

MAGELLAN MANUFACTURING MARKETING CORPORATION,[] PETITIONER, VS. COURT OF APPEALS, ORIENT OVERSEAS CONTAINER LINES AND F.E. ZUELLIG, INC. RESPONDENTS.

G.R. No. 95529, August 22, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioner, via this petition for review on certiorari, seeks the reversal of the judgment of respondent Court of Appeals in CA-G.R. CV No. 18781,[1] affirming in part the decision of the trial court,[2] the dispositive portion of which reads:

"Premises considered, the decision appealed from is affirmed insofar as it dismisses the complaint. On the counter-claim, however, appellant is ordered to pay appellees the amount of P52,102.45 with legal interest from date of extra-judicial demand. The award of attorney's fees is deleted."[3]

The facts as found by respondent appellate court are as follows:

"On May 20, 1980, plaintiff-appellant Magellan Manufacturers Marketing Corp. (MMMC) entered into a contract with Choju Co. of Yokohama, Japan to export 136,000 anahaw fans for and in consideration of \$23,220.00. As payment thereof, a letter of credit was issued to plaintiff MMMC by the buyer. Through its president, James Cu, MMMC then contracted F.E. Zuellig, a shipping agent, through its solicitor, one Mr. King, to ship the anahaw fans through the other appellee, Orient Overseas Container Lines, Inc., (OOCL) specifying that he needed an on-board bill of lading and that transshipment is not allowed under the letter of credit (Exh. B-1). On June 30, 1980, appellant MMMC paid F.E. Zuellig the freight charges and secured a copy of the bill of lading which was presented to Allied Bank. The bank then credited the amount of US\$23,220.00 covered by the letter of credit to appellant's account. However, when appellant's president James Cu, went back to the bank later, he was informed that the payment was refused by the buyer allegedly because there was no on-board bill of lading, and there was a transshipment of goods. As a result of the refusal of the buyer to accept, upon appellant's request, the anahaw fans were shipped back to Manila by appellees, for which the latter demanded from appellant payment of P246,043.43. Appellant abandoned the whole cargo and asked appellees for damages.

"In their Partial Stipulation of Facts, the parties admitted that a shipment of 1,047 cartons of 136,000 pieces of Anahaw Fans contained in 1 x 40 and 1 x 20 containers was loaded at Manila on board the MV 'Pacific Despatcher' freight prepaid, and duly covered by Bill of Lading No. MNYK201T dated June 27, 1980 issued by OOCL; that the shipment was delivered at the port of discharge on July 19, 1980, but was subsequently returned to Manila after the consignee refused to accept/pay the same."[4]

Elaborating on the above findings of fact of respondent court and without being disputed by herein private respondents, petitioner additionally avers that:

"When petitioner informed private respondents about what happened, the latter issued a certificate stating that its bill of lading it issued is an on board bill of lading and that there was no actual transshipment of the fans.

According to private respondents when the goods are transferred from one vessel to another which both belong to the same owner which was what happened to the Anahaw fans, then there is (no) transshipment. Petitioner sent this certification to Choju Co., Ltd., but the said company still refused to accept the goods which arrived in Japan on July 19, 1980.

"Private respondents billed petitioner in the amount of P16,342.21 for such shipment and P34,928.71 for demurrage in Japan from July 26 up to August 31, 1980 or a total of P51,271.02. In a letter dated March 20, 1981, private respondents gave petitioner the option of paying the sum of P51,271.02 or to abandon the Anahaw fans to enable private respondents to sell them at public auction to cover the cost of shipment and demurrages. Petitioner opted to abandon the goods. However, in a letter dated June 22, 1981 private respondents demanded for payment of P298,150.93 from petitioner which represents the freight charges from Japan to Manila; demurrage incurred in Japan and Manila from October 22, 1980 up to May 20, 1981; and charges for stripping the container van of the Anahaw fans on May 20, 1981.

