

MARKET DEVELOPERS, INC. (MADE), PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND GAUDIOSO UY, RESPONDENTS.*G.R. No. 74978. September 08, 1989*

Ponente: CRUZ, J.

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What one may notice at the outset about this case is that the private respondent, although the plaintiff in the court a quo, seems to have lost all interest after the decision in his favor was appealed to the respondent court. He did not even submit a brief.[1] Later, when this petition was filed and he was required to comment, he also failed to do so. Required to show cause for his non-compliance, he explained that his records of the case had been misplaced. Anyway, he said, he could not add to the evidence presented at the trial; hence, he was submitting the case for resolution by this Court without further pleadings.[2]

It is not as simple as that. The petitioner has raised substantial arguments not touched in the decision under challenge. It was in the private respondent's interest to refute these arguments if he was to maintain his advantage. Notably, the issues raised by the petitioner are mainly legal and could have been answered without much need of referring to the records. If there was such a need, it would have been easy for the private respondent to consult the records in this Court, which were available to him. But it is now too late for him to do so because of his waiver.

The private respondent's seeming indifference becomes all the more costly to him in the light of the challenged decision of the respondent court.[3] It was rather sketchy, to say the least. Hardly an original idea or finding was volunteered. The appellate court made a brief recital of the facts, summarized the allegations of the plaintiff and the defendant, quoted at length the findings and conclusions of the trial court,[4] declared them "well-taken and meritorious," and concluded by affirming the appealed decision in toto. It was a mistake for the private respondent to fully rely on that unsatisfactory decision.

It appears that on June 20, 1978, petitioner Market Developers, Inc. (MADE) entered into a written barging and towage contract with private respondent Gaudioso Uy for the shipment of the former's cargo from Iligan City to Kalibo, Aklan, at the rate of P1.45 per bag. The petitioner was allowed 4 lay days and agreed to pay demurrage at the rate of P5,000.00 for every day of delay, or in excess of the stipulated allowance.[5] On June 26, 1978, Uy sent a barge and a tugboat to Iligan City and loading of the petitioner's cargo began immediately. It is not clear who made the request, but upon completion of the loading on June 29, 1978, the parties agreed to divert the barge to Culasi, Roxas City, with the cargo being consigned per bill of lading to Modern Hardware in that city.[6] This new agreement was not reduced to writing. The shipment arrived in Roxas City on July 13, 1978, and the cargo was eventually unloaded and duly received by the consignee. There is some dispute as to the time consumed for such unloading. At any rate, about six months later, Uy demanded payment of demurrage charges in the sum of P40,855.40 for an alleged delay of eight days and 4/25 hours.[7] MADE ignored this demand, and Uy filed suit. He was sustained by the trial court, which ordered the petitioner to pay him the said amount with interest plus

P4,000.00 attorney's fees and the cost of the suit.[8] As earlier stated, this decision was fully affirmed on appeal to the respondent court, which is the reason for this petition.

Agreeing with the trial court, the respondent court held that since the diversion of the cargo to Roxas City was not covered by a new written agreement, the original agreement must prevail.

It is this conclusion that is now disputed by the petitioner, which contends that the first written contract was replaced by a new verbal agreement that did not contain any stipulation for demurrage. There is the further insistence that the alleged delay in the unloading of the cargo in Roxas City should not have been readily assumed as a fact by the trial and respondent courts because it had not been established by competent evidence and was based on mere hearsay. The petitioner also argues that the claim for demurrage was barred by laches, the private respondent having asserted it tardily and obviously only as an afterthought.[9]

After considering the issues and the arguments of the parties, we find that it was erroneous for the respondent courts to affirm that the original contract concluded on June 20, 1978, continued to regulate the relations of the parties. What it should have held instead was that the first written contract had been cancelled and replaced by the second verbal contract because of the change in the destination of the cargo.

In his testimony, the private respondent said he felt there was no need to draft another agreement as anyway the rates remained unchanged at P1.45 per sack of the petitioner's cargo. He did not consider, however, that there was a substantial difference between Roxas City and Kalibo, Aklan, as ports of destination, that affected the continued existence of the first contract.

