

REYMA BROKERAGE, INC., PETITIONER, VS. PHILIPPINE HOME ASSURANCE CORPORATION, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 93464. October 07, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Assailed in this petition for review on certiorari is the decision of the Court of Appeals in CA-G.R. CV No. 14550,[1] promulgated on November 29, 1988, which affirmed in toto the decision of the Regional Trial Court, National Capital Judicial Region, Branch 31, Manila.[2]

The challenged decision of the trial court disposes as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:

- a. To pay the sum of P88,650.22 plus legal interest thereon from the date of the filing of the Complaint until the same is fully paid;
- b. To pay a sum equivalent to 25% of the entire amount as attorney's fees; and
- c. To pay the costs of this suit.

SO ORDERED.[3]

The facts of the case found by the court a quo and adopted by the respondent court, are, in brief:

On October 2, 1979, the vessel 'MS Malmros Monsoon' received onboard at Fremantle, Brisbane Queensland, Australia from shipper Craig Mostyn & Co., Pty. Ltd. (of Brisbane, Queensland) a shipment of 2,680 cartons of hard frozen boneless beef contained in five (5) containers complete and in good order and condition for transport to Manila in favor of the eventual consignee RFM Corp. under Bill of Lading No. 53149, dated October 2, 1979. On October 13, 1979, the MS 'Malmros Monsoon' arrived at Pier 3 of the Port of Manila and discharged the shipment into the possession and custody of the defendant, the arrastre operator in the case at bar (Exh. 'A'). From Pier 3, the shipment was transferred to the Reefer Van Area of Pier 13 and on October 22, 1979, the defendant arrastre contractor loaded the containers in two (2) trucks and delivered them to Grech Food Industries Cold Storage in Pasig, Rizal arriving there at 1:00 o'clock A.M., the following morning, October 23, 1979. Four (4) personnel of defendant, a driver and a helper in each truck made the delivery. On October 23, 1979 at 9:00 o'clock in the morning, the containers were stripped and the representative of the defendant and consignee counted the contents of five (5) containers and after an inventory of Container No. BROU-430656[1], it was discovered that 203 cartons were found short out of the loaded 2,680 cartons of hard frozen boneless beef which according to the consignee was totally attributable to the defendant as it occurred while the said container in question was in the custody and responsibility of the defendant. Consignee filed claim for the recovery of the missing 203 cartons but the same was denied and consequently, consignee filed the claim with the plaintiff under its Marine Cargo Insurance Policy. The consignee was paid by plaintiff the amount of P88,658.22 (Exhs. 'F' and 'G'). The payment of consignee's claim by the plaintiff had subrogated the

latter to file this instant claim for the recovery of the said amount (Exh. 'H')[4]

As earlier indicated, the lower courts ruled against the herein petitioner despite its pleas, specifically the following:

- That, in the light of US Lines case (G.R. No. 73490, June 18, 1987), a "said-to-contain" bill of lading for sealed containers is "receipt" only of the containers but not of their contents which the carrier was not in a position to verify.
- That, since there is no evidence of tampering of seals, presumptions cannot take the place of proof in a due-process system where the burden of proof lies on the plaintiff (private respondent), and [where] the rule is that plaintiff must rely on the strength of his own evidence and not on the weakness of the defense.
- That, if, as claimed by private respondent, the "tampering" was ingeniously done and the tampered seal cannot be determined unless "separated" from the container, then plaintiff (private respondent) virtually admits that the containers could have been tampered from the very start (i.e., before petitioner took possession of them) but nobody noticed the tampering.
- That, in the light of the foregoing, it was not procedurally and equitably sound of private respondent to sue petitioner alone without joining the carrier and the arrastre contractor as alternative defendants; petitioner should not be singled out as defendant.
- That, this case is barred by prescription, as previously alleged in petitioner's Answer in the lower court; as a mere subrogee, private respondent cannot have more rights than the consignee itself who could not have brought this action beyond the one-year prescriptive period (one year from October 22, 1979) fixed by the carriage of goods by sea act.[5]

The issue presented is whether or not the respondent court committed a reversible error in declaring the petitioner liable for the short delivery of 203 cartons from the containerized shipments.

The petition is without merit.