"On July 20, 1981 petitioner filed the complaint in this case praying that private respondents be ordered to pay whatever petitioner was not able to earn from Choju Co., Ltd., amounting to P174,150.00 and other damages like attorney's fees since private respondents are to blame for the refusal of Choju Co., Ltd. to accept the Anahaw fans. In answer thereto the private respondents alleged that the bill of lading clearly shows that there will be a transshipment and that petitioner was well aware that MV (Pacific) Despatcher was only up to Hongkong where the subject cargo will be transferred to another vessel for Japan. Private respondents also filed a counterclaim praying that petitioner be ordered to pay freight charges from Japan to Manila and the demurrages in Japan and Manila amounting to P298,150.93.

"The lower court decided the case in favor of private respondents. It dismissed the complaint on the ground that petitioner had given its consent to the contents of the bill of lading where it is clearly indicated that there will be transshipment. The lower court also said that petitioner is liable to pay to private respondent the freight charges from Japan to Manila and demurrages since it was the former which ordered the reshipment of the cargo from Japan to Manila.

"On appeal to the respondent court, the finding of the lower (court) that petitioner agreed to a transshipment of the goods was affirmed but the finding that petitioner is liable for P298,150.93 was modified. It was reduced to P52,102.45 which represents the freight charges and demurrages incurred in Japan but not for the demurrages incurred in Manila. According to the respondent (court) the petitioner can not be held liable for the demurrages incurred in Manila because private respondents did not timely inform petitioner that the goods were already in Manila in addition to the fact that private respondent had given petitioner the option of abandoning the goods in exchange for the demurrages."[5]

Petitioner, being dissatisfied with the decision of respondent court and the motion for reconsideration thereof having been denied, invokes the Court's review powers for the resolution of the issues as to whether or not respondent court erred (1) in affirming the decision of the trial court which dismissed petitioner's complaint; and (2) in holding petitioner liable to private respondents in the amount of P52,102.45.[6]

I. Petitioner obstinately faults private respondents for the refusal of its buyer, Choju Co., Ltd., to take delivery of the exported anahaw fans resulting in a loss of P174,150.00 representing the purchase price of the said export items because of violation of the terms and conditions of the letter of credit issued in favor of the former which specified the requirement for an on board bill of lading and the prohibition against transshipment of goods, inasmuch as the bill of lading issued by the latter bore the notation "received for shipment" and contained an entry indicating transshipment in Hongkong.

We find no fault on the part of private respondents. On the matter of transshipment, petitioner maintains that "x x x while the goods were transferred in Hongkong from MV Pacific Despatcher, the feeder vessel, to MV Oriental

Researcher, a mother vessel, the same cannot be considered transshipment because both vessels belong to the same shipping company, the private respondent Orient Overseas Container Lines, Inc." [7] Petitioner emphatically goes on to say: "To be sure, there was no actual transshipment of the Anahaw fans. The private respondents have executed a certification to the effect that while the Anahaw fans were transferred from one vessel to another in Hong Kong, since the two vessels belong to one and the same company then there was no transshipment." [8]

Transshipment, in maritime law, is defined as "the act of taking cargo out of one ship and loading it in another," [9] or "the transfer of goods from the vessel stipulated in the contract of affreightment to another vessel before the place of destination named in the contract has been reached," [10] or "the transfer for further transportation from one ship or conveyance to another." [11] Clearly, either in its ordinary or its strictly legal acceptation, there is transshipment whether or not the same person, firm or entity owns the vessels. In other words, the fact of transshipment is not dependent upon the ownership of the transporting ships or conveyances or in the change of carriers, as the petitioner seems to suggest, but rather on the fact of actual physical transfer of cargo from one vessel to another.

That there was transshipment within this contemplation is the inescapable conclusion, as there unmistakably appears on the face of the bill of lading the entry "Hong Kong" in the blank space labeled "Transshipment," which can only mean that transshipment actually took place. [12] This fact is further bolstered by the certification [13] issued by private respondent F.E. Zuellig, Inc. dated July 19, 1980, although it carefully used the term "transfer" instead of transshipment. Nonetheless, no amount of semantic juggling can mask the fact that transshipment in truth occurred in this case.

