

SECOND DIVISION

[G.R. No. 125524, August 25, 1999]

BENITO MACAM DOING BUSINESS UNDER THE NAME AND STYLE BEN-MAC ENTERPRISES, PETITIONER, VS. COURT OF APPEALS, CHINA OCEAN SHIPPING CO., AND/OR WALLEM PHILIPPINES SHIPPING, INC., RESPONDENTS.

DECISION

BELLOSILLO, J.:

On 4 April 1989 petitioner Benito Macam, doing business under the name and style *Ben-Mac Enterprises*, shipped on board the vessel *Nen Jiang*, owned and operated by respondent China Ocean Shipping Co., through local agent respondent Wallem Philippines Shipping, Inc. (hereinafter WALLEM), 3,500 boxes of watermelons valued at US\$5,950.00 covered by Bill of Lading No. HKG 99012 and exported through Letter of Credit No. HK 1031/30 issued by National Bank of Pakistan, Hongkong (hereinafter PAKISTAN BANK) and 1,611 boxes of fresh mangoes with a value of US\$14,273.46 covered by Bill of Lading No. HKG 99013 and exported through Letter of Credit No. HK 1032/30 also issued by PAKISTAN BANK. The Bills of Lading contained the following pertinent provision: "One of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order."^[1] The shipment was bound for Hongkong with PAKISTAN BANK as consignee and Great Prospect Company of Kowloon, Hongkong (hereinafter GPC) as notify party.

On 6 April 1989, per letter of credit requirement, copies of the bills of lading and commercial invoices were submitted to petitioner's depository bank, Consolidated Banking Corporation (hereinafter SOLIDBANK), which paid petitioner in advance the total value of the shipment of US\$20,223.46.

Upon arrival in Hongkong, the shipment was delivered by respondent WALLEM directly to GPC, not to PAKISTAN BANK, and without the required bill of lading having been surrendered. Subsequently, GPC failed to pay PAKISTAN BANK such that the latter, still in possession of the original bills of lading, refused to pay petitioner through SOLIDBANK. Since SOLIDBANK already pre-paid petitioner the value of the shipment, it demanded payment from respondent WALLEM through five (5) letters but was refused. Petitioner was thus allegedly constrained to return the amount involved to SOLIDBANK, then demanded payment from respondent WALLEM in writing but to no avail.

On 25 September 1991 petitioner sought collection of the value of the shipment of US\$20,223.46 or its equivalent of P546,033.42 from respondents before the Regional Trial Court of Manila, based on delivery of the shipment to GPC without presentation of the bills of lading and bank guarantee.

Respondents contended that the shipment was delivered to GPC without

presentation of the bills of lading and bank guarantee per request of petitioner himself because the shipment consisted of perishable goods. The telex dated 5 April 1989 conveying such request read -

AS PER SHPR'S REQUEST KINDLY ARRANGE DELIVERY OF A/M SHIPT TO RESPECTIVE CNEES WITHOUT PRESENTATION OF OB/L^[2] and bank guarantee since for prepaid shipt ofrt charges already fully paid our end x x x^[3]

Respondents explained that it is a standard maritime practice, when immediate delivery is of the essence, for the shipper to request or instruct the carrier to deliver the goods to the buyer upon arrival at the port of destination without requiring presentation of the bill of lading as that usually takes time. As proof thereof, respondents apprised the trial court that for the duration of their two-year business relationship with petitioner concerning similar shipments to GPC deliveries were effected without presentation of the bills of lading.^[4] Respondents advanced next that the refusal of PAKISTAN BANK to pay the letters of credit to SOLIDBANK was due to the latter's failure to submit a Certificate of Quantity and Quality. Respondents counterclaimed for attorney's fees and costs of suit.

On 14 May 1993 the trial court ordered respondents to pay, jointly and severally, the following amounts: (1) P546,033.42 plus legal interest from 6 April 1989 until full payment; (2) P10,000.00 as attorney's fees; and, (3) the costs. The counterclaims were dismissed for lack of merit.^[5] The trial court opined that respondents breached the provision in the bill of lading requiring that "one of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order," when they released the shipment to GPC without presentation of the bills of lading and the bank guarantee that should have been issued by PAKISTAN BANK in lieu of the bills of lading. The trial court added that the shipment should not have been released to GPC at all since the instruction contained in the telex was to arrange delivery to the respective consignees and not to any party. The trial court observed that the only role of GPC in the transaction as notify party was precisely to be notified of the arrival of the cargoes in Hongkong so it could in turn duly advise the consignee.

