623 Phil. 424

SECOND DIVISION

[G.R. No. 172822, December 18, 2009]

MOF COMPANY, INC., PETITIONER, VS. SHIN YANG BROKERAGE CORPORATION, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

The necessity of proving lies with the person who sues.

The refusal of the consignee named in the bill of lading to pay the freightage on the claim that it is not privy to the contract of affreightment propelled the shipper to sue for collection of money, stressing that its sole evidence, the bill of lading, suffices to prove that the consignee is bound to pay. Petitioner now comes to us by way of Petition for Review on *Certiorari*[1] under Rule 45 praying for the reversal of the Court of Appeals' (CA) judgment that dismissed its action for sum of money for insufficiency of evidence.

Factual Antecedents

On October 25, 2001, Halla Trading Co., a company based in Korea, shipped to Manila secondhand cars and other articles on board the vessel Hanjin Busan 0238W. The bill of lading covering the shipment, *i.e.,* Bill of Lading No. HJSCPUSI14168303, [2] which was prepared by the carrier Hanjin Shipping Co., Ltd. (Hanjin), named respondent Shin Yang Brokerage Corp. (Shin Yang) as the consignee and indicated that payment was on a "Freight Collect" basis, *i.e.*, that the consignee/receiver of the goods would be the one to pay for the freight and other charges in the total amount of P57,646.00.[3]

The shipment arrived in Manila on October 29, 2001. Thereafter, petitioner MOF Company, Inc. (MOF), Hanjin's exclusive general agent in the Philippines, repeatedly demanded the payment of ocean freight, documentation fee and terminal handling charges from Shin Yang. The latter, however, failed and refused to pay contending that it did not cause the importation of the goods, that it is only the Consolidator of the said shipment, that the ultimate consignee did not endorse in its favor the original bill of lading and that the bill of lading was prepared without its consent.

Thus, on March 19, 2003, MOF filed a case for sum of money before the Metropolitan Trial Court of Pasay City (MeTC Pasay) which was docketed as Civil Case No. 206-03 and raffled to Branch 48. MOF alleged that Shin Yang, a regular client, caused the importation and shipment of the goods and assured it that ocean freight and other charges would be paid upon arrival of the goods in Manila. Yet, after Hanjin's compliance, Shin Yang unjustly breached its obligation to pay. MOF argued that Shin Yang, as the named consignee in the bill of lading, entered itself as a party to the contract and bound itself to the "Freight Collect" arrangement. MOF

thus prayed for the payment of P57,646.00 representing ocean freight, documentation fee and terminal handling charges as well as damages and attorney's fees.

Claiming that it is merely a consolidator/forwarder and that Bill of Lading No. HJSCPUSI14168303 was not endorsed to it by the ultimate consignee, Shin Yang denied any involvement in shipping the goods or in promising to shoulder the freightage. It asserted that it never authorized Halla Trading Co. to ship the articles or to have its name included in the bill of lading. Shin Yang also alleged that MOF failed to present supporting documents to prove that it was Shin Yang that caused the importation or the one that assured payment of the shipping charges upon arrival of the goods in Manila.

Ruling of the Metropolitan Trial Court

On June 16, 2004, the MeTC of Pasay City, Branch 48 rendered its Decision[4] in favor of MOF. It ruled that Shin Yang cannot disclaim being a party to the contract of affreightment because:

> x x x it would appear that defendant has business transactions with plaintiff. This is evident from defendant's letters dated 09 May 2002 and 13 May 2002 (Exhibits "1" and "2", defendant's Position Paper) where it requested for the release of refund of container deposits x x x. [In] the mind of the Court, by analogy, a written contract need not be necessary; a mutual understanding [would suffice]. Further, plaintiff would have not included the name of the defendant in the bill of lading, had there been no prior agreement to that effect.
>
> In sum, plaintiff has sufficiently proved its cause of action against the defendant and the latter is obliged to honor its agreement with plaintiff despite the absence of a written contract.[5]

The dispositive portion of the MeTC Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter to pay plaintiff as follows:
>
> 1. P57,646.00 plus legal interest from the date of demand until fully paid,
> 2. P10,000.00 as and for attorney's fees and
> 3. the cost of suit.
>
> SO ORDERED.[6]

Ruling of the Regional Trial Court

The Regional Trial Court (RTC) of Pasay City, Branch 108 affirmed *in toto* the

Decision of the MeTC. It held that:

> MOF and Shin Yang entered into a contract of affreightment which Black's Law Dictionary defined as a contract with the ship owner to hire his ship or part of it, for the carriage of goods and generally take the form either of a charter party or a bill of lading.
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> The bill of lading contain[s] the information embodied in the contract.
>
> Article 652 of the Code of Commerce provides that the charter party must be in writing; however, Article 653 says: "If the cargo should be received without charter party having been signed, the contract shall be understood as executed in accordance with what appears in the bill of lading, the sole evidence of title with regard to the cargo for determining the rights and obligations of the ship agent, of the captain and of the charterer". Thus, the Supreme Court opined in the Market Developers, Inc. (MADE) vs. Honorable Intermediate Appellate Court and Gaudioso Uy, G.R. No. 74978, September 8, 1989, this kind of contract may be oral. In another case, Compania Maritima vs. Insurance Company of North America, 12 SCRA 213 the contract of affreightment by telephone was recognized where the oral agreement was later confirmed by a formal booking.
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> x x x x
>
> Defendant is liable to pay the sum of P57,646.00, with interest until fully paid, attorney's fees of P10,000.00 [and] cost of suit.
>
> Considering all the foregoing, this Court affirms *in toto* the decision of the Court *a quo*.
>
> SO ORDERED.[7]