The petitioner insists that the ruling of *United States Lines Inc. vs. Commissioner of Customs*[6] which held that:

It is petitioner's contention that Sec. 24 of Customs Administrative Order No. 8-75[*] was promulgated in line with the government policy of encouraging containerization which results in the laudable decongestion of ports of entry. Such arrangement has been sanctioned worldwide by international ports to cope [up] with the ever-increasing volume of cargoes of the shipping industry. Hence, the containerization system was devised to facilitate the expeditious and economical loading, carriage and unloading of cargoes. Under this system, the shipper loads his cargoes in a specially designed container, seals the container and delivers it to the carrier for transportation. The carrier does not participate in the counting of the merchandise for loading into the container, the actual loading thereof nor the sealing of the container. Having no actual knowledge of the kind, quantity or condition of the contents of the container, the carrier issues the corresponding bill of lading based on the declaration of the shipper. The bill of lading describes the cargo as a container simply and it states the contents of the container either as advised by the shipper or prefaced by the phrase "said to contain." Clearly then, the matter quantity, description and conditions of the cargo is the sole responsibility of the shipper.

is controlling in the case at bar because the transactions are identical, in that, in the present case, the cargoes in question are containerized. And the bill of lading, has, among others, the following entries:[7]

SHIPPED ON BOARD FIVE SHIPPER PACKED CONTAINERS SAID TO CONTAIN 2680 CARTONS
HARD FROZEN BONELESS 72938 kgs = 160800 lbs nett

536 CARTONS - CONTAINER NO: BROU 430915 (4)

536 CARTONS - CONTAINER NO: ITLU 780480 (2)

536 CARTONS - CONTAINER NO: BROU 430773 (7)

536 CARTONS - CONTAINER NO: ITLU 780254 (3)

536 CARTONS - CONTAINER NO: BROU 4306561

Moreover, we must note also that the bill of lading itself contains the printed stipulations:

x x x x x x x x

Weight, measurement marks and numbers (except loading marks for which the carrier is only responsible if stamped or otherwise shown clearly in letters at least 50 mm high) quality contents and value shown above are furnished by the Merchant and have not been checked and are to be considered unknown, unless expressly acknowledged and agreed to.[8]

And in the bottom portion of the bill of lading there appears the statement:

This bill of lading is a receipt only for the number of packages shown above.[9]

which was duly signed by the carrier.

Evidently, the carrier, by signifying in the bill of lading that "it is a receipt x x x for the number of packages shown above," had explicitly admitted that the containerized shipments had actually the number of packages declared by the shipper in the bill of lading. And this conclusion is bolstered by the stipulation printed in the bill of lading, "unless expressly acknowledged and agreed to." Therefore, the phrase "said to contain" also appearing in the bill of lading must give way to this reality.

Hence, this express acknowledgment of the carrier makes the case at bar an exception to the doctrine enunciated in *United States Lines*. The rule enunciated by *United States Lines* applies to a situation where the carrier of the containerized cargo simply admits the information furnished by the shipper with regard to the goods it shipped as reflected in the bill of lading ("said to contain") but not where the carrier of the containerized cargo makes an explicit admission as to the weight, measurement marks, numbers, quality contents, and value, and more so, inscribed these admissions as stipulations in the bill of lading itself, or made them an addendum thereto, to which the carrier affixed its express acknowledgment as what happened in this case. In its stead, the dictum that the bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described[10] governs. We have already held that:

x x x [a] bill of lading operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks and condition, quality, and value. As a contract it names the contracting parties, which include the consignee, fixes the route, destination, and freight rates or charges, and stipulates the rights and obligations assumed by the parties.[11]

In addition, the petitioner contends that it can not possibly be held liable for the shortage of the containerized goods because before the same came into its custody the same had already passed through different hands. And passing the buck, so to speak, it surmises that the shortfall occurred either in Brisbane, or on board the carrier, or at the piers (Piers 3 and 13), or at the consignee's warehouse in Pasig. But wherever, the shortage could not be blamed on the petitioner.

The petitioner contradicts itself for contrary to these posturings, it included allegations in its answer that all the containerized shipments arrived in Manila with the seals intact,[12] and that the petitioner received the said sealed

containers of the shipments, particularly container no. BROU-4306561 which sustained the loss of 203 cartons from the arrastre operator, also with the seals intact.[13] It can therefore be concluded that the petitioner received all the shipments as itemized in the bill of lading. For the rule is well-established that the facts alleged in a party's pleading are deemed admissions of that party and binding upon it.[14]

As the petitioner prima facie received all the shipments in the sealed containers, it has the burden to rebut the conclusion that it received the same without shortage. It has been authoritatively said that:

x x x prima facie evidence is of course, like all evidence susceptible to rebuttal; but unrebutted it remains sufficient, as a matter of law to establish the ultimate proposition it purports to prove. It goes without saying that such evidence can only be overcome by contrary proof and not by mere surmises and speculations.[15]

We have gone over the records and we find that the petitioner had not overthrown this presumption by contrary evidence. Therefore, the respondent court did not commit any reversible error in agreeing with the trial court that the loss of the 203 cartons is attributable to the petitioner.

