

PROVIDENT INSURANCE CORP., PETITIONER, VS. HONORABLE COURT OF APPEALS AND AZUCAR SHIPPING CORP., RESPONDENTS.

G.R. No. 118030. January 15, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals dated November 15, 1994, which affirmed the appealed Orders dated August 12, 1991 and February 4, 1992 issued by the Regional Trial Court of Manila, Branch 51, in Civil Case No. 91-56167.

The pertinent facts as culled from the stipulation of facts submitted by the parties are as follows:

On or about June 5, 1989, the vessel MV “Eduardo II” took and received on board at Sangi, Toledo City a shipment of 32,000 plastic woven bags of various fertilizer in good order and condition for transportation to Cagayan de Oro City. The subject shipment was consigned to Atlas Fertilizer Corporation, and covered by Bill of Lading No. 01 and Marine Insurance Policy No. CMI-211/89-CB.

Upon its arrival at General Santos City on June 7, 1989, the vessel MV “Eduardo II” was instructed by the consignee’s representative to proceed to Davao City and deliver the shipment to its Davao Branch in Tabigao.

On June 10, 1989, the MV “Eduardo II” arrived in Davao City where the subject shipment was unloaded. In the process of unloading the shipment, three bags of fertilizer fell overboard and 281 bags were considered to be unrecovered spillages. Because of the mishandling of the cargo, it was determined that the consignee incurred actual damages in the amount of P68,196.16.

As the claims were not paid, petitioner Provident Insurance Corporation indemnified the consignee Atlas Fertilizer Corporation for its damages. Thereafter, petitioner, as subrogee of the consignee, filed on June 3, 1991 a complaint against respondent carrier seeking reimbursement for the value of the losses/damages to the cargo.

Respondent carrier moved to dismiss the complaint on the ground that the claim or demand by petitioner has been waived, abandoned or otherwise extinguished for failure of the consignee to comply with the required claim for damages set forth in the first sentence of Stipulation No. 7 of the bill of lading, the full text of which reads –

- All claims for damages to the goods must be made to the carrier at the time of delivery to the consignee or his agent if the package or containers show exterior sign of damage, otherwise to be made in writing to the carrier within twenty-four hours from the time of delivery. Notice of loss due to delay must be given in writing to the carrier within 30 days from the time the goods were ready for delivery, or in case of non-delivery or misdelivery of shipment the written notice must be given within 30 days after the arrival at the port of discharge of the vessels on which the goods were received in case of the failure of the vessel on which the goods were shipped to arrive at the port of discharge, misdelivery must be presented in writing to the carrier within two months after the arrival of the vessel of the port of discharge or in case of the failure of the vessel in which the goods were shipped to arrive at the port of discharge written claims shall be made within 30 days of the time the vessel should have arrived. The giving of notice and the filing of claims as above provided shall be

conditions precedent to the securing of the right of actions against the carrier for losses due to delay, non-delivery, or misdelivery. In the case of damage to goods, the filing of the suit based upon claims arising from damage, delay, non-delivery or mis-delivery shall be instituted within one year from the date of the accrual of the right of action. Failure to institute judicial proceedings as herein provided shall constitute a waiver of the claim or right of action, and no agent nor employee of the carrier shall have authority to waive any of the provisions or requirements of this bill of lading. Any action by the ship owner or its agents or attorneys in considering or dealing with claims where the provisions or requirements of this bill of lading have not been complied with shall not be considered a waiver of such requirements and they shall not be considered as waived except by an express waiver.[1] (*Italics Supplied*)

The trial court, in an Order dated August 12, 1991, found the motion to dismiss well taken and accordingly, dismissed the complaint.[2]

Petitioner filed a motion for reconsideration which the trial court, in an Order dated February 4, 1992, denied.[3]

Aggrieved by the lower court's decision, petitioner appealed to the Court of Appeals. On November 15, 1994, the Court of Appeals rendered the assailed decision which affirmed the lower court's Orders dated August 12, 1991 and February 4, 1992.[4] Hence, this petition raising the lone error that –

THE HONORABLE COURT OF APPEALS HAS DECIDED THE QUESTION IN ISSUE NOT IN ACCORDANCE WITH THE PURPOSE FOR WHICH THE LAW WAS ESTABLISHED AND CONTRARY TO THE EXISTING JURISPRUDENCE.[5]

In support of its petition, petitioner contends that it is unreasonable for the consignee Atlas Fertilizer Corporation to be required to abide by the provisions of Stipulation No. 7 of the bill of lading. According to petitioner, since the place of delivery was remote and inaccessible, the consignee cannot be expected to have been able to immediately inform its main office and make the necessary claim for damages for the losses and unrecovered spillages in the subject cargo.

Petitioner further argues that the contents of the bill of lading are printed in small letters that no one would bother to read them, as they are difficult to read.

Finally, petitioner avers that from June 13 to 18, 1987, the vessel's Chief Officer supervised the unloading of the shipment and thereafter signed a discharging report attesting to the fact of loss and unrecovered spillages on the cargo. Thus, petitioner argues that respondent carrier's knowledge of the loss and spillages was substantial compliance with the notice of claim required under Stipulation No. 7 of the bill of lading.

The petition is bereft of merit.