Ruling of the Court of Appeals

Seeing the matter in a different light, the CA dismissed MOF's complaint and refused to award any form of damages or attorney's fees. It opined that MOF failed to substantiate its claim that Shin Yang had a hand in the importation of the articles to the Philippines or that it gave its consent to be a consignee of the subject goods. In its March 22, 2006 Decision,[8] the CA said:

> This Court is persuaded [that except] for the Bill of Lading, respondent has not presented any other evidence to bolster its claim that petitioner has entered [into] an agreement of affreightment with respondent, be it verbal or written. It is noted that the Bill of Lading was prepared by Hanjin Shipping, not the petitioner. Hanjin is the principal while respondent is the former's agent. (p. 43, rollo)
>
> The conclusion of the court a quo, which was upheld by the RTC Pasay

City, Branch 108 xxx is purely speculative and conjectural. A court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances. Litigation cannot be properly resolved by suppositions, deductions or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof (Lagon vs. Hooven Comalco Industries, Inc. 349 SCRA 363).

While it is true that a bill of lading serves two (2) 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 who undertake specific responsibilities and assume stipulated obligations (Belgian Overseas Chartering and Shipping N.V. vs. Phil. First Insurance Co., Inc., 383 SCRA 23), x x x if the same is not accepted, it is as if one party does not accept the contract. Said the Supreme Court:

> "A bill of lading delivered and accepted constitutes the contract of carriage[,] even though not signed, because the acceptance of a paper containing the terms of a proposed contract generally constitutes an acceptance of the contract and of all its terms and conditions of which the acceptor has actual or constructive notice" (Keng Hua Paper Products Co., Inc. vs. CA, 286 SCRA 257).

In the present case, petitioner did not only [refuse to] accept the bill of lading, but it likewise disown[ed] the shipment x x x. [Neither did it] authorize Halla Trading Company or anyone to ship or export the same on its behalf.

It is settled that a contract is upheld as long as there is proof of consent, subject matter and cause (Sta. Clara Homeowner's Association vs. Gaston, 374 SCRA 396). In the case at bar, there is not even any iota of evidence to show that petitioner had given its consent.

"He who alleges a fact has the burden of proving it and a mere allegation is not evidence" (Luxuria Homes Inc. vs. CA, 302 SCRA 315).

The 40-footer van contains goods of substantial value. It is highly improbable for petitioner not to pay the charges, which is very minimal compared with the value of the goods, in order that it could work on the release thereof.

For failure to substantiate its claim by preponderance of evidence, respondent has not established its case against petitioner.[9]

Petitioners filed a motion for reconsideration but it was denied in a Resolution[10] dated May 25, 2006. Hence, this petition for review on *certiorari*.

Petitioner's Arguments

In assailing the CA's Decision, MOF argues that the factual findings of both the MeTC and RTC are entitled to great weight and respect and should have bound the CA. It stresses that the appellate court has no justifiable reason to disturb the lower courts' judgments because their conclusions are well-supported by the evidence on record.

MOF further argues that the CA erred in labeling the findings of the lower courts as purely `speculative and conjectural'. According to MOF, the bill of lading, which expressly stated Shin Yang as the consignee, is the best evidence of the latter's actual participation in the transportation of the goods. Such document, validly entered, stands as the law among the shipper, carrier and the consignee, who are all bound by the terms stated therein. Besides, a carrier's valid claim after it fulfilled its obligation cannot just be rejected by the named consignee upon a simple denial that it ever consented to be a party in a contract of affreightment, or that it ever participated in the preparation of the bill of lading. As against Shin Yang's bare denials, the bill of lading is the sufficient preponderance of evidence required to prove MOF's claim. MOF maintains that Shin Yang was the one that supplied all the details in the bill of lading and acquiesced to be named consignee of the shipment on a `Freight Collect' basis.

Lastly, MOF claims that even if Shin Yang never gave its consent, it cannot avoid its obligation to pay, because it never objected to being named as the consignee in the bill of lading and that it only protested when the shipment arrived in the Philippines, presumably due to a botched transaction between it and Halla Trading Co. Furthermore, Shin Yang's letters asking for the refund of container deposits highlight the fact that it was aware of the shipment and that it undertook preparations for the intended release of the shipment.

Respondent's Arguments

Echoing the CA decision, Shin Yang insists that MOF has no evidence to prove that it consented to take part in the contract of affreightment. Shin Yang argues that MOF miserably failed to present any evidence to prove that it was the one that made preparations for the subject shipment, or that it is an `actual shipping practice' that forwarders/consolidators as consignees are the ones that provide carriers details and information on the bills of lading.

Shin Yang contends that a bill of lading is essentially a contract between the shipper and the carrier and ordinarily, the shipper is the one liable for the freight charges. A consignee, on the other hand, is initially a stranger to the bill of lading and can be liable only when the bill of lading specifies that the charges are to be paid by the consignee. This liability arises from either a) the contract of agency between the shipper/consignor and the consignee; or b) the consignee's availment of the stipulation *pour autrui* drawn up by and between the shipper/ consignor and carrier upon the consignee's demand that the goods be delivered to it. Shin Yang contends that the fact that its name was mentioned as the consignee of the cargoes did not make it automatically liable for the freightage because it never benefited from the shipment. It never claimed or accepted the goods, it was not the shipper's agent, it was not aware of its designation as consignee and the original bill of lading was