

THIRD DIVISION

[CV No. 62414, May 19, 2010]

**CALIFORNIA MANUFACTURING CO., INC., PLAINTIFF-
APPELLANT, VS. * V. CAPEMCO TRADE CORPORATION,
DEFENDANT-APPELLEE**

D E C I S I O N

Court of Appeals

Before this Court is an ** appeal from the decision^[1] dated January 15, 1999 of the Regional Trial Court, National Capital Judicial Region, Branch 257, Parañaque City in Civil Case No. 96-0330, entitled "California Manufacturing Corp., Plaintiff, versus Capemco Trade, Corp., Respondent", the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the instant case is hereby dismissed.

SO ORDERED."

The facts are:

In its Complaint^[2] for Sum of Money against defendant-appellee V. Capemco Trade Corporation (V. Capemco for brevity), plaintiff-appellant California Manufacturing Co., Inc. (CMCI for brevity) alleged that: on May 11, 1993, it entered into a Contract of Carriage^[3] for defendant-appellee V. Capemco to supply it with means for transporting its goods; item No. 4 of the Contract of Carriage provides that:

"4) Liabilities-That Capemco shall be liable to, and pay CMCI for any loss or damage to the Merchandise or goods transported while in transit occasioned by employees (sic) dishonesty, negligence, non-delivery, pilferage *** or any other cause not covered by Insurance set forth in the next paragraph."

on March 11, 1996, a ten-wheeler truck with plate number TBP-995, owned by defendant-appellee V. Capemco and driven by Romeo S. Odallo, went to plaintiff-appellant CMCI's Las Piñas plant to load Seven Hundred Seventy (770) cases of Royal Spaghetti worth Six Hundred Eighty Six Thousand Seventy Pesos (P686,070.00) to be delivered to plaintiff-appellant CMCI's Parañaque Plant;^[4] at around 9:30 p.m. on said date, while the truck was running north bound along the West Service Road in Sucat, Muntinlupa City, Odallo suddenly stopped the vehicle and told another co-employee Amero Galleto, who was riding in the truck, to get a flashlight and some tools, claiming that the truck broke down; before Galleto left the scene, he saw two (2) other employees of defendant-appellee V. Capemco, namely: Simeon Nombrado and Benjamin Mapanao, board the truck; when Galleto returned to the scene, the truck was nowhere to be found; on March 28, 1996, Homer B. Nugui sent a letter^[5] to Vicente Alejaga, Manager of defendant-appellee V.

Capemco, demanding that defendant-appellee V. Capemco pay the amount of the stolen spaghetti; on May 15, 1996, Nugui sent another demand letter^[6] to defendant-appellee V. Capemco; on July 8, 1996, counsel for plaintiff-appellant CMCI sent a final demand letter^[7] to defendant-appellee V. Capemco demanding for the settlement of the value of the stolen spaghetti, however, the latter ignored the same; due to defendant-appellee V. Capemco's failure to pay the amount demanded, plaintiff-appellant CMCI was constrained to hire the services of a counsel to protect its interests, thereby incurring legal and attorney's fees.

In its Answer^[8] defendant-appellee V. Capemco denied all the material allegations in the complaint and alleged by way of special and affirmative-defenses that: plaintiff-appellant CMCI has no cause of action against it; assuming without admitting that its employees did commit some acts of dishonesty, it had exercised the diligence required by law in the selection and supervision of its employees and therefore should not be held liable thereto; as carrier, it is not the insurer of all risks; and in all transactions emanating from the contract of carriage, the same are covered by marine insurance which both parties have mutually contributed for the payment of its premium.

By way of compulsory counterclaim, defendant-appellee V. Capemco prayed for exemplary damages, attorney's fees and other litigation expenses.

On December 3, 1996, plaintiff-appellant CMCI filed a Motion for Summary Judgment^[9] which was denied by the lower court in its Order^[10] dated February 5, 1997.

Pre-trial conference was held and the parties stipulated on the following issues: "1) whether or not defendant is liable to plaintiff for the loss of 770 cases of Royal Spaghetti valued at P686,700.00; and 2) whether or not it is a condition precedent that plaintiff must seek recovery first from the insurance before it can go after the defendant in this case."^[11]

Trial on the merits ensued. Plaintiff-appellant CMCI presented as witnesses Reynaldo B. Castillo, Luisito Cailing and Felipe Lumbog.

Reynaldo B. Castillo testified that: he is the Sales Accounting Service Manager of Plaintiff-appellant CMCI, which entered into a Contract of Carriage with defendant-appellee V. Capemco for the latter to deliver the former's finished products from its Las Piñas warehouse to its Parañaque Warehouse; he identified plaintiff-appellant CMCI's Retail Price List^[12] showing that the price of one (1) box of Royal Spaghetti containing 40 packages of 450 grams was P891.00 or a total of P686,070.00 for 770 boxes.^[13]

Luisito Cailing testified that: he is a factory worker of plaintiff-appellant CMCI; he was present when the 770 cases of spaghetti were loaded in defendant-appellee V. Capemco's truck with Plate No. TBP-995 for delivery to the Parañaque warehouse; and he was the one who prepared and issued the Product Transfer Receipt (PTR) No. 61134^[14] covering the 770 cases of spaghetti.^[15]

Felipe Lumbog testified that: he is a Checker at plaintiff-appellant CMCI's Parañaque

