

SECOND DIVISION

[G.R. No. 134873, September 17, 2002]

ADR SHIPPING SERVICES, INC., PETITIONER, VS. MARCELINO GALLARDO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

DECISION

QUISUMBING, J.:

Petitioner ADR Shipping Services, Inc., seeks to reverse and set aside the decision^[1] of the Court of Appeals in CA-G.R. CV No. 47556 dated October 9, 1996, which affirmed *in toto* the judgment of the Regional Trial Court of Manila, Branch 50, in Civil Case No. 88-43931, for sum of money and damages.

Culled from the records, the following are the antecedent facts:

Marcelino Gallardo, a timber concessionaire and log dealer doing business under the name "Mar Gallardo Trading", entered into a charter agreement with ADR Shipping Services, Inc., through its president Abraham Rodriguez, for the use of the MV Pacific Breeze to transport 60,000 cubic meters of logs to Kaoshung, Taiwan. These logs were the subject of a sales agreement^[2] between Gallardo as seller and Stywood Philippines, Inc., as buyer. Gallardo paid an advance charter fee of P242,000 representing ten percent of the agreed charter fee, evidenced by two official receipts^[3] issued by ADR to Mar Gallardo Trading. Under the charter agreement, the boat should be ready to load by February 5, 1988.

MV Pacific Breeze failed to arrive on time. Consequently, Gallardo sent a letter dated February 5, 1988 to ADR stating:

Kindly be informed that we are cancelling the charter contract we signed in view of the failure of STYWOOD to fulfill its commitment with us. Since the vessel would be arriving on February 19 or 20 certainly you can still have sufficient time to notify the owner.

As a consequence of this cancellation, we are constrained to withdraw the amount we deposited on January 28 and 29 of this year in the total amount of P242,000.00

Thank you very much.^[4]

Due to ADR's refusal to return the P242,000 already advanced by Gallardo, the latter filed a case for sum of money and damages, docketed as Civil Case No. 88-43931 in the RTC of Manila, Branch 50. After trial, the trial court rendered its decision, thus:

WHEREFORE, judgment is hereby rendered ordering defendant ADR Shipping Services, Inc. to pay plaintiff the sum of P242,000.00 with 6%

interest per annum from date of filing of the complaint, plus P20,000.00 as attorney's fees and the costs of suit.

SO ORDERED.^[5]

On appeal, the Court of Appeals affirmed the decision of the trial court in a decision dated October 9, 1996. ADR's motion for reconsideration was denied by the appellate court on July 29, 1998.

Hence, this petition for review anchored on the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING PRIVATE RESPONDENT MARCELINO GALLARDO IS (SIC) ENTITLED TO THE REFUND OF THE P210,000.00 AND THE P32,000.00 PAID TO ADR SHIPPING SERVICES INC. AS 10% ADVANCE FREIGHT OF MV PACIFIC BREEZE.

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PRIVATE RESPONDENT MARCELINO GALLARDO HAS NO KNOWLEDGE NOR HAVE (SIC) CONSENTED TO THE AGREEMENT THAT STYWOOD PHILIPPINE INDUSTRIES INC. FORMALLY TAKE OVER THE CHARTER PARTY ON THE MV PACIFIC BREEZE.

III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING NOVATION WITH THE TAKE OVER OF STYWOOD PHILIPPINE INDUSTRIES INC. OF THE CHARTER PARTY ON THE MV PACIFIC BREEZE.

IV

GRANTING, ARGUENDO, THAT THERE WAS NO NOVATION OR SUBSTITUTION OF THE VESSEL TO PERFORM THE CARGO TRANSPORT REQUIREMENTS OF GALLARDO AND/OR STYWOOD PHIL INDUSTRIES, INC., THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED THAT BASED ON THE EVIDENCE AND CHARTER CONTRACT OF MV PACIFIC BREEZE, GALLARDO IS NOT ENTITLED TO ANY REFUND AFTER HE FILED A NOTICE OF CANCELLATION BEFORE THE CANCELLING DATE OF 16 FEBRUARY 1988.^[6]

The issue for resolution is whether or not private respondent Gallardo is entitled to the refund in the sum of P242,000 representing his deposit for the charter of the ship provided by petitioner ADR.

Petitioner asserts that under the terms of the Charter Party for MV Pacific Breeze, Gallardo as the charterer had the option to cancel the Charter Party only when the vessel failed to arrive or was not ready to load after February 16, 1988, citing paragraph 10 thereof, which provides:

10. CANCELLING CLAUSE

Should the vessel not be ready to load (whether in berth or not) on or before the date indicated in Box 19 [**16 February, 1988**], Charterers have the option of cancelling this contract, such option to be declared, if demanded, at least 48 hours before vessel's expected arrival at port of

loading. Should the vessel be delayed on account of average or otherwise. Charterers to be informed as soon as possible, and if the vessel is delayed for more than 10 days after the day she is stated to be expected ready to load, Charterers have the option of cancelling this contract, unless a cancelling date has been agreed upon.^[7] (Emphasis ours.)