On this score, the respondent court found that:

x x x x x x x x

x x x The fact remains that on October 13, 1979, the vessel MS 'Malmros Monsoon' arrived at Pier 3 of the Port of Manila and the shipment was discharged into possession and custody of the arrastre operator with the seals of the containers intact on same date (Exh. 'H'). It was only on October 22, 1979 when defendant withdrew the containers to be delivered to the Grech Food Industries Cold Storage arriving at 1:00 o'clock in the morning of the following day October 23, 1979 that the contents of Container No. BROU 306561 was counted and there it was discovered that the shipment was short of 203 cartons (Exhs. 'A', 'D' and 'E'). In other words, the containers were delivered to the consignee's warehouse at Grech Food Industries Cold Storage in Pasig, Rizal after more than nine (9) hours which is highly suspicious as the trip from the piers to Pasig, takes only one (1) hour and there were (sic) no heavy traffic along the route. This will militate against the stand of the defendant that the loss of the 203 cartons of hard frozen boneless beef meat occurred while it was outside its custody as the contrary had been proven by plaintiff.[16]

x x x x x x x x

There being no showing that the respondent court overlooked certain facts of substance and value, which if taken into account would affect the result of this case necessitating its reversal,[17] we must deny the petition for review.

Belatedly, the petitioner raises the issue of prescription citing sec. 3(6), paragraph 4 of the Carriage of Goods by Sea Act which provides:

x x x the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: x x x

This defense had been waived and/or abandoned by the petitioner. Other than the allegation of prescription in the answer, the petitioner never pursued this matter either in the later proceedings of the trial court or in the Court of Appeals. The petitioner can not now be allowed to raise this issue to this Court after such waiver or abandonment.

Granting arguendo that petitioner can still put up prescription as its defense, nonetheless it will not prosper considering that the petitioner is not a carrier or a vessel or a charterer or the legal holder of the bill of lading. The petitioner is the broker. And the private respondent is the insurer. The prescriptive period of this cause of action is ten years. In the present case, ten years have not yet lapsed from the delivery of the shipment.[18]

WHEREFORE, the petition is hereby DENIED. Costs against the petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Josue N. Bellosillo, J., ponente; Felipe B. Kalalo and Regina G. Ordoñez-Benitez, JJ., Concurring; rollo, 55.

[2] Regino R. Veridiano II, Presiding Judge; rollo, 37.

[3] Ibid., 37.

[4] Ibid., 55-56, Court of Appeals' Decision, 1-2.

[5] Memorandum, rollo, 123-124.

[6] G.R. No. 73490, June 18, 1987, 151 SCRA 189.

[*] Sec. 11-24 of Customs Administrative Order No. 8-75 reads as follows:

"Shippers' 'Load and Count' — a container packed with cargo by one shipper where the quantity, description and conditions of the cargo is the sole responsibility of the shipper."

[7] Rollo, 58.

[8] Memorandum, rollo, 101.

[9] Ibid., 100.

[10] Sec. 3, par. 4, Title I, Carriage of Goods by Sea Act.

[11] Phoenix Assurance Co., Ltd. vs. United States Lines, No. L-24033, February 22, 1968, 22 SCRA 674, 678.

[12] Answer, paragraphs 2 & 3, rollo, 22.

[13] Answer, paragraphs 7 & 8, rollo, 23.

[14] Granada v. PNB, No. L-20745, September 2, 1966, 18 SCRA 1; Gardner v. C.A., 131 SCRA 585 (1984).

[15] 1954 A.M.C., 1616 at p. 1620, cited in William Tetley, Q.C. Marine Cargo Claims, Second Edition, 113.

[16] Rollo, 58-59.

[17] Rule 45, Rules of Court, 2 Moran, 474, 1979 ed., citing Hodges vs. People, 68 Phil. 178, etc., Perido vs. Perido, L-28248, March 12, 1975.

[18] Insurance Co. of North America vs. Phil. Ports Terminal, Inc., L-6420, July 18, 1955, 97 Phil. 288; Sveriges Angfartygs Assurans Forening vs. Qua Chee Gan, No. L-9757, April 16, 1959, 105 Phil. 473, citing sec. 43, Art. 190; Art. 1114, Civil Code.

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