnote, explaining the apparent discrepancy between the bill of lading and the manifest, was added on June 22, 1979 but that petitioner's representative did not return to pick up the manifest until June 29, 1979. To the contrary, it is more probable to believe the petitioner's claim that the manifest was corrected only on June 29, 1979 (by which time the "free time" had already expired), because Smith, Bell & Co. did not immediately know what to do as it insisted it could not amend the manifest and only thought of adding a footnote on June 29, 1979 upon the suggestion of the IBC.

Now June 29, 1979 was a Friday. Again it is probable that the corrected manifest was presented to the Bureau of Customs only on Monday, July 2, 1979 and, therefore, it was only on July 3 that it was approved. It was, therefore, only from this date (July 3, 1979) that petitioner could have claimed its cargo and charged for any delay in removing its cargo from the containers. With respect to the other two containers which arrived on the SS Hangang Glory, demurrage was properly considered to have accrued on July 10, 1979 since the "free time" expired on July 9.

The period of delay, however, for all the 12 containers must be deemed to have stopped on July 13, 1979, because on this date petitioner paid P47,680.00. If it was not able to get its cargo from the container vans, it was because of the breakdown of the shifters or cranes. This breakdown cannot be blamed on petitioners since these were cranes of the arrastre service operator. It would be unjust to charge demurrage after July 13, 1979 since the delay in emptying the containers was not due to the fault of the petitioner.

Indeed, there is no reason why petitioner should not get its cargo after paying all demurrage charges due on July 13, 1979. If it paid P20,180.00 more in demurrage charges after July 13, 1979 it was only because respondents would not release the goods. Even then petitioner was able to obtain the release of cargo from five container vans. Its trucks were unable to load anymore cargo and returned to petitioner's premises empty.

In sum, we hold that petitioner can be held liable for demurrage only for the period July 3-13, 1979 and that in accordance with the stipulation in its bill of lading, it is liable for demurrage only in the amount of P28,480.00 computed as follows:

A. 10 containers ex Far East Friendship (July 3-13, 1979)

1. 1st 5 days @ P4.00/day/foot

5 days x P4 x 40 ft. x 10 ctnrs. P 8,000

2. Next 6 days @ P8.00/day/foot

6 days x P8 x 40 ft. x 10 ctnrs. P19,200 P27,200

B. 2 containers ex Hangang Glory (July 10-13, 1979)

1st 4 days @ P4.00/day/foot

4 days x P4 x 40 ft. x 10 ctnrs. P 1,280

TOTAL DEMURRAGE DUE P28,480

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LESS: TOTAL PAID (P67,840)

OVERPAYMENT (P39,360)

As shown above there is an overpayment of P39,360.00 which should be refunded to petitioner.

WHEREFORE, the decision appealed from is SET ASIDE and another one is RENDERED, ORDERING the private respondents to pay to petitioner the sum of P39,360.00 by way of refund, with legal interest.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Puno, J., no part.

[1] Per Cañizares-Nye, J., with Puno, J., Chairman, and Torres Jr., J., concurring.

[2] As respondent Smith, Bell & Co. explained in its letter dated July 25, 1979 (Exh. 8-Defendants) to petitioner: "K-Line, as [member] of the Far East Conference, operates under an agreement approved by the U.S. Federal Maritime Commission, Washington, in accordance with the provision of the U.S. Shipping Act of 1916, which requires conference members to assess and collect all freight and other charges stipulated in the tariff the conference has filed with the Commission."

[3] Under the rules filed with the Federal Maritime Commission, "Free Time" commenced at 8:00 a.m. on the first working day (June 13, 1979 and June 25, 1979 in the case of the SS Far East Friendship and SS Hangang Glory respectively) following completion of discharge of the vessel, and it expired on the 10th day, excluding Saturdays, Sundays, and holidays (June 27, 1979 in the case of the SS Far East Friendship and July 10, 1989 in the case of SS Hangang Glory). In computing the free time, June 16, 23 and 30 and July 7 were excluded because they fell on Saturday, June 17 and 24 and July 1 and 8 because they fell on Sunday, while July 4, being Philippine-American Friendship Day, was a public holiday.

[4] Decision, p. 10; Rollo, p. 96

[5] Decision, p. 13; Rollo, p. 54.

[6] Petition, p. 9; Rollo, p. 19.

[7] G.R. No. 99529, Aug. 22, 1991, 201 SCRA 102.

[8] Phoenix Assurance Co., Ltd. v. United States Lines, No. L-24033, Feb. 22, 1968, 22 SCRA 674. (Emphasis ours,)

[9] No. L-36481-2, Oct. 23, 1982, 117 SCRA 832.

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