

INTERNATIONAL FREEPORT TRADERS, INC., PETITIONER, VS. DANZAS INTERCONTINENTAL, INC., RESPONDENT.

G.R. No. 181833. January 26, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case involves the liability of the consignee for electric charges, demurrage, and storage fees based on a contract for lease of services that it entered into with a cargo handler.

The Facts and the Case

In March 1997 petitioner International Freeport Traders, Inc. (IFTI) ordered a shipment of Toblerone chocolates and assorted confectioneries from Jacobs Suchard Tobler Ltd. of Switzerland (Jacobs) through its Philippine agent, Colombo Merchants Phils., Inc., under the delivery term "F.O.B. Ex-Works."

To ship the goods, Jacobs dealt with Danmar Lines of Switzerland (Danmar) which issued to Jacobs negotiable house bills of lading [1] signed by its agent, respondent Danzas Intercontinental, Inc. (Danzas). The bills of lading stated that the terms were "F.O.B." and "freight payable at destination," with Jacobs as the shipper, China Banking Corporation as the consignee, and IFTI as the party to be notified of the shipment. The shipment was to be delivered at the Clark Special Economic Zone with Manila as the port of discharge. The goods were also covered by Letters of Credit MK-97/0467 and MK-97/0468 under a "freight collect" arrangement.

Since Danmar did not have its own vessel, it contracted Orient Overseas Container Line (OOCL) to ship the goods from Switzerland. OOCL issued a non-negotiable master bill of lading, [2] stating that the freight was prepaid with Danmar as the shipper and Danzas as the consignee and party to be notified. The shipment was to be delivered at Angeles City in Pampanga. Danmar paid OOCL an arbitrary fee of US\$425.00 to process the release of the goods from the port and ship the same to Clark in Angeles City. The fee was to cover brokerage, trucking, wharfage, arrastre, and processing expenses.

The goods were loaded on board the OOCL vessel on April 20, 1997 and arrived at the port of Manila on May 14, 1997. Upon learning from Danmar that the goods had been shipped, Danzas immediately informed IFTI of its arrival. IFTI prepared the import permit needed for the clearing and release of the goods from the Bureau of Customs and advised Danzas on May 20, 1997 to pick up the document. Danzas got the import permit on May 26, 1997. At the same time, it asked IFTI to 1) surrender the original bills of lading to secure the release of the goods, and 2) submit a bank guarantee inasmuch as the shipment was consigned to China Banking Corporation to assure Danzas that it will be compensated for freight and other charges.

But IFTI did not provide Danzas a bank guarantee, claiming that letters of credit already covered the shipment. IFTI insisted that Danzas should already endorse the import permit and bills of lading to OOCL since the latter had been paid an arbitrary fee. But Danzas did not do this.

Because IFTI did not provide Danzas with the original bills of lading and the bank guarantee, the latter withheld

the processing of the release of the goods. Danzas reiterated to IFTI that it could secure the release of the goods only if IFTI submitted a bank guarantee. Ultimately, IFTI yielded to the request and applied for a bank guarantee which was approved on May 23, 1997. It claimed to have advised Danzas on even date of its availability for pick up but Danzas secured it only on June 6, 1997.

In a letter dated June 6, 1997, Danzas told IFTI that the issuance of a promissory note would assure the delivery of the goods to Clark. On June 10, 1997 IFTI faxed a letter to Danzas, stating that Edwin Mabazza of OOCL confirmed that it had been paid an arbitrary fee. IFTI maintained, however, that it was not in a position to decide whether Danzas was to be liable for the charges. Nonetheless, IFTI issued a promissory note and requested that the goods be released to avoid any further charges.

Minutes later, IFTI faxed another letter reiterating its request that the goods be released pending payment of whatever charges Danzas had incurred for the release and delivery of the goods to Clark. IFTI promised to pay Danzas any charges within five days upon delivery of the goods as soon as the investigation as to which company will shoulder the expenses is settled.

