

FIRST DIVISION

[G.R. No. 116863, February 12, 1998]

KENG HUA PAPER PRODUCTS CO. INC., PETITIONER, VS. COURT OF APPEALS; REGIONAL TRIAL COURT OF MANILA, BR. 21; AND SEA-LAND SERVICE, INC., RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

What is the nature of a bill of lading? When does a bill of lading become binding on a consignee? Will an alleged overshipment justify the consignee's refusal to receive the goods described in the bill of lading? When may interest be computed on unpaid demurrage charges?

Statement of the Case

These are the main questions raised in this petition assailing the Decision^[1] of the Court of Appeals^[2] promulgated on May 20, 1994 in C.A.-G.R. CV No. 29953 affirming *in toto* the decision^[3] dated September 28, 1990 in Civil Case No. 85-33269 of the Regional Trial Court of Manila, Branch 21. The dispositive portion of the said RTC decision reads:

"WHEREFORE, the Court finds by preponderance of evidence that Plaintiff has proved its cause of action and right to relief. Accordingly, judgment is hereby rendered in favor of the Plaintiff and against Defendant, ordering the Defendant to pay plaintiff:

1. The sum of ₱67,340.00 as demurrage charges, with interest at the legal rate from the date of the extrajudicial demand until fully paid;
2. A sum equivalent to ten (10%) percent of the total amount due as Attorney's fees and litigation expenses.

Send copy to respective counsel of the parties.

SO ORDERED."^[4]

The Facts

The factual antecedents of this case as found by the Court of Appeals are as follows:

"Plaintiff (herein private respondent), a shipping company, is a foreign corporation licensed to do business in the Philippines. On June 29, 1982, plaintiff received at its Hong Kong terminal a sealed container, Container No. SEAU 67523, containing seventy-six bales of "unsorted waste paper" for shipment to defendant (herein petitioner), Keng Hua Paper Products, Co. in Manila. A bill of lading (Exh. A) to cover the shipment was issued by the plaintiff.

On July 9, 1982, the shipment was discharged at the Manila International Container Port. Notices of arrival were transmitted to the defendant but the latter failed to discharge the shipment from the container during the “free time” period or grace period. The said shipment remained inside the plaintiff’s container from the moment the free time period expired on July 29, 1982 until the time when the shipment was unloaded from the container on November 22, 1983, or a total of four hundred eighty-one (481) days. During the 481-day period, demurrage charges accrued. Within the same period, letters demanding payment were sent by the plaintiff to the defendant who, however, refused to settle its obligation which eventually amounted to P67,340.00. Numerous demands were made on the defendant but the obligation remained unpaid. Plaintiff thereafter commenced this civil action for collection and damages.

In its answer, defendant, by way of special and affirmative defense, alleged that it purchased fifty (50) tons of waste paper from the shipper in Hong Kong, Ho Kee Waste Paper, as manifested in Letter of Credit No. 824858 (Exh. 7. p. 110. Original Record) issued by Equitable Banking Corporation, with partial shipment permitted; that under the letter of credit, the remaining balance of the shipment was only ten (10) metric tons as shown in Invoice No. H-15/82 (Exh. 8, p. 111, Original Record); that the shipment plaintiff was asking defendant to accept was twenty (20) metric tons which is ten (10) metric tons more than the remaining balance; that if defendant were to accept the shipment, it would be violating Central Bank rules and regulations and custom and tariff laws; that plaintiff had no cause of action against the defendant because the latter did not hire the former to carry the merchandise; that the cause of action should be against the shipper which contracted the plaintiff’s services and not against defendant; and that the defendant duly notified the plaintiff about the wrong shipment through a letter dated January 24, 1983 (Exh. D for plaintiff, Exh. 4 for defendant, p. 5. Folder of Exhibits).”

As previously mentioned, the RTC found petitioner liable for demurrage, attorney’s fees and expenses of litigation. The petitioner appealed to the Court of Appeals, arguing that the lower court erred in (1) awarding the sum of ₱67,340 in favor of the private respondent, (2) rejecting petitioner’s contention that there was overshipment, (3) ruling that petitioner’s recourse was against the shipper, and (4) computing legal interest from date of extrajudicial demand.^[5]

Respondent Court of Appeals denied the appeal and affirmed the lower court’s decision *in toto*. In a subsequent resolution,^[6] it also denied the petitioner’s motion for reconsideration.

Hence, this petition for review.^[7]

The Issues

In its memorandum, petitioner submits the following issues:

- I. Whether or not petitioner had accepted the bill of lading;
- II. Whether or not the award of the sum of P67,340.00 to private respondent was proper;
- III. Whether or not petitioner was correct in not accepting the overshipment;

IV. Whether or not the award of legal interest from the date of private respondent's extrajudicial demand was proper;"^[8]

In the main, the case revolves around the question of whether petitioner was bound by the bill of lading. We shall, thus, discuss the above four issues as they intertwine with this main question.

The Court's Ruling

The petition is partly meritorious. We affirm petitioner's liability for demurrage, but modify the interest rate thereon.

