

1965
March 27,
April 19,
June 28,
July 5, 26,
Sept. 13

[VASSILIADES, J.]

ARTEMIS CO. LTD.,

Plaintiffs,

v.

1. ZIM ISRAEL NAVIGATION CO. LTD.,

2. SHOHAM (CYPRUS) LTD.,

Defendants.

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ARTEMIS
CO. LTD.,
v.
ZIM ISRAEL
NAVIGATION
CO. LTD.,
AND ANOTHER

(Admiralty Action No. 7/62)

Admiralty—Carriage of goods by sea—Action for damage caused to goods during voyage—Damages for breach of contract in bill of lading—Findings of Court in relation thereto.

On September 20, 1962, the plaintiffs filed the present action with a claim of :—

- (a) £2,022.050 mils for damage caused to their goods “ whilst being carried from Glasgow to Famagusta on the s.s. Atzmaut, due to bad storage and negligence of the first defendants, their servants or agents ” ;
- (b) £358.900 mils “ actual expenses for reselection and re-bagging ” of the goods ; and
- (c) General damages for breach of the contract in the bill of lading dated 26.11.61.

The main issues arising from the pleadings ordered under rule 82 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction are :

1. The contract between the parties ;
2. The breach, if any ; and
3. The loss resulting therefrom.

In support of their claim, the plaintiffs called five witnesses ; and produced seventeen different documentary exhibits. The defendants called two witnesses. The evidence for the plaintiffs consists in that of their managing director (P.W. 1) ; their accountant (P.W. 5) ; the surveyor (P.W. 2) ; the produce-inspector and one of his assistants (P.W. 3, and P.W. 4). The evidence for the defendants consists in that of two of their managing directors (D.W. 1 and D.W. 2).

Held, (1) the contract for the carriage of the goods is that embodied in the bill of lading, *exhibit 3*. As a contract between carrier and shipper or consignee, I find it as the agreement between the first defendants and the plaintiffs.

(2) I read the notes on the face of this bill of lading, "Goods shipped UNDER DECK" and "SHIPPED IN ELECTRICALLY-VENTILATED STOWAGE" as material terms of the parties' contract; meaning that the seed potatoes constituting the cargo in question, would be carried duly protected under deck, in a sufficiently ventilated stowage for a voyage of about 30 days; the normal duration of the ship's voyage from Glasgow to Famagusta.

(3) I, therefore, find that the first defendants' failure regarding stowage and ventilation as above, constitutes a breach of the contract between the parties, entitling the plaintiffs to appropriate damages.

(4) Coming now to plaintiffs' loss, I find it as follows:

1. Approximately 85% of the value of 9,800 kilos of rejected goods	£ 300
2. Wages for sorting, re-selecting and repacking..	65
3. Value of 834 new bags, less the value of the rejected ones	80
4. Six rolls of binder twine	6
5. Labour for sewing torn bags	10
	<hr/>
	£461
6. Allowance for other incidental expenses ..	39
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	£500

(5) The evidence does not show that the re-selected goods were sold at any lower price than the 770 unopened bags. In fact it would seem reasonable to think, that the re-selected goods would be free of even that small percentage of damaged goods allowed by the regulations, and not unusually found according to the evidence, in this kind of goods.

(6) Plaintiffs' evidence regarding any other damage has not been at all convincing or satisfactory. I find myself unable to accept it. The plaintiffs far from trying to minimise their loss, they have given me the impression of trying to present exaggerated claims, right from the start. Same as defendants' agents have, right from the start, tried to place the responsibility for the damage, elsewhere. None of the damage was due to discharging the goods by lighters.

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(7) Plaintiffs' claim against the second defendants cannot succeed. I must confess that even at this stage, I cannot understand the ground upon which the plaintiffs could make this claim against the second defendants.

(8) In these circumstances, I reach the conclusion that the plaintiffs are entitled to judgment against the first defendants for £500 with costs on the amount recovered. Action against the second defendants dismissed with £25 costs.

Judgment for plaintiffs against the first defendants for £500 with costs on the amount recovered. Action against the second defendants dismissed with £25 costs.

Admiralty Action.

Admiralty Action for damages for loss alleged to have been caused to plaintiffs' goods, a consignment of 150 tons of potatoes bought in Scotland, whilst being carried on board s.s. "Atzmaut" belonging to defendants No. 1, due to bad storage, negligence and/or breach of agreement.

Chr. Mitsides, for the plaintiffs.

M. Montanios, for the defendants.

Cur. adv. vult.

The facts of the action sufficiently appear in the judgment delivered by :

VASSILIADES, J.: The plaintiffs in this action are the consignees and importers of a consignment of 150 tons of seed-potatoes bought in Scotland. They claim against the shipping company (the first defendants herein) who agreed to carry the goods to Cyprus, and against their local agents (the second defendants) damages for loss alleged to have been sustained by the plaintiffs from the defective condition in which the goods arrived at Famagusta, their port of destination.

The potatoes were contained in 3,000 new jute bags of 50 kilos each, shipped at Glasgow on the m.v. "Atzmaut" under a bill of lading issued by the first defendants on the 26th November, 1961; exhibit 3 herein. Attached to the bill of lading, there was the certificate of the Department of Agriculture and Fisheries for Scotland, required for the export of the goods in question (*exhibit* 2); and the invoice of the shipper (*exhib.* 1); both dated the 27th November, 1961.