On June 13, 1997 Danzas secured the release of the goods and delivered the same to IFTI at Clark on June 16, 1997. IFTI faxed a letter to Danzas, confirming the delivery. IFTI also said that Danzas' General Manager and OOCL's Mabazza visited IFTI's office to settle the charges on the goods. Danzas agreed to charge IFTI only the electric charges and storage fees totaling P56,000.00 (or roughly US\$2,210.00) from the original billing of about US\$7,000.00. In turn, IFTI agreed to give Danzas another opportunity to service its account and requested it to disregard IFTI's June 10, 1997 fax letter where it said that it would no longer employ Danzas for its future shipments for Subic and Clark.

On January 19, 1998, however, Danzas wrote IFTI, demanding payment of P181,809.45 for its handling of the shipment. IFTI ignored the demand. On March 26, 1998 Danzas filed separate complaints for sum of money against IFTI and OOCL before the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 78. The court subsequently dismissed the complaint against OOCL after it settled the case amicably.

In the main, Danzas claimed that IFTI engaged its services for P181,809.45 to process the release of the goods from the port and deliver it to IFTI at Clark but the latter reneged on its obligation, compelling Danzas to file the suit.

IFTI countered that it had no liability to Danzas since IFTI was not privy to the hiring of Danzas. Following normal procedure, IFTI coursed the import permit to Danzas since it was the party that issued the house bills of lading. IFTI added that under arbitrary shipments, imported goods are allowed to stay free of charge in the port for three working days and in the storage for five to six calendar days. Storage fees, electricity charges, and demurrage become due only after such period. In this case, IFTI informed Danzas on May 20, 1997 to pick up the import permit but Danzas picked it up only on May 26, 1997. And instead of endorsing it with the bills of lading to OOCL, Danzas itself processed the release of the goods. Since Danzas failed to process the release or transshipment of the goods within the three-day period, then it should shoulder all the charges from May 20, 1997 to June 13, 1999.

On January 2, 2002, [3] the MeTC rendered a decision in favor of Danzas and ordered IFTI to pay (1) P181,809.45 plus legal interest to be computed from March 26, 1998 until fully paid; (2) P25,000.00 as attorney's fees; and (3) the costs of suit. On appeal, however, the Regional Trial Court (RTC) [4] of Parañaque City, Branch 274, dismissed the complaint.

Danzas elevated the case to the Court of Appeals (CA) [5] which reversed the RTC decision. The CA ruled that

IFTI's fax letters dated June 10, 1997 showed the parties engaged in negotiation stage. When IFTI heeded Danzas' request for a bank guarantee, its action brought about a perfected contract of lease of service. The bank guarantee, procured by IFTI, contained all the requisites of a perfected contract. The cause of the contract was the release of the goods from the port and its delivery at Clark; the consideration was the compensation for the release and delivery of the goods to IFTI.

The Issues Presented

Two issues are presented:

- Whether or not a contract of lease of service exists between IFTI and Danzas; and
- Whether or not IFTI is liable to Danzas for the costs of the delay in the release of the goods from the port.

The Court's Rulings

One. The facts show the existence of several contracts: one between IFTI and Jacobs, another between Jacobs and Danmar, and still another between Danmar and OOCL. IFTI bought chocolates and confectioneries from Jacobs; Jacobs got Danmar to deliver the goods to its destination; Danmar got OOCL to carry the goods for it by ship to Manila. For this purpose, Danmar paid OOCL an arbitrary fee to process the release of the goods from the port of Manila and deliver the same to Clark. In all these transactions, Danzas acted as an agent of Danmar who signed the house bills of lading in favor of Jacobs.