Petitioner insists that "(c)onsidering that there was no actual transshipment of the Anahaw fans, then there is no occasion under which the petitioner can agree to the transshipment of the Anahaw fans because there is nothing like that to agree to" and "(i)f there is no actual transshipment but there appears to be a transshipment in the bill of lading, then there can be no possible reason for it but a mistake on the part of the private respondents." [14]

Petitioner, in effect, is saying that since there was a mistake in documentation on the part of private respondents, such a mistake militates against the conclusiveness of the bill of lading insofar as it reflects the terms of the contract between the parties, as an exception to the parole evidence rule, and would therefore permit it to explain or present evidence to vary or contradict the terms of the written agreement, that is, the bill of lading involved herein.

It is a long standing jurisprudential rule that 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 contract, it names the parties, which includes the consignee, fixes the route, destination, and freight rates or charges, and stipulates the rights and obligations assumed by the parties. [15] Being a contract, it is the law between the parties who are bound by its terms and conditions provided that these are not contrary to law, morals, good customs, public order and public policy. [16] A bill of lading usually becomes effective upon its delivery to and acceptance by the shipper. It is presumed that the stipulations of the bill were, in the absence of fraud, concealment or improper conduct, known to the shipper, and he is generally bound by his acceptance whether he reads the bill or not. [17]

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. This rule applies with particular force where a shipper accepts a bill of lading with full knowledge of its contents and acceptance under such circumstances makes it a binding contract.[18]

In the light of the series of events that transpired in the case at bar, there can be no logical conclusion other than that the petitioner had full knowledge of, and actually consented to, the terms and conditions of the bill of lading thereby making the same conclusive as to it, and it cannot now be heard to deny having assented thereto. As borne out by the records, James Cu himself, in his capacity as president of MMMC, personally received and signed the bill of lading. On practical considerations, there is no better way to signify consent than by voluntarily signing the document which embodies the agreement. As found by the Court of Appeals —

"Contrary to appellant's allegation that it did not agree to the transshipment, it could be gleaned from the record that the appellant actually consented to the transshipment when it received the bill of lading personally at appellee's (F.E. Zuellig's) office. There clearly appears on the face of the bill of lading under column "PORT OF TRANSHIPMENT" an entry "HONGKONG" (Exhibits 'G-1'). Despite said entries he still delivered his voucher (Exh. F) and the corresponding check in payment of the freight (Exhibit D), implying that he consented to the transshipment (Decision, p. 6, Rollo)."[19]

Furthermore and particularly on the matter of whether or not there was transshipment, James Cu, in his testimony on cross-examination, categorically stated that he knew for a fact that the shipment was to be unloaded in Hong Kong from the MV Pacific Dispatcher to be transferred to a mother vessel, the MV Oriental Researcher, in this wise:

"Q Mr. Cu, are you not aware of the fact that your shipment is to be transferred or transhipped at the port of Hongkong?

A I know. It's not transport, they relay, not trans. . . yes, that is why we have an agreement if they should not put a transshipment in Hongkong, that's why they even stated in the certification.

X X X X X X X X

Q In layman's language, would you agree with me that transshipment is the transfer of a cargo from one vessel to the other?

A As a layman, yes.

Q So, you know for a fact that your shipment is going to be unloaded in Hongkong from M.V. Dispatcher (sic) and then transfer (sic) to another vessel which was the Oriental Dispatcher, (sic) you know that for a fact?

A Yes, sir. (Italics supplied.)[20]

Under the parol evidence rule,[21] the terms of a contract are rendered conclusive upon the parties, and evidence aliunde is not admissible to vary or contradict a complete and enforceable agreement embodied in a document, subject to well defined exceptions which do not obtain in this case. The parol evidence rule is based on the

consideration that when the parties have reduced their agreement on a particular matter into writing, all their previous and contemporaneous agreements on the matter are merged therein. Accordingly, evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid instrument.[22] The mistake contemplated as an exception to the parol evidence rule is one which is a mistake of fact mutual to the parties.[23] Furthermore, the rules on evidence, as amended, require that in order that parol evidence may be admitted, said mistake must be put in issue by the pleadings, such that if not raised inceptively in the complaint or in the answer, as the case may be, a party can not later on be permitted to introduce parol evidence thereon.[24]

Needless to say, the mistake adverted to by herein petitioner, and by its own admission, was supposedly committed by private respondents only and was raised by the former rather belatedly only in this instant petition. Clearly then, and for failure to comply even only with the procedural requirements thereon, we cannot admit evidence to prove or explain the alleged mistake in documentation imputed to private respondents by petitioner.