It is a fact admitted by both parties that the losses and damages were caused by the mishandling of the cargo by respondent carrier. There is also no dispute that the consignee failed to strictly comply with Stipulation No. 7 of the Bill of Lading in not making claims for damages to the goods within the twenty-four hour period from the time of delivery, and that there was no exterior sign of damage of the goods. Consequently, the only issue left to be resolved is whether the failure to make the prompt notice of claim as required is fatal to the right of petitioner to claim indemnification for damages.

The bill of lading defines the rights and liabilities of the parties in reference to the contract of carriage. Stipulations therein are valid and binding in the absence of any showing that the same are contrary to law, morals, customs, public order and public policy. Where the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the stipulations shall control.

In light of the foregoing, there can be no question about the validity and enforceability of Stipulation No. 7 in the

bill of lading. The twenty-four hour requirement under the said stipulation is, by agreement of the contracting parties, a sine qua non for the accrual of the right of action to recover damages against the carrier. The wisdom of this kind of proviso has been succinctly explained in *Consunji v. Manila Port Service*, where it was held:

Carriers and depositaries sometimes require presentation of claims within a short time after delivery as a condition precedent to their liability for losses. Such requirement is not an empty formalism. It has a definite purpose, i.e., to afford the carrier or depositary a reasonable opportunity and facilities to check the validity of the claims while the facts are still fresh in the minds of the persons who took part in the transaction and the document are still available.[6]

Considering that a prompt demand was necessary to foreclose the possibility of fraud or mistake in ascertaining the validity of claims, there was a need for the consignee or its agent to observe the conditions provided for in Stipulation No. 7. Hence, petitioner's insistence that respondent carrier had knowledge of the damage because one of respondent carrier's officers supervised the unloading operations and signed a discharging report, cannot be construed as sufficient compliance with the aforementioned proviso. The Discharge Report is not the notice referred to in Stipulation No. 7, hence, its accomplishment cannot be considered substantial compliance of the requirement embodied therein. Moreover, a reading of the first paragraph of Stipulation No. 7 will readily show that upon the consignee or its agent rests the obligation to make the necessary claim within the prescribed period and not merely rely on the supposed knowledge of the damages by the carrier.

Petitioner also makes much of the fact that it had nothing to do with the preparation of the bill of lading. Worse, according to petitioner, the bill of lading, particularly Stipulation No. 7, was printed in very small letters that no one would be minded to closely examine the contents thereof and understand its legal implications.

We are not persuaded. A bill of lading is in the nature of a contract of adhesion, defined as one where one of the parties imposes a ready-made form of contract which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. Nevertheless, these types of contracts have been declared as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely.[7]

After it received the bill of lading without any objection, consignee Atlas Fertilizer Corporation was presumed to have knowledge of its contents and to have assented to the terms and conditions set forth therein. The pronouncement by this Court in *Magellan Manufacturing Marketing Corp. v. Court of Appeals* may be cited by analogy –

The holding in most jurisdictions has been that a shipper who receives a bill of lading without objection after an opportunity to inspect it, and permits the carrier to act on it by proceeding with the shipment is presumed to have accepted it as correctly stating the contract and to have assented to its terms. In other words, the acceptance of the bill without dissent raises the presumption that all the terms therein were brought to the knowledge of the shipper and agreed to by him and, in the absence of fraud or mistake, he is estopped from thereafter denying that he assented to such terms.[8] (*Italics Supplied*)

In this regard, we also quote with approval the lower court's view on the matter when it said:

It is very clear that the Bill of Lading provides for the time or period within which a claim should be made or suit filed in Court. Plaintiff or Atlas Fertilizer Corporation failed on this score. Moreover, Atlas Fertilizer Corporation could not claim ignorance of the contents of the Bill of Lading just because the printed letters are so small that they are hard to read or that the shipper did not sign it for Atlas Fertilizer Corporation being a regular shipper and a big corporation. Plaintiff is presumed to know the contents thereof for the reason that this is the very document (Annex "A" of the complaint) where plaintiff relied its suit.[9]

We are likewise not inclined to lend credence to petitioner's allegation that the lack of communications facilities in the place of delivery prevented the consignee from making a prompt claim for recovery of damages as prescribed by Stipulation No. 7. It is indeed hard to believe that Atlas Fertilizer Corporation, being an established corporation and a regular shipper, would be so inept as not to have the necessary facilities to at least monitor, in the form of communications equipment, the condition of its large shipment involving 32,000 bags of fertilizer. As pointed out by the appellate court, at this day and age of advanced telecommunications and modern transportation, even in the year 1989, the time limitation provided for in Stipulation No. 7 are just and reasonable.

WHEREFORE, in view of all the foregoing, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 36498 is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Annex "A", Complaint, p. 5.

[2] Court of Appeals, Original Records, p. 34.

[3] Id., p. 35.

[4] Rollo, pp. 28-33; penned by Associate Justice Alicia Austria-Martinez (now a Member of this Court), concurred in by Associate Justices Jaime M. Lantin and Conrado M. Vasquez, Jr.

[5] Rollo, p. 15.

[6] 110 Phil. 231 (1960).

[7] Philippine Commercial International Bank v. Court of Appeals, 325 Phil. 588 (1996).

[8] G.R. No. 95529, 22 August 1991, 201 SCRA 102.

[9] Court of Appeals, Original Records, p. 34.

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