As correctly pointed out by the petitioner, Roxas City is a much busier port than Kalibo, Aklan, where unloading of its cargo could have been accomplished faster because of the lighter traffic. That is why he agreed to pay demurrage charges under the original contract but not under the revised verbal agreement. Testifying for the petitioner, Julian Chua, its sales manager, declared that he had expressed misgivings about paying demurrage charges in Roxas City but was assured by Uy that there would be no such charges.[10] This testimony was never denied by the private respondent.

Indeed, it would have been foolhardy for the petitioner to assume demurrage charges in Roxas City, considering the crowded condition of the port in that place. Such assumption should not have been lightly inferred, especially since it is based on the resurrection of a contract already voided because of the change in the port of destination. To hold that the old agreement was still valid and subsisting notwithstanding this substantial change was to impose upon the petitioner a condition he had not, and would not have, accepted under the new agreement.

In ruling that in the absence of a new written agreement the old agreement must prevail, the courts a quo were saying that the first agreement continued to be valid because the second was void. That is hardly a logical conclusion. If the first contract was, indeed, still valid, then it was clearly violated because of the diversion of the cargo which, if we follow the reasoning of the courts a quo, could not have been agreed upon verbally.

Was the second contract invalid because it was not in writing?

Article 1356 of the Civil Code provides:

Contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable x x x.

We affirmed this rule only recently when we said in *Tong v. Intermediate Appellate Court*[11] that "a contract

may be entered into in whatever form except where the law requires a document or other special form as in the contracts enumerated in Article 1388 of the Civil Code. The general rule, therefore, is that a contract may be oral or written."

The contract executed by MADE and Uy was a contract of affreightment. As defined, a contract of affreightment is a contract with the shipowner to hire his ship or part of it, for the carriage of goods, and generally takes the form either of a charter party or a bill of lading.[12]

Article 652 of the Code of Commerce provides that "a charter party must be drawn in duplicate and signed by the contracting parties" and enumerates the conditions and information to be embodied in the contract, including "the lay days and extra lay days to be allowed and the demurrage to be paid for each of them."

But while the rule clearly shows that this kind of contract must be in writing, the succeeding Article 653 just as clearly provides:

If the cargo should be received without a charter party having been signed, the contract shall be understood as executed in accordance with what appears in the bill of lading, the sole evidence of title with regard to the cargo for determining the rights and obligations of the ship agent, of the captain and of the charterer.

We read this last provision as meaning that the charter party may be oral, in which case the terms thereof, not having been reduced to writing, shall be those embodied in the bill of lading.

Conformably, we recognized in *Compañía Marítima v. Insurance Company of North America*,[13] the existence of a contract of affreightment entered into by telephone, where it was shown that this oral agreement was later confirmed by a formal and written booking issued by the shipper's branch office and later carried out by the carrier.

We see no reason why the second agreement of the parties to deliver the petitioner's cargo to Roxas City instead of Kalibo, Aklan, should not be recognized simply because it was not in writing. Law and jurisprudence support the validity of such a contract. And there is no justification either incorporate in such contract the stipulation for demurrage in the original written contract which provided for a different port of destination than that later agreed upon by the parties. It was precisely this vital change in the second contract that rendered that first contract ineffectual.

If the rate provided for in the old written contract was maintained in the new oral contract, it was simply because, as the private respondent himself declared, the rates for Kalibo, Aklan and Culasi, Roxas City, were the same. But the demurrage charges cannot be deemed stipulated also in the verbal contract because the conditions in the ports of Aklan and Roxas City were, unlike the rates, not the same. In fact, they were vastly different.

The parol evidence rule is clearly inapplicable because that involves the verbal modification - usually not allowed - of a written agreement admittedly still valid and subsisting. In the case at bar, the first written agreement had not merely been modified but actually replaced by the second verbal agreement, which is perfectly valid even if not in writing like the first. As has been correctly held:

No principle of law makes it necessary that a new contract upon the same subject between the same persons shall be reduced to writing because the old contract was written.[14]

Regarding the bill of lading, an examination thereof will reveal that there is no condition or requirement therein for the payment of demurrage charges. Under the afore-quoted Article 653 of the Code of Commerce, therefore, there was no reason to read any stipulation for demurrage into the second contract.