Petitioner further argues that assuming that there was transshipment, it cannot be deemed to have agreed thereto even if it signed the bill of lading containing such entry because it had made known to private respondents from the start that transshipment was prohibited under the letter of credit and that, therefore, it had no intention to allow transshipment of the subject cargo. In support of its stand, petitioner relies on the second paragraph of Article 1370 of the Civil Code which states that "(i)f the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former," as well as the supposed ruling in *Caltex Phil., Inc. vs. Intermediate Appellate Court, et al.*[25] that "where the literal interpretation of a contract is contrary to the evident intention of the parties, the latter shall prevail."

As between such stilted thesis of petitioner and the contents of the bill of lading evidencing the intention of the parties, it is irremissible that the latter must prevail. Petitioner conveniently overlooks the first paragraph of the very article that he cites which provides that "(i)f 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 addition, Article 1371 of the same Code provides that "(i)n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."

The terms of the contract as embodied in the bill of lading are clear and thus obviates the need for any interpretation. The intention of the parties which is the carriage of the cargo under the terms specified thereunder and the wordings of the bill of lading do not contradict each other. The terms of the contract being conclusive upon the parties and judging from the contemporaneous and subsequent actuations of petitioner, to wit, personally receiving and signing the bill of lading and paying the freight charges, there is no doubt that petitioner must necessarily be charged with full knowledge and unqualified acceptance of the terms of the bill of lading and that it intended to be bound thereby.

Moreover, it is a well-known commercial usage that transshipment of freight without legal excuse, however competent and safe the vessel into which the transfer is made, is a violation of the contract and an infringement of the right of the shipper, and subjects the carrier to liability if the freight is lost even by a cause otherwise excepted.[26] It is highly improbable to suppose that private respondents, having been engaged in the shipping business for so long, would be unaware of such a custom of the trade as to have undertaken such transshipment without petitioner's consent and unnecessarily expose themselves to a possible liability. Verily, they could only have undertaken transshipment with the shipper's permission, as evidenced by the signature of James Cu.

Another ground for the refusal of acceptance of the cargo of anahaw fans by Choju Co., Ltd. was that the bill of lading that was issued was not an on board bill of lading, in clear violation of the terms of the letter of credit

issued in favor of petitioner. On cross-examination, it was likewise established that petitioner, through its aforesaid president, was aware of this fact, thus:

"Q

If the container van, the loaded container van, was transported back to South Harbor on June 27, 1980, would you tell us, Mr. Cu, when the Bill of Lading was received by you?

A

I received on June 30, 1980. I received at the same time so then I gave the check.

X X X X X X X X

Q

So that in exchange of the Bill of Lading you issued your check also dated June 30, 1980?

A

Yes, sir.

Q

And June 27, 1980 was the date of the Bill of Lading, did you notice that the Bill of Lading states: 'Received for shipment' only?

A

Yes, sir.

Q

What did you say?

A

I requested to issue me on board bill of lading.

Q

When?

A

In the same date of June 30.

Q

What did they say?

A

They said, they cannot.

x x x x x x x x

Q

Do you know the difference between a "received for shipment bill of lading" and "on board bill of lading"?

A

Yes, sir.

Q

What's the difference?

A

Received for shipment, you can receive the cargo even you don't ship on board, that is placed in the warehouse; while on--board bill of lading means that is loaded on the vessel, the goods.

x x x x x x x x

Q

In other words, it was not yet on board the vessel?

A

During that time, not yet.

x x x x x x x x

Q

Do you know, Mr. Cu, that under the law, if your shipment is received on board a vessel you can demand an

on-board bill of lading not only a received for shipment bill of lading?

A

Yes sir.