Warehouse for 16 years; as checker, he receives finished products from the Las Piñas warehouse; he was sure that he did not receive the 770 cases of spaghetti from Las Piñas on March 11, 1997 as there was no V. Capemco truck that arrived on that date; and he later learned that a V. Capemco truck was held up.^[16]

On the other hand, defendant-appellee V. Capemco presented as witness Vicente Alejada, its President and General Manager, who testified that: he paid the insurance premium covering the insurance of the goods of plaintiff-appellant CMCI which was deducted from the trucking charges as evidenced by the Interplant Trucking Charges^[17]; the value of the merchandise loaded in the truck with Plate No. TBP-995 was P265,249.60 as shown in the Interplant Trucking Charges and not P686,070.00 as alleged by plaintiff-appellant CMCI; and that his company is not liable for the loss of the merchandise.^[18]

On rebuttal, Reynaldo Castillo stated that the correct amount of the 770 cases of spaghetti was P686,070.00 as appearing in the Product Transfer Receipt^[19] and not P265,249.60 as shown in the Interplant Trucking Charges.^[20]

After the parties have submitted their respective memorandum^[21], the lower court rendered the assailed decision. Hence, this appeal with the following assignment of errors.

- "I. THE LOWER COURT ERRED IN NOT HOLDING THE DEFENDANT-APPELLEE LIABLE TO THE PLAINTIFF-APPELLANT FOR THE LOSS OF THE CARGO VALUED AT SIX HUNDRED EIGHTY SIX THOUSAND SEVENTY PESOS (P686,070.00) DESPITE ITS FINDING OF FACT THAT IT GOT LOST WHILE LOADED ON DEFENDANT-APPELLEE'S TRUCK.
- II. THE LOWER COURT ERRED IN HOLDING THAT THE LIABILITY OF THE CARRIER FOR LOSS OF GOODS IS LIMITED TO CAUSES NOT COVERED BY INSURANCE.
- III. THE LOWER COURT ERRED IN NOT AWARDING ATTORNEY'S FEES TO THE PLAINTIFF-APPELLANT."^[22]

The appeal is meritorious.

Undoubtedly, plaintiff-appellant CMCI's merchandise was loaded in defendant-appellee V. Capemco's truck from the former's Las Piñas warehouse to be delivered to its Paranaque warehouse, unfortunately, the merchandise never reached its destination. Somewhere along the way, it got lost. Allegedly, it was stolen by defendant-appellee V. Capemco's employees. Nevertheless, how it got lost is not an issue here. The real issue is whether or not defendant-appellee V. Capemco is liable for the loss of plaintiff-appellant CMCI's merchandise.

At the outset, there is no gainsaying that defendant-appellee V. Capemco is a common carrier. Article 1732 of the Civil Code states that:

"Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting,

passengers or goods or both, by land, water or air, for compensation, offering their services to the public." (Underscoring supplied)

Indeed, by the nature of its business, which is trucking, defendant-appellee V. Capemco is a common carrier. Plaintiff-appellant CMCI hired the services of its trucks for a fee to transport the former's goods from Las Piñas to Parañaque. As common carrier, defendant-appellee V. Capemco is bound to observe extraordinary diligence in the vigilance over the goods transported by it.^[23]

Pertinent provision of the Contract of Carriage^[24] entered into between the parties provides that:

"4. Liabilities:—That the carrier shall be liable to, and pay the company for any loss or damage to the merchandise or goods transported while in transit occasioned by employees (sic) dishonesty, negligence, non-delivery, pilferage, breakage, strikes, civil commotion, riots and public disturbance or any other cause not covered by insurance as set forth in the next paragraph."

Under the aforequoted provision, defendant-appellee V. Capemco shall be liable for the loss or damage to the merchandise or goods while in transit occasioned by defendant-appellee V. Capemco's employees' dishonesty, negligence, non-delivery, pilferage, breakage, strikes, civil commotion, riots and public disturbance or any other cause not covered by insurance. Evidently, plaintiff-appellant CMCI's merchandise loaded in defendant-appellee V. Capemco's truck with Plate No. TBP 995 were lost while in transit to its Parañaque warehouse. Based on the said provision and as common carrier, defendant-appellee V. Capemco is liable to plaintiff-appellant CMCI for the value of the merchandise.

In an attempt to evade liability for the loss of the goods, defendant-appellee V. Campeco denied that it is a common carrier. It opined that it does not offer its services to the public and has not held itself out to carry all freight for all persons, but only to a limited clientele covered by special contracts.^[25] The argument deserved scant consideration.

The test to determine a common carrier is whether the given undertaking is a part of the business engaged in by the carrier which it has held out to the general public as his occupation rather than the quantity or extent of the business transacted.^[26]

The definition of common carrier in Article 1732 of the Civil Code makes no distinction between a carrier offering its services to the general public and one who offers services or solicits business only from a narrow segment of the general population or as an ancillary activity.

While the concept of common carrier continues to vary in every case that reached the Higher Court, its determination and interpretation should generally rely on the facts of the case, the nature of the service being offered by the carrier, and mostly on common sense, since law is also common sense.

The concept of a common carrier does not change merely because individual contracts are executed or entered into with patrons of the carrier.^[27] Otherwise, such restrictive interpretation would make it easy for a common carrier to escape