In short, the combined services of different carriers were used for the delivery of the goods: Danmar, as the initial carrier, assumed the responsibility of conveyance when it received the goods for transportation; OOCL, as the forwarding carrier, had the duty to deliver the goods to Danzas which was designated as the consignee in the master bill of lading; and Danzas, being the agent of Danmar, assumed the responsibility for delivering the goods from Manila to IFTI at Clark. [6] Evidently, although Danmar intended the arbitrary fee that it paid OOCL to cover the latter's delivery of the goods all the way to Danzas, the latter had no notion of and was not a party to such arrangement. Since the last leg of the delivery of the goods to IFTI at Clark devolved on Danzas, the latter insisted that it was entitled to collect a separate fee following the terms of the sale (F.O.B. Ex-Works) and the house bills of lading (F.O.B. and freight payable at destination).

At first, IFTI did not want to pay more but when Danzas would not move the goods until it was assured that it would be paid, IFTI eventually negotiated with Danzas for its services. IFTI prepared the import permit and advised Danzas to pick up the document. But Danzas told IFTI that it also needed the house bills of lading and the bank guarantee. If IFTI believed that it was OOCL's responsibility to deliver the goods at its doorsteps, then it should not have asked Danzas to pick up the import permit and submit to it the bank guarantee and promissory note that it required. IFTI should have instead addressed its demand to OOCL for the delivery of the goods.

What is clear to the Court is that, by acceding to all the documentary requirements that Danzas imposed on it, IFTI voluntarily accepted its services. The bank guarantee IFTI gave Danzas assured the latter that it would eventually be paid all freight and other charges arising from the release and delivery of the goods to it.

Another indication that IFTI recognized its contract with Danzas is when IFTI requested Danzas to have the goods released pending payment of whatever expenses the latter would incur in obtaining the release and delivery of the goods at Clark. It also admitted that it initially settled with Danzas' General Manager and OOCL's Mabazza the issue regarding the charges on the goods after Danzas agreed to bill IFTI for the electric charges and storage fees totaling P56,000.00. Certainly, this concession indicated that their earlier agreement did not push through.

Every contract has the elements of (1) consent of the contracting parties; (2) object certain which is the subject

matter of the contract; and (3) cause of the obligation which is established. A contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. [7]

Generally, contracts undergo three distinct stages: (1) preparation or negotiation; (2) perfection; and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract where the parties fulfill or perform the terms they agreed on, culminating in its extinguishment. [8] Here, there is no other conclusion than that the parties entered into a contract of lease of service for the clearing and delivery of the imported goods.

Two. There is no dispute that under arbitrary shipments, imported goods are allowed to stay, free of charge, in the port for three working days, and in the storage for five to six calendar days. Beyond this period, storage fees, electric charges, and the demurrage are due.

Since the goods arrived at the Port of Manila on May 14, 1997, they could remain there until May 20, 1997 free of charge. The fact that IFTI had the import permit ready by May 20, 1997 was immaterial since it had not yet given the bank guarantee required of it. The Court is not convinced that IFTI had the bank guarantee ready as early as May 23, 1997 for, if that were the case, surely it did not make sense for it not to hand over such document to Danzas when the latter claimed the import permit on May 26, 1997.

Since the delay in the processing of the release of the goods was due to IFTI's fault, the CA rightly adjudged it liable for electric charges, demurrage, and storage fees of P122,191.75 from May 20, 1997 to June 13, 1999.

WHEREFORE, the Court DENIES the petition and AFFIRMS the decision dated October 25, 2007 of the Court of Appeals in CA-G.R. SP 79597.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] CA rollo, pp. 109-110.

[2] Id. at 111.

[3] CA rollo, pp. 34-39.

[4] Id. at 40-44.

[5] Rollo, pp. 46-62. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Martin S. Villarama, Jr. and Edgardo F. Sundiam.

[6] Transportation Laws and Public Service Act, Hernando B. Perez, 2001 Edition, pp. 86-87.

[7] Swedish Match, AB v. Court of Appeals, 483 Phil. 735, 750 (2004).

[8] XYST Corporation v. DMC Urban Properties Development, Inc., G.R. No. 171968, July 31, 2009, 594 SCRA 598, 604-605.

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