Q

And did you demand from F.E. Zuellig the substitution of that received for shipment bill of lading with an on-board bill of lading?

A

Of course, instead they issue me a certification.

Q

They give you a...?

A

... a certification that it was loaded on board on June 30.

x x x x x x x x

Q

Mr. Cu, are you aware of the conditions of the Letter of Credit to the effect that there should be no transshipment and that it should also get an on board bill of lading?

A

Yes sir."[27]

Undoubtedly, at the outset, petitioner knew that its buyer, Choju Co., Ltd., particularly required that there be an on board bill of lading, obviously due to the guaranty afforded by such a bill of lading over any other kind of bill of lading. The buyer could not have insisted on such a stipulation on a pure whim or caprice, but rather because of its reliance on the safeguards to the cargo that having an on board bill of lading ensured. Herein petitioner cannot feign ignorance of the distinction between an "on board" and a "received for shipment" bill of lading, as manifested by James Cu's testimony. It is only to be expected that those long engaged in the export industry should be familiar with business usages and customs.

In its petition, MMMC avers that "when petitioner learned of what happened, it saw private respondent F.E. Zuellig which, in turn, issued a certification that as of June 30, 1980, the Anahaw fans were already on board MV Pacific Despatcher (which means that the bill of lading is an on-board-bill of lading or 'shipped' bill of lading as distinguished from a 'received for shipment' bill of lading as governed by Sec. 3, par. 7, Carriage of Goods by Sea Act) x x x."[28] What the petitioner would suggest is that said certification issued by F.E. Zuellig, Inc., dated July

19, 1980, had the effect of converting the original "received for shipment only" bill of lading into an "on board" bill of lading as required by the buyer and was, therefore, by substantial compliance, not violative of the contract.

An on board bill of lading is one in which it is stated that the goods have been received on board the vessel which is to carry the goods, whereas a received for shipment bill of lading is one in which it is stated that the goods have been received for shipment with or without specifying the vessel by which the goods are to be shipped. Received for shipment bills of lading are issued whenever conditions are not normal and there is insufficiency of shipping space.[29] An on board bill of lading is issued when the goods have been actually placed aboard the ship with every reasonable expectation that the shipment is as good as on its way.[30] It is, therefore, understandable that a party to a maritime contract would require an on board bill of lading because of its apparent guaranty of certainty of shipping as well as the seaworthiness of the vessel which is to carry the goods.

It cannot plausibly be said that the aforestated certification of F.E. Zuellig, Inc. can qualify the bill of lading, as originally issued, into an on board bill of lading as required by the terms of the letter of credit issued in favor of petitioner. For one, the certification was issued only on July 19, 1980, way beyond the expiry date of June 30, 1980 specified in the letter of credit for the presentation of an on board bill of lading. Thus, even assuming that by a liberal treatment of the certification it could have the effect of converting the received for shipment bill of lading into an on board bill of lading, as petitioner would have us believe, such an effect may be achieved only as of the date of its issuance, that is, on July 19, 1980 and onwards.

The fact remains, though, that on the crucial date of June 30, 1980 no on board bill of lading was presented by petitioner in compliance with the terms of the letter of credit and this default consequently negates its entitlement to the proceeds thereof. Said certification, if allowed to operate retroactively, would render illusory the guaranty afforded by an on board bill of lading, that is, reasonable certainty of shipping the loaded cargo aboard the vessel specified, not to mention that it would indubitably be stretching the concept of substantial compliance too far.

Neither can petitioner escape liability by adverting to the bill of lading as a contract of adhesion, thus warranting a more liberal consideration in its favor to the extent of interpreting ambiguities against private respondents as allegedly being the parties who gave rise thereto. The bill of lading is clear on its face. There is no occasion to speak of ambiguities or obscurities whatsoever. All of its terms and conditions are plainly worded and commonly understood by those in the business.

