

PUROMINES, INC., PETITIONER, VS. COURT OF APPEALS AND PHILIPP BROTHERS OCEANIC, INC., RESPONDENTS.*G.R. No. 91228. March 22, 1993*

Ponente: NOCON, J.

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This is a special civil action for certiorari and prohibition to annul and set aside the Decision of the respondent Court of Appeals dated November 16, 1989[1] reversing the order of the trial court and dismissing petitioner's complaint in Civil Case No. 89-47403, entitled *Puromines, Inc. v. Maritime Factors, Inc. and Philipp Brothers Oceanic, Inc.*

Culled from the records of this case, the facts show that petitioner, Puromines, Inc. (Puromines for brevity) and Makati Agro Trading, Inc. (not a party in this case) entered into a contract with private respondent Philipp Brothers Oceanic, Inc. for the sale of prilled Urea in bulk. The Sales Contract No. S151.8.01018 provided, among others an arbitration clause which states thus:

"9. Arbitration

"Any disputes arising under this contract shall be settled by arbitration in London in accordance with the Arbitration Act 1950 and any statutory amendment or modification thereof. Each party is to appoint an Arbitrator, and should they be unable to agree, the decision of an Umpire appointed by them to be final. The Arbitrators and Umpire are all to be commercial men and resident in London. This submission may be made a rule of the High Court of Justice in England by either party."[2]

On or about May 12, 1988, the vessel M/V "Liliana Dimitrova" loaded on board at Yuzhny, USSR a shipment of 15,500 metric tons prilled Urea in bulk complete and in good order and condition for transport to Iloilo and Manila, to be delivered to petitioner. Three bills of lading were issued by the ship-agent in the Philippines, Maritime Factors Inc., namely: Bill of Lading No. 1 dated May 12, 1988 covering 10,000 metric tons for discharge in Manila; Bill of Lading No. 2 of even date covering 4,000 metric tons for unloading in Iloilo City; and Bill of Lading No. 3, also dated May 12, 1988, covering 1,500 metric tons likewise for discharge in Manila.

The shipment covered by Bill of Lading No. 2 was discharged in Iloilo City complete and in good order and condition. However, the shipments covered by Bill of Lading Nos. 1 and 3 were discharged in Manila in bad order and condition, caked, hardened and lumpy, discolored and contaminated with rust and dirt. Damages were valued at P683,056.29 including additional discharging expenses.

Consequently, petitioner filed a complaint[3] with the trial court[4] for breach of contract of carriage against Maritime Factors, Inc. (which was not included as respondent in this petition) as ship-agent in the Philippines for the owners of the vessel MV "Liliana Dimitrova," while private respondent, Philipp Brothers Oceanic, Inc., was impleaded as charterer of the said vessel and proper party to accord petitioner complete relief. Maritime Factors, Inc. filed its Answers[5] to the complaint, while private respondent filed a motion to dismiss, dated February 9, 1989, on the grounds that the complaint states no cause of action: that it was prematurely filed; and that petitioner

should comply with the arbitration clause in the sales contract.[6]

The motion to dismiss was opposed by petitioner contending the inapplicability of the arbitration clause inasmuch as the cause of action did not arise from a violation of the terms of the sales contract but rather for claims of cargo damages where there is no arbitration agreement. On April 26, 1989, the trial court denied respondent's motion to dismiss in this wise:

"The sales contract in question states in part:

'Any disputes arising under this contract shall be settled by arbitration . . . ' (emphasis supplied)

"A perusal of the facts alleged in the complaint upon which the question of sufficiency of the cause of action is to be determined shows quite clearly that the cause of action of the complaint arose from a breach of contract of carriage by the vessel chartered by the defendant Philipp Brothers Oceanic, Inc. Thus, the aforementioned arbitration clause cannot apply to the dispute in the present action which concerns plaintiff's claim for cargo loss/damage arising from breach of contract of carriage.

"That the defendant is not the ship owner or common carrier and therefore plaintiff does not have a legal right against it since every action must be brought against the real party in interest has no merit either for by the allegations in the complaint the defendant herein has been impleaded as charterer of the vessel, hence, a proper party."[7]

Elevating the matter to the Court of Appeals, petitioner's complaint was dismissed. The appellate court found that the arbitration provision in the sales contract and/or the bills of lading is applicable in the present case. Said the court:

"An examination of the sales contract No. S151.8.01018 shows that it is broad enough to include the claim for damages arising from the carriage and delivery of the goods subject matter thereof.

"It is also noted that the bills of lading attached as Annexes 'A', 'B' and 'C' to the complaint state, in part, 'any dispute arising under this Bill of Lading shall be referred to arbitration of the Maritime Arbitration Commission at the USSR Chamber of Commerce and Industry, 6 Kuibyshevskaya Str., Moscow, USSR, in accordance with the rules of procedure of said commission.'

"Considering that the private respondent was one of the signatories to the sales contract. . . all parties are obliged to respect the terms and conditions of the said sales contract, including the provision thereof on 'arbitration.' "

Hence, this petition.