At that, even assuming that the original agreement for demurrage had been carried over in the second contract,

there is no acceptable evidence of the delay allegedly incurred by the petitioner in the unloading of its cargo in Roxas City. Uy's testimony on this matter is self-serving, let alone the fact that he admittedly was not present at the unloading. His corroboration is hearsay. This consisted merely of Exhibits B and C,[15] the so-called statement of facts regarding the unloading of the cargo from the barge, prepared by the barge patron, a certain Ding Julian. This person was not presented at the trial to testify on his report and could therefore not be subjected to cross examination.

A no less important consideration is the timeliness of the private respondent's demand for the payment of demurrage charges as this would indicate the real intention of the parties regarding this matter.

The petitioner points out that the original bill sent by the private respondent charged it only for the freight but made no mention of the demurrage charges. The trial court correctly noted, and the respondent court agreed, that "this is so because at the time Exhibit '2' was made which was on July 8, 1978, there was yet no demurrage. As a matter of fact, unloading had not yet started. The unloading started on July 13, 1978. (Exh. D)."

True. But accepting *arguendo* the facts stated in the mentioned exhibits, we find that after sending the petitioner the billing dated July 8, 1978, the private respondent did not make any additional billing for demurrage following the completion of the unloading on July 24, 1978, as alleged. It is also a matter of record that on September 1, 1978, the petitioner remitted to Uy a check "in full payment of our account,"[16] which was accepted without protest and eventually encashed by the private respondent. Furthermore, the petitioner's sales manager testified that MADE and Uy entered into at least one more voyage afterwards, and there was no demand made then for the demurrage charges for the voyage to Roxas City.[17] This has not been denied. Uy says he made such demand verbally several times but offered no corroboration. It was only on February 5, 1979, that he made his demand in writing.[18]

Considering that Uy's original billing for freightage was made even while the petitioner's cargo was still being unloaded in Roxas City, one can only wonder why the billing for the demurrage charges was not made with similar dispatch, that is, soon after the alleged delay. Uncharacteristically, that billing was not at all prompt; indeed, it was inexplicably deferred. It is not explained either why, when the petitioner remitted what it expressly described as "full payment" of its account, Uy did not make haste to say that the demurrage charges were still outstanding nor did he mention this claim when he later entered into another freightage contract with the petitioner. More curiously, it took all of six months before it occurred to Uy to make a written demand for demurrage although he says his several verbal demands had been consistently ignored.

The Court finds that while this delay, standing by itself, is not long enough to constitute laches, it nevertheless clearly reflects on the private respondent's credibility when assessed in relation to the facts above narrated.

The sum of it all is that while private respondent could have met all the arguments of the petitioner frontally, he elected to rely merely on the decisions of the trial court and the respondent court, perhaps feeling smugly that he had already won. That was his error. He misjudged those judgments. It should never be assumed that when this Court sits to review the decisions of the lower courts, it will merely and automatically affirm them without further inquiry on the convenient assumption that they are correct. That may be a presumption, and it is often valid, but it is never conclusive upon us. Such decisions are always examined carefully and thoroughly by this Court, in the light of the issues and arguments raised by the parties before it, and may be modified or even reversed whenever warranted to give the deserving suitor the appropriate relief. As in this case.

WHEREFORE, the petition is GRANTED. The decision of the respondent court is REVERSED. Civil Case No. R 18095 in the Regional Trial Court of Cebu is hereby dismissed, with costs against the private respondent.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 11.

[2] Ibid., p. 39.

[3] Id., p. 26. Decision penned by Castro-Bartolome, J., with Coquia, Zosa and Ejercito, JJ., concurring.

[4] Original records, p. 107; decided by Judge Celso Avelino of the Court of First Instance, 14th Judicial District, Branch XIII.

[5] Exhibit "A."

[6] Exhibit "B."

[7] Exhibit "D."

[8] Decision, p. 109.

[9] Rollo, p. 10.

[10] TSN, March 24, 1980, p. 27.

[11] 156 SCRA 726.

[12] Black's Law Dictionary, p. 83.

[13] 12 SCRA 213.

[14] Teal v. Bilby, 31 L Ed 263.

[15] Exhibit "C."

[16] Exhibit "3."

[17] Supra, note 20, p. 39.

[18] Exhibit "D."

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