It will be recalled that petitioner entered into the contract with Choju Co., Ltd. way back on May 20, 1980 or over a month before the expiry date of the letter of credit on June 30, 1980, thus giving it more than ample time to find a carrier that could comply with the requirements of shipment under the letter of credit. It is conceded that bills of lading constitute a class of contracts of adhesion. However, as ruled in the earlier case of *Ong Yiu vs. Court of Appeals, et al.*[31] and reiterated in *Servando, et al. vs. Philippine Steam Navigation Co.*,[32] plane tickets as well as bills of lading are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent. The respondent court correctly observed in the present case that "when the appellant received the bill of lading, it was tantamount to appellant's adherence to the terms and conditions as embodied therein." [33]

In sum, petitioner had full knowledge that the bill issued to it contained terms and conditions clearly violative of the requirements of the letter of credit. Nonetheless, perhaps in its eagerness to conclude the transaction with its Japanese buyer and in a race to beat the expiry date of the letter of credit, petitioner took the risk of accepting the bill of lading even if it did not conform with the indicated specifications, possibly entertaining a glimmer of hope and imbued with a touch of daring that such violations may be overlooked, if not disregarded, so long as the cargo is delivered on time. Unfortunately, the risk did not pull through as hoped for. Any violation of the terms and

conditions of the letter of credit as would defeat its right to collect the proceeds thereof was, therefore, entirely of the petitioner's making for which it must bear the consequences. As finally averred by private respondents, and with which we agree, "x x x the questions of whether or not there was a violation of the terms and conditions of the letter of credit, or whether or not such violation was the cause or motive for the rejection by petitioner's Japanese buyer should not affect private respondents therein since they were not privies to the terms and conditions of petitioner's letter of credit and cannot therefore be held liable for any violation thereof by any of the parties thereto." [34]

II. Petitioner contends that respondent court erred in holding it liable to private respondents for P52,102.45 despite its exercise of its option to abandon the cargo. It will be recalled that the trial court originally found petitioner liable for P298,150.93, which amount consists of P51,271.02 for freight, demurrage and other charges during the time that the goods were in Japan and for its reshipment to Manila, P831.43 for charges paid to the Manila International Port Terminal, and P246,043.43 for demurrage in Manila from October 22, 1980 to June 18, 1981.

On appeal, the Court of Appeals limited petitioner's liability to P52,102.45 when it ruled:

"As regards the amount of P51,271.02, which represents the freight charges for the return shipment to Manila and the demurrage charges in Japan, the same is supported by appellant's own letter request (Exh. 2) for the return of the shipment to Manila at its (appellant's) expense, and hence, it should be held liable therefor. The amount of P831.43 was paid to the Manila International Port Terminal upon arrival of the shipment in Manila for appellant's account. It should properly be charged to said appellant." [35]

However, respondent court modified the trial court's decision by excluding the award for P246,043.43 for demurrage in Manila from October 22, 1980 to June 18, 1981.

Demurrage, in its strict sense, is the compensation provided for in the contract of affreightment for the detention of the vessel beyond the time agreed on for loading and unloading. Essentially, demurrage is the claim for damages for failure to accept delivery. In a broad sense, every improper detention of a vessel may be considered a demurrage. Liability for demurrage, using the word in its strictly technical sense, exists only when expressly stipulated in the contract. Using the term in its broader sense, damages in the nature of demurrage are recoverable for a breach of the implied obligation to load or unload the cargo with reasonable dispatch, but only by the party to whom the duty is owed and only against one who is a party to the shipping contract. [36] Notice of arrival of vessels or conveyances, or of their placement for purposes of unloading is often a condition precedent to the right to collect demurrage charges.

Private respondents, admittedly, have adopted the common practice of requiring prior notice of arrival of the goods shipped before the shipper can be held liable for demurrage, as declared by Wilfredo Hans, head of the accounting department of F.E. Zuellig, Inc., on cross-examination as a witness for private respondents:

"Q

x x x you will agree with me that before one could be charged with demurrage the shipper should be notified of the arrival of the shipment?

A

Yes sir.

Q

Without such notification, there is no way by which the shipper would know (of) such arrival?

A

Yes.

Q

And no charges of demurrage before the arrival of the cargo?