The issue raised is: Whether the phrase "any dispute arising under this contract" in the arbitration clause of the sales contract covers a cargo claim against the vessel (owners and/or charterers) for breach of contract of carriage.

Petitioner states in its complaint that Philipp Brothers "was the charterer of the vessel MV 'Liliana Dimitrova' which transported the shipment from Yuzhny USSR to Manila." Petitioner further alleged that the caking and hardening, wetting and melting, and contamination by rust and dirt of the damaged portions of the shipment were due to the improper ventilation and inadequate storage facilities of the vessel; that the wetting of the cargo was attributable to the failure of the crew to close the hatches before and when it rained while the shipment was being unloaded in the Port of Manila; and that as a direct and natural consequence of the unseaworthiness and negligence of the vessel (sic), petitioner suffered damages in the total amount of P683,056.29 Philippine currency."[8] (underscoring supplied)

Moreover, in its Opposition to the Motion to Dismiss, petitioner said that "[t]he cause of action of the complaint

arose from breach of contract of carriage by the vessel that was chartered by defendant Philipp Brothers"[9]

In the present petition, petitioner argues that the sales contract does not include the contract of carriage which is a different contract entered into by the carrier with the cargo owners. That it was an error for the respondent court to touch upon the arbitration provision of the bills of lading in its decision inasmuch as the same was not raised as an issue by private respondent who was not a party in the bills of lading (emphasis Ours). Petitioner contradicts itself.

We agree with the court a quo that the sales contract is comprehensive enough to include claims for damages arising from carriage and delivery of the goods. As a general rule, the seller has the obligation to transmit the goods to the buyer, and concomitant thereto, the contracting of a carrier to deliver the same. Art. 1523 of the Civil Code provides:

"Art. 1523. Where in pursuance of contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in article 1503, first, second and third paragraphs, or unless a contrary intent appears.

"Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages."

x x x

The disputed sales contract provides for conditions relative to the delivery of goods, such as date of shipment, demurrage, weight as determined by the bill of lading at load port and more particularly the following provisions:

"3. Intention is to ship in one bottom, approximately 5,000 metric tons to Puromines and approximately 15,000 metric tons to Makati Agro. However, Sellers to have right to ship material as partial shipment or co-shipment in addition to above. In the event of co-shipment to a third party within Philippines same to be discussed with and acceptable to both Puromines and Makati Agro.

"4. Sellers to appoint neutral survey for Seller's account to conduct initial draft survey at first discharge port and final survey at last discharge port. Surveyor's results to be binding and final. In the event draft survey results show a quantity less than the combined Bills of Lading quantity for both Puromines and Makati Agro, Sellers to refund the difference. In the event that draft survey results show a quantity in excess of combined Bills of Lading quantity of both Puromines and Makati Agro then Buyers to refund the difference.

"5. It is expressly and mutually agreed that neither Sellers nor vessel's Owners have any liability to separate cargo or to deliver cargos separately or to deliver minimum/maximum quantities stated on individual Bills of Lading. At each port vessel is to discharge in accordance with Buyers local requirements and it is Buyer's responsibility to separate individual quantities required by each of them at each port during or after discharge."

As argued by respondent on its motion to dismiss, "the (petitioner) derives his right to the cargo from the bill of lading which is the contract of affreightment together with the sales contract. Consequently, the (petitioner) is bound by the provisions and terms of said bill of lading and of the arbitration clause incorporated in the sales contract."

Assuming arguendo that the liability of respondent is not based on the sales contract, but rather on the contract of carriage, being the charterer of the vessel MV "Liliana Dimitrova," it would, therefore, be material to show what kind of charter party the respondent had with the shipowner to determine respondent's liability.

American jurisprudence defines charter party as a contract by which an entire ship or some principal part thereof is let by the owner to another person for a specified time or use.[10] Charter or charter parties are of two kinds. Charter of demise or bareboat and contracts of affreightment.

Under the demise or bareboat charter of the vessel, the charterer will generally be considered as owner for the voyage or service stipulated. The charterer mans the vessel with his own people and becomes, in effect, the owner pro hac vice, subject to liability to others for damages caused by negligence.[11] To create a demise the owner of a vessel must completely and exclusively relinquish possession, command and navigation thereof to the charterer: anything short of such a complete transfer is a contract of affreightment (time or voyage charter party) or not a charter party at all.

On the other hand, a contract of affreightment is one in which the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for a special service to be rendered by the owner of the vessel[12] and under such contract the general owner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire.[13] If the charter is a contract of affreightment, which leaves the general owner in possession of the ship as owner for the voyage, the rights, responsibilities of ownership rest on the owner and the charterer is usually free from liability to third persons in respect of the ship.[14]

Responsibility to third persons for goods shipped on board a vessel follows the vessel's possession and employment; and if possession is transferred to the charterer by virtue of a demise, the charterer, and not the owner, is liable as carrier on the contract of affreightment made by himself or by the master with third persons, and is answerable for loss, damage or nondelivery of goods received for transportation. An owner who retains possession of the ship, though the hold is the property of the charterer, remains liable as carrier and must answer for any breach of duty as to the care, loading or unloading of the cargo.[15]

Assuming that in the present case, the charter party is a demise or bareboat charter, then Philipp Brothers is liable to Puromines, Inc., subject to the terms and conditions of the sales contract. On the other hand, if the contract between respondent and the owner of the vessel MV "Liliana Dimitrova" was merely that of affreightment, then it cannot be held liable for the damages caused by the breach of contract of carriage, the evidence of which is the bills of lading.