Main Issue: *Liability Under the Bill of Lading*

A bill of lading serves two functions. *First*, it is a receipt for the goods shipped. *Second*, it is a contract by which three parties, namely, the shipper, the carrier, and the consignee undertake specific responsibilities and assume stipulated obligations.^[9] A "bill of lading delivered and accepted constitutes the contract of carriage even though not signed,"^[10] because the "(a)ccptance of a paper containing the terms of a proposed contract generally constitutes an acceptance of the contract and of all of its terms and conditions of which the acceptor has actual or constructive notice."^[11] In a nutshell, the acceptance of a bill of lading by the shipper and the consignee, with full knowledge of its contents, gives rise to the presumption that the same was a perfected and binding contract.^[12]

In the case at bar, both lower courts held that the bill of lading was a valid and perfected contract between the shipper (Ho Kee), the consignee (Petitioner Keng Hua), and the carrier (Private Respondent Sea-Land). Section 17 of the bill of lading provided that the shipper and the consignee were liable for the payment of demurrage charges for the failure to discharge the containerized shipment beyond the grace period allowed by tariff rules. Applying said stipulation, both lower courts found petitioner liable. The aforementioned section of the bill of lading reads:

"17. COOPERAGE FINES. The shipper and consignee shall be liable for, indemnify the carrier and ship and hold them harmless against, and the carrier shall have a lien on the goods for, all expenses and charges for mending cooperage, baling, repairing or reconditioning the goods, or the van, trailers or containers, and all expenses incurred in protecting, caring for or otherwise made for the benefit of the goods, whether the goods be damaged or not, and for any payment, expense, penalty fine, dues, duty, tax or impost, loss, damage, detention, demurrage, or liability of whatsoever nature, sustained or incurred by or levied upon the carrier or the ship in connection with the goods or by reason of the goods being or having been on board, or because of shipper's failure to procure consular or other proper permits, certificates or any papers that may be required at any port or place or shipper's failure to supply information or otherwise to comply with all laws, regulations and requirements of law in connection with the goods of from any other act or omission of the shipper or consignee." (Underscoring supplied.)

Petitioner contends, however, that it should not be bound by the bill of lading because it never gave its consent thereto. Although petitioner admits "physical acceptance" of the bill of lading, it argues that its subsequent actions belie the finding that it accepted the terms and conditions printed therein.^[13] Petitioner cites as support the "Notice of Refused or On Hand Freight" it received on November 2, 1982 from private

respondent, which acknowledged that petitioner declined to accept the shipment. Petitioner adds that it sent a copy of the said notice to the shipper on December 29, 1982. Petitioner points to its January 24, 1983 letter to the private respondent, stressing “that its acceptance of the bill of lading would be tantamount to an act of smuggling as the amount it had imported (with full documentary support) was only (at that time) for 10,000 kilograms and not for 20,313 kilograms as stated in the bill of lading” and “could lay them vulnerable to legal sanctions for violation of customs and tariff as well as Central Bank laws.”^[14] Petitioner further argues that the demurrage “was a consequence of the shipper’s mistake” of shipping more than what was bought. The discrepancy in the amount of waste paper it actually purchased, as reflected in the invoice *vis-à-vis* the excess amount in the bill of lading, allegedly justifies its refusal to accept the shipment.^[15]

Petitioner Bound by the Bill of Lading

We are not persuaded. Petitioner admits that it “received the bill of lading immediately after the arrival of the shipment”^[16] on July 8, 1982.^[17] Having been afforded an opportunity to examine the said document, petitioner did not immediately object to or dissent from any term or stipulation therein. It was only six months later, on January 24, 1983, that petitioner sent a letter to private respondent saying that it could not accept the shipment. Petitioner’s inaction for such a long period conveys the clear inference that it accepted the terms and conditions of the bill of lading. Moreover, said letter spoke only of petitioner’s inability to use the delivery permit, *i.e.* to pick up the cargo, due to the shipper’s failure to comply with the terms and conditions of the letter of credit, for which reason the bill of lading and other shipping documents were returned by the “banks” to the shipper.^[18] The letter merely proved petitioner’s refusal to pick up the cargo, not its rejection of the bill of lading.

Petitioner’s reliance on the Notice of Refused or On Hand Freight, as proof of its nonacceptance of the bill of lading, is of no consequence. Said notice was not written by petitioner; it was sent by private respondent to petitioner in November 1982, or four months after petitioner received the bill of lading. If the notice has any legal significance at all, it is to highlight petitioner’s prolonged failure to object to the bill of lading. Contrary to petitioner’s contention, the notice and the letter support – not belie – the findings of the two lower courts that the bill of lading was impliedly accepted by petitioner.

As aptly stated by Respondent Court of Appeals:

“In the instant case, (herein petitioner) cannot and did not allege non-receipt of its copy of the bill of lading from the shipper. Hence, the terms and conditions as well as the various entries contained therein were brought to its knowledge. (Herein petitioner) accepted the bill of lading without interposing any objection as to its contents. This raises the presumption that (herein petitioner) agreed to the entries and stipulations imposed therein.

Moreover, it is puzzling that (herein petitioner) allowed months to pass, six (6) months to be exact, before notifying (herein private respondent) of the ‘wrong shipment.’ It was only on January 24, 1983 that (herein petitioner) sent (herein private respondent) such a letter of notification (Exh D for plaintiff, Exh. 4 for defendant; p. 5, Folder of Exhibits). Thus, for the duration of those six months (herein private respondent never knew the reason for (herein petitioner’s) refusal to discharge the shipment.