A

Yes sir."[37]

Accordingly, on this score, respondent court ruled:

"However, insofar as the demurrage charges of P246,043.43 from October up to May 1980, arriv(al) in Manila, are concerned, We are of the view that appellant should not be made to shoulder the same, as it was not at fault nor was it responsible for said demurrage charges. Appellee's own witness (Mabazza) testified that while the goods arrived in Manila in October 1980, appellant was notified of said arrival only in March 1981. No explanation was given for the delay in notifying appellant. We agree with appellant that before it could be charged for demurrage charges it should have been notified of the arrival of the goods first. Without such notification it could not be so charged because there was no way by which it would know that the goods had already arrived for it to take custody of them. Considering that it was only in March 1981 (Exh. K) that appellant was notified of the arrival of the goods, although the goods had actually arrived in October 1980 (tsn, Aug. 14, 1986, pp. 10-14), appellant cannot be charged for demurrage from October 1980 to March 1981. x x x"[38]

While being satisfied with the exclusion of demurrage charges in Manila for the period from October 22, 1980 to June 18, 1981, petitioner neverthe-less assails the Court of Appeals' award of P52,102.43 in favor of private respondents, consisting of P51,271.01 as freight and demurrage charges in Japan and P831.43 for charges paid at the Manila International Port Terminal.

Petitioner asserts that by virtue of the exercise of its option to abandon the goods so as to allow private respondents to sell the same at a public auction and to apply the proceeds thereof as payment for the shipping and demurrage charges, it was released from liability for the sum of P52,102.43 since such amount represents the shipping and demurrage charges from which it is considered to have been released due to the abandonment of goods. It further argues that the shipping and demurrage charges from which it was released by the exercise of the option to abandon the goods in favor of private respondents could not have referred to the demurrage charges in Manila because respondent court ruled that the same were not chargeable to petitioner. Private respondents would rebut this contention by saying in their memorandum that the abandonment of goods by petitioner was too late and made in bad faith.[39]

On this point, we agree with petitioner. Ordinarily, the shipper is liable for freightage due to the fact that the shipment was made for its benefit or under its direction and, correspondingly, the carrier is entitled to collect charges for its shipping services. This is particularly true in this case where the reshipment of the goods was made at the instance of petitioner in its letter of August 29, 1980.[40]

However, in a letter dated March 20, 1981,[41] private respondents belatedly informed petitioner of the arrival of its goods from Japan and that if it wished to take delivery of the cargo it would have to pay P51,271.02, but with the last paragraph thereof stating as follows:

"Please can you advise within 15 days of receipt of this letter whether you intend to take delivery of this shipment, as alternatively we will have to take legal proceedings in order to have the cargo auctioned to recover the costs involved, as well as free the container which are (sic) urgently required for export cargoes."

Clearly, therefore, private respondents unequivocally offered petitioner the option of paying the shipping and demurrage charges in order to take delivery of the goods or of abandoning the same so that private respondents could sell them at public auction and thereafter apply the proceeds in payment of the shipping and other charges.

Responding thereto, in a letter dated April 3, 1981, petitioner seasonably communicated its decision to abandon the goods in favor of private respondents with the specific instruction that any excess of the proceeds over the legal costs and charges be turned over to petitioner. Receipt of said letter was acknowledged by private respondents, as revealed by the testimony of Edwin Mabazza, a claim officer of F.E. Zuellig, Inc., on cross-examination.[42]

Despite petitioner's exercise of the option to abandon the cargo, however, private respondents sent a demand letter on June 22, 1981[43] insisting that petitioner should pay the entire amount of P298,150.93 and, in another letter dated April 30, 1981,[44] they stated that they will not accept the abandonment of the goods and demanded that the outstanding account be settled. The testimony of said Edwin Mabazza definitely admits and bears this out.[45]

Now, there is no dispute that private respondents expressly and on their own volition granted petitioner an option with respect to the satisfaction of freightage and demurrage charges. Having given such option, especially since it was accepted by petitioner, private respondents are estopped from reneging thereon. Petitioner, on its part, was well within its right to exercise said option. Private respondents, in giving the option, and petitioner, in exercising that option, are concluded by their respective actions. To allow either of them to unilaterally back out on the offer and on the exercise of the option would be to countenance abuse of rights as an order of the day, doing violence to the long entrenched principle of mutuality of contracts.