Respondent Court of Appeals appreciated the evidence in a different manner. According to it, as established by previous similar transactions between the parties, shipped cargoes were sometimes actually delivered not to the consignee but to notify party GPC without need of the bills of lading or bank guarantee.^[6] Moreover, the bills of lading were viewed by respondent court to have been properly superseded by the telex instruction and to implement the instruction, the delivery of the shipment must be to GPC, the real importer/buyer of the goods as shown by the export invoices,^[7] and not to PAKISTAN BANK since the latter could very well present the bills of lading in its possession; likewise, if it were the PAKISTAN BANK to which the cargoes were to be strictly delivered it would no longer be proper to require a bank guarantee. Respondent court noted that besides, GPC was listed as a consignee in the telex. It observed further that the demand letter of petitioner to respondents never complained of misdelivery of goods. Lastly, respondent court found that petitioner's claim of having reimbursed the amount involved to SOLIDBANK was unsubstantiated. Thus, on 13 March 1996 respondent court set aside the decision of the trial court and dismissed the complaint together with the counterclaims.^[8] On 5 July 1996 reconsideration was denied.^[9]

Petitioner submits that the fact that the shipment was not delivered to the consignee as stated in the bill of lading or to a party designated or named by the consignee constitutes a misdelivery thereof. Moreover, petitioner argues that from the text of the telex, assuming there was such an instruction, the delivery of the shipment without the required bill of lading or bank guarantee should be made only to the designated consignee, referring to PAKISTAN BANK.

We are not persuaded. The submission of petitioner that "the fact that the shipment was not delivered to the consignee as stated in the Bill of Lading or to a party designated or named by the consignee constitutes a misdelivery thereof" is a deviation from his cause of action before the trial court. It is clear from the allegation in his complaint that it does not deal with misdelivery of the cargoes but of delivery to GPC without the required bills of lading and bank guarantee -

6. The goods arrived in Hongkong and were released by the defendant Wallem directly to the buyer/notify party, Great Prospect Company and not to the consignee, the National Bank of Pakistan, Hongkong, without the required bills of lading and bank guarantee for the release of the shipment issued by the consignee of the goods x x x x^[10]

Even going back to an event that transpired prior to the filing of the present case or when petitioner wrote respondent WALLEM demanding payment of the value of the cargoes, misdelivery of the cargoes did not come into the picture -

We are writing you on behalf of our client, Ben-Mac Enterprises who informed us that Bills of Lading No. 99012 and 99013 with a total value of US\$20,223.46 were released to Great Prospect, Hongkong without the necessary bank guarantee. We were further informed that the consignee of the goods, National Bank of Pakistan, Hongkong, did not release or endorse the original bills of lading. As a result thereof, neither the consignee, National Bank of Pakistan, Hongkong, nor the importer, Great Prospect Company, Hongkong, paid our client for the goods x x x x^[11]

At any rate, we shall dwell on petitioner's submission only as a prelude to our discussion on the imputed liability of respondents concerning the shipped goods. Article 1736 of the Civil Code provides -

Art. 1736. The extraordinary responsibility of the common carriers lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of article 1738.^[12]

We emphasize that the extraordinary responsibility of the common carriers lasts until actual or constructive delivery of the cargoes to the consignee or to the person who has a right to receive them. PAKISTAN BANK was indicated in the bills of lading as consignee whereas GPC was the notify party. However, in the export invoices GPC was clearly named as buyer/importer. Petitioner also referred to GPC as such in his demand letter to respondent WALLEM and in his complaint before the trial court. This premise draws us to conclude that the delivery of the cargoes to GPC as buyer/importer which, conformably with Art. 1736 had, other than the consignee,

the right to receive them^[13] was proper.

The real issue is whether respondents are liable to petitioner for releasing the goods to GPC without the bills of lading or bank guarantee.

Respondents submitted in evidence a telex dated 5 April 1989 as basis for delivering the cargoes to GPC without the bills of lading and bank guarantee. The telex instructed delivery of various shipments to the respective consignees without need of presenting the bill of lading and bank guarantee per the respective shipper's request since "for prepaid shipt ofrt charges already fully paid." Petitioner was named therein as shipper and GPC as consignee with respect to Bill of Lading Nos. HKG 99012 and HKG 99013. Petitioner disputes the existence of such instruction and claims that this evidence is self-serving.

From the testimony of petitioner, we gather that he has been transacting with GPC as buyer/importer for around two (2) or three (3) years already. When mangoes and watermelons are in season, his shipment to GPC using the facilities of respondents is twice or thrice a week. The goods are released to GPC. It has been the practice of petitioner to request the shipping lines to immediately release perishable cargoes such as watermelons and fresh mangoes through telephone calls by himself or his "people." In transactions covered by a letter of credit, bank guarantee is normally required by the shipping lines prior to releasing the goods. But for buyers using telegraphic transfers, petitioner dispenses with the bank guarantee because the goods are already fully paid. In his several years of business relationship with GPC and respondents, there was not a single instance when the bill of lading was first presented before the release of the cargoes. He admitted the existence of the telex of 3 July 1989 containing his request to deliver the shipment to the consignee without presentation of the bill of lading^[14] but not the telex of 5 April 1989 because he could not remember having made such request.

Consider pertinent portions of petitioner's testimony -

Q: Are you aware of any document which would indicate or show that your request to the defendant Wallem for the immediate release of your fresh fruits, perishable goods, to Great Prospect without the presentation of the original Bill of Lading?

A: Yes, by telegraphic transfer, which means that it is fully paid. And I requested the immediate release of the cargo because there was immediate payment.

Q: And you are referring, therefore, to this copy Telex release that you mentioned where your Company's name appears Ben-Mac?

Atty. Hernandez: Just for the record, Your Honor, the witness is showing a Bill of Lading referring to SKG (sic) 93023 and 93026 with Great Prospect Company.

Atty. Ventura:

Q: Is that the telegraphic transfer?

A: Yes, actually, all the shippers partially request for the