In any case, whether the liability of respondent should be based on the sales contract or that of the bill of lading, the parties are nevertheless obligated to respect the arbitration provisions on the sales contract and/or the bill of lading. Petitioner being a signatory and party to the sales contract cannot escape from his obligation under the arbitration clause as stated therein.

Neither can petitioner contend that the arbitration provision in the bills of lading should not have been discussed as an issue in the decision of the Court of Appeals since it was not raised as a special or affirmative defense. The three bills of lading were attached to the complaint as Annexes "A," "B," and "C," and are therefore parts thereof and may be considered as evidence although not introduced as such.[16] Hence, it was then proper for the court a quo to discuss the contents of the bills of lading, having been made part of the record.

Going back to the main subject of this case, arbitration has been held valid and constitutional. Even before the enactment of Republic Act No. 876, this Court has countenanced the settlement of disputes through arbitration. The rule now is that unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable arrangements and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator.[17]

As pointed out in the case of *Mindanao Portland Cement Corp. v. McDonough Construction Company of Florida*[18] wherein the plaintiff sued defendant for damages arising from a contract, the Court said:

"Since there obtains herein a written provision for arbitration as well as failure on respondent's part to comply therewith, the court a quo rightly ordered the parties to proceed to their arbitration in accordance with the terms of their agreement (Sec. 6 Republic Act 876). Respondent's arguments touching upon the merits of the dispute are improperly raised herein. They should be addressed to the arbitrators. This proceeding is merely a summary remedy to enforce the agreement to arbitrate. The duty of the court in this case is not to resolve the merits of the parties' claims but only to determine if they should proceed to arbitration or not. And although it has been ruled that a frivolous or patently baseless claim should not be ordered to arbitration, it is also recognized that the mere fact that a defense exists against a claim does not make it frivolous or baseless." [19]

In the case of *Bengson v. Chan*, [20] We upheld the provision of a contract which required the parties to submit their disputes to arbitration and We held as follows:

"The trial court sensibly said that 'all the causes of action alleged in the plaintiff's amended complaint are based upon the supposed violations committed by the defendants of the 'Contract of Construction of a Building' ' and that 'the provisions of paragraph 15 hereof leave a very little room for doubt that the said causes of action are embraced within the phrase 'any and all questions, disputes or differences between the parties hereto relative to the construction of the building,' which must be determined by arbitration of two persons and such determination by the arbitrators shall be 'final, conclusive and binding upon both parties' unless they go to court, in which the case the determination by arbitration is a condition precedent 'for taking any court action.' ' "

x x x

"We hold that the terms of paragraph 15 clearly express the intention of the parties that all disputes between them should first be arbitrated before court action can be taken by the aggrieved party." [21]

Premises considered, We uphold the validity and applicability of the arbitration clause as stated in Sales Contract No. S151.8.01018 to the present dispute.

WHEREFORE, petition is hereby DISMISSED and the decision of the court a quo is AFFIRMED.
SO ORDERED.

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

[1] CA-G.R. SP No. 18566, Justice Asaali S. Isnani, ponente, Justices Luis A. Javellana and Jaime M. Lantin, concurring.

[2] Rollo, p. 44

[3] Annex "A" of the Petition.

[4] Civil Case No. 89-47403, Branch XV, Manila, Judge Gil S. Sta. Maria, presiding Judge.

[5] Annex "B" of the Petition, Rollo, p. 29.

[6] Annex "C" of the Petition, Rollo, p. 36.

[7] Rollo, p. 100.

[8] Annex "A" of the Petition, Rollo. p. 23-24.

[9] Annex "D" of the Petition, Rollo, p. 47.

[10] Ward v. Thompson, 63 US 330, 162 L Ed 249; Vandewater v. Mills, 60 US 82, 15 L Ed 554.

[11] Assistance Inc v. Teledyne Industries Inc. (2d Dist) 37 Cal App 3d 644, 112 Cal Rptr 418.

[12] US v. Shea, 152 US 178, 38 L Ed 403, 14 S ct 579.

[13] US v. Shea, *supra*.

[14] Leary v. United States, *supra*.

[15] Gracie v. Palmer, 21 US 605, 5 L Ed 696; Kerry v. Pacific Marine Co., 121 Cal 564, 54 P 89.

[16] Philippine Bank of Communications v. Court of Appeals, G.R. No. 92067, 195 SCRA 567 (1991).

[17] Arbitration as a Means of Reducing Court Congestion, Coquia, Jorge, 78 SCRA 121 (1977), quoting Justice Malcolm in Vega v. San Carlos Milling, 51 Phil 917 (1924).

[18] 19 SCRA 808 (1967).

[19] *Id.*, pp. 814-815.

[20] 78 SCRA 113 (1977).

[21] *Id.*, pp. 117-118.

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