It will be remembered that in overland transportation, an unreasonable delay in the delivery of transported goods is sufficient ground for the abandonment of goods. By analogy, this can also apply to maritime transportation. Further, with much more reason can petitioner in the instant case properly abandon the goods, not only because of the unreasonable delay in its delivery but because of the option which was categorically granted to and exercised by it as a means of settling its liability for the cost and expenses of reshipment. And, said choice having been duly communicated, the same is binding upon the parties on legal and equitable considerations of estoppel.

WHEREFORE, the judgment of respondent Court of Appeals is AFFIRMED, with the MODIFICATION that petitioner is likewise absolved of any liability and the award of P52,102.45 with legal interest granted by respondent court on private respondents' counterclaim is SET ASIDE, said counterclaim being hereby DISMISSED, without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

[*] The name of petitioner in the case records of respondent Court of Appeals and of the trial court is Magellan Manufacturers Marketing Corporation.

[1] Per Justice Nicolas P. Lapeña, Jr., ponente, with Justices Jose A. R. Melo and Antonio M. Martinez,

concurring.

[2] Civil Case No. 141806, Regional Trial Court, Branch 38, Manila, presided over by Judge Natividad G. Adduru-Santillan.

[3] Annex A, Rollo, 31.

[4] Id., *ibid.*, 24.

[5] Petitioner's Memorandum, 2-4; *ibid.*, 51-53.

[6] Rollo, 12.

[7] Rollo, 8-9.

[8] *Ibid.*, 14.

[9] Black's Law Dictionary, 4th ed., 1670.

[10] Ballentine Law Dictionary with Pronunciations, 1959 ed., 1295.

[11] Webster's Third New International Dictionary (Un-abridged), 1986 ed., 2431. See also *Samar Mining Co., Inc. vs. Nordeutscher Lloyd, et al.*, 132 SCRA 529 (1984).

[12] Exhibit "G-1," Original Record; Annex C, Rollo, 35.

[13] Exhibit "I," *ibid.*, 80; Annex E, *ibid.*, 37.

[14] Rollo, 14.

[15] *Phoenix Assurance Co., Ltd. vs. United States Lines*, 22 SCRA 674 (1968).

[16] *Samar Mining Co., Inc. vs. Nordeutscher Lloyd, et al.*, *supra*.

[17] 70 Am. Jur. 2d, Shipping 598.

[18] 13 Am. Jur. 2d, Carriers 278.

[19] Rollo, 29.

[20] TSN, March 14, 1984, 14-15; Original Record, 140-141.

[21] Sec. 9, Rule 130, Rules of Court.

[22] *De la Rama vs. Ledesma*, 143 SCRA 1 (1986).

[23] *Bank of the Philippine Islands vs. Fidelity & Surety Co.*, 51 Phil. 57 (1927).

[24] *Philippine National Railways vs. Court of First Instance of Albay, etc., et al.*, 83 SCRA 569 (1978).

[25] 176 SCRA 741 (1989).

[26] 70 Am. Jr. 2d, Shipping 608.

[27] TSN, March 14, 1984, 7-12; Original Record, 133-138.

[28] Rollo, 8.

[29] *IV Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, A. F. Agbayani, 121, 1987

ed.

[30] Philippine Law Dictionary, Moreno, 652, 1988 ed.

[31] 91 SCRA 223 (1979).

[32] 117 SCRA 832 (1982).

[33] Rollo, 30.

[34] Respondent's Memorandum, 6; Rollo, 63.

[35] Rollo, 30.

[36] 80 C.J.S., Shipping 1146-1147.

[37] TSN, December 13, 1985, 15.

[38] Rollo, 30-31.

[39] Rollo, 64.

[40] Exhibit 2, Original Record, 11.

[41] Exhibit K, *ibid.*, 181; Annex E, Rollo, 37.

[42] TSN, August 14, 1985, 6-7.

[43] Exhibit 5, Original Record, 236.

[44] Exhibit 6, *ibid.*, 237.

[45] TSN, August 14, 1985, 14.

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