Petitioner argues, on one hand, that the date "5 February 1988", written in Box No. 9 of the charter party, merely indicates a "reference commencing date" from which the chartered vessel is expected and ready to load, and not the exact date when the vessel has to arrive as indicated in paragraph 10 of the charter party as quoted above. On the other hand, private respondent contends that the charter party, in Box No. 9 thereof, has unequivocally fixed February 5, 1998 as the date when MV Pacific Breeze is expected ready to load. In this regard, we are not persuaded by petitioner's argument, and we find in favor of private respondent.

Paragraph 10 of the "Gencon" Charter Party, in our view, contains a typographical error where "Box 19" was erroneously written instead of "Box 9". But more importantly, paragraph 10 presents an ambiguity. Ambiguities in a contract are interpreted strictly, albeit not unreasonably, against the drafter thereof when justified in light of the operative facts and surrounding circumstances.^[8] In this case, such ambiguity must be construed strictly against ADR, the party that drafted and caused the inclusion of the subject clause.

More decisive is the stipulation in Box No. 9 of the Charter Party which explicitly states that **February 5, 1988 is the date when the vessel is "expected ready to load."**^[9] **February 16, 1988 is merely the "cancelling date"** as specified in Box 19 of the said contract.^[10] That February 5, 1988 is the intended date when the ship is expected ready to load, is buttressed by the provision of paragraph 1 of the "Gencon" Charter which states:

1. It is agreed between the party mentioned in Box 3 as Owners of the steamer or motor-vessel named in Box 5, of the gross/net Register tons indicated in Box 6 and carrying about the number of tons of deadweight cargo stated in Box 7, now in position as stated in Box 8 **and expected ready to load under this Charter about the date indicated in Box 9, [February 5, 1988]** and the party mentioned as Charterers in Box 4 that:

The said vessel shall proceed to the loading port or place stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo^[11] (Emphasis supplied.)

Considering that the subject contract contains the foregoing express provision that February 5, 1988 is the date when the vessel is expected ready to load, that provision leaves the parties with no other recourse but to apply the literal meaning of such stipulation. The cardinal rule is that where the terms of the contract are clear, leaving no doubt as to the intention of the contracting parties, the literal meaning of its stipulations is controlling.^[12]

ADR asserts further that a subsequent agreement was forged among ADR, Gallardo and Stywood for Stywood to take over the charter contract from Gallardo.^[13] In

support of its claim, petitioner produced in court a copy of the document embodying the alleged agreement, to wit:

AGREEMENT

TO: ADR SHIPPING SERVICES

Room 304 Ermita Center Building

Roxas Blvd., Manila

This is to certify that I have appointed STYWOOD PHILIPPINE INDUSTRIES with office address of 7 D Vernida 1, 120 Amorsolo St. Legaspi Village Makati Metro Manila, to have full authority to use the Charter Vessel "MV PACIFIC BREEZE" Singaporean Flag in case that I cannot push through with my shipment of FALCATA Logs that is expected to be loaded by February 5,^[14] 1988.

This agreement is valid upon if I cannot meet the requirements given to me as stated above and other previous contracts.

MAR GALLARDO TRADING

(SGD.) Marcelino C. Gallardo

PRESIDENT^[15]

On the strength of the above-mentioned agreement, says petitioner, ADR and Stywood entered into a Charter Party on February 11, 1988,^[16] for the loading of the same falcata logs for which the MV Pacific Breeze was initially engaged, this time on board the MV Adhiguna Dharma. Hence, the P242,000 advanced by Gallardo for the freight of MV Pacific Breeze was applied to MV Adhiguna Dharma, which is the substitute vessel for MV Pacific Breeze.^[17] Accordingly, ADR now claims that Gallardo lost his legal personality to file the instant case.

On this point, both the RTC and the CA found no evidence, testimonial or otherwise, to prove the genuineness and due execution of Exhibit 3, the so-called take-over agreement. Factual findings of the trial court, especially when affirmed by the appellate court, are binding upon us^[18] and entitled to utmost respect.^[19] Moreover, nothing on record has been shown to us by petitioner to warrant a reversal of the CA's conclusion negating the genuineness and due execution of the disputed document. Such conclusion is supported by the evidence on record.

First, the purported take-over agreement was not notarized. Thus, it is not a public document and, by law, not entitled to full faith and credit upon its face. Second, said document is undated, creating grave doubt as to its authenticity. Third, we agree with the appellate court's finding that the alleged signature of respondent Gallardo in Exhibit 3 is different from his signature appearing in the records of this case, particularly in the Falcata Sales Agreement,^[20] Charter Party,^[21] Additional Clauses to Charter Party,^[22] and in Gallardo's letter of cancellation dated February 5, 1988.^[23] We note that the agreement was purportedly entered into in the presence of a certain Stanley Ho. Curiously though, petitioner ADR did not present Mr. Ho in court to corroborate its claim. Lastly, Exhibit 3, though captioned as an "agreement,"