The ship arrived at Famagusta a month later, on December 27, 1961. Upon inspection of the goods before unloading, by the Produce Inspector of the Ministry of Commerce and Industry, for the purposes of the importation certificate required by the regulations, the consignment was found to contain more than the permissible half per cent (1/2%) of damaged potatoes. Unloading was, therefore, only allowed upon an undertaking by the importer (the plaintiffs) that the goods would be re-selected to the satisfaction of the Produce Inspector, and re-packed at an approved packing store. The Inspector's examination-certificate, dated the 29th December, 1961, is on the record as exhibit 4.

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The result of the re-selection and re-packing of the goods, was that out of the 3,000 bags, 2,230, showing signs of rotting potatoes in the bag, had to be opened ; the contents re-selected ; and the sound potatoes re-packed, producing 2,034 bags of certifiable goods. The equivalent of 196 bags (9,800 kilos of potatoes) were found unfit, and had to be discarded altogether. The remaining 770 bags (3,000-2,230) were found certifiable and did not have to be opened at all.

The goods, now confined to 2,804 bags (2,034+770) certified fit for import, were released for sale as from the 9th January, 1962. They were sold and distributed by the plaintiffs, in the ordinary course of their business, to different customers at various prices. For the expenses incurred in connection with re-selection, packing, etc., and for the loss resulting from the sale of the goods later in the season, they say, the plaintiffs make their present claim. It may be added here, that upon examination of the goods before unloading, the plaintiffs lodged a protest with the shipping agents ; and had the goods surveyed by a Lloyd's agent. The shipowners and their local agents entirely declined liability, right from the start.

On September 20, 1962, the plaintiffs filed the present action with a claim of—

- (a) £2,022.050 mils for damage caused to their goods " whilst being carried from Glasgow to Famagusta on the s.s. " Atzmaut ", due to bad storage and negligence of the first defendants, their servants or agents ";
- (b) £358.900 mils " actual expenses for re-selection and re-bagging " of the goods ; and
- (c) General damages for breach of the contract in the bill of lading dated 26.11.61.

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Both defendants entered an appearance in due course. In the pleadings ordered under r. 82 on joint application of the parties, the claim was based on the allegations that—

- (i) The goods of the plaintiffs consisting of 150 tons of Scottish certified class “A” Up-to-date seed potatoes, of the total value of £5,250 were shipped on the s.s. “Atzmaut” at Glasgow under a bill of lading issued by the first defendants on the 26.11.61, for transport to Famagusta in electrically-ventilated stowage, under deck.
- (ii) The ship arrived at Famagusta on December 27, 1961; and discharged plaintiffs’ potatoes on the 28th and 29th December. The goods were found to be “in a very bad state, greatly deteriorated in quality, and a quantity of the goods were landed loose, dark stained, rotten and smelling”.
- (iii) The Government Produce Inspector did not permit importation, unless the goods were re-selected under official supervision.
- (iv) The Lloyds survey report stated, *inter alia* that “. . . a number of bags were stained, moist and rotten to a varied extent. A quantity of potatoes were loose, dark stained, rotten and smelling”.
- (v) This condition of the goods was due to the fact that the holds of the ship were filled to capacity so that “the potatoes could not get proper or any ventilation . . .”; the journey from Glasgow to Famagusta took 32 days “instead of the usual period by direct route of nine days”; the potatoes were negligently stowed “in breach of the agreement for the carriage thereof”; the defendants failed to take the proper customary measures for their safe carriage.
- (vi) The plaintiffs sustained, in consequence of the condition in which the goods arrived, £701,900 mils “actual damages” specified in nine different items in paragraph 14 of the petition; and £2,022,050 mils “general damages” the total of which constitutes plaintiffs’ claim in the action.

After considerable delay, the defendants filed their answer. They both, denied liability and amount. The second defendants, sued as agents of the first, contended that the petition disclosed no cause of action against them. The first defendants admitted shipment as alleged, under the bill of

lading referred to above ; but raised the question of the ownership of the ship, which, however, has not been pursued further.

Regarding the condition of the goods on arrival, the defendants "emphatically" denied plaintiffs' allegations ; and contended that the goods "arrived in Famagusta in good condition" (paragraph 8). Their allegation is that "after discharge" a small number of bags were found "torn and wet" but this did not affect the goods. It was due, the defendants allege, to the fact that the goods were discharged into lighters where, owing to differences between the plaintiffs and their consignees, the potatoes remained overnight. Moreover, the defendants denied that the plaintiffs were required by the authorities to have the goods re-selected as alleged. (paragraphs 9 and 12).

As to stowage, and the alleged delay in the ship's journey, the defendants say that the potatoes "were properly stowed and properly ventilated" (paragraph 11 (i)) ; "all proper and customary steps and measures" for their safe carriage, were taken (paragraph 11 (iii)) ; and the ship's journey, with calls to certain other ports on the way, did not constitute any breach of the contract in the bill of lading. They denied "the alleged or any damage" ; and they denied liability (paragraph 14).

The main issues arising from these pleadings are :

1. The contract between the parties.
2. The breach, if any ; and
3. The loss resulting therefrom.

In support of their claim, the plaintiffs called five witnesses ; and produced seventeen different documentary exhibits. The defendants called two witnesses. The evidence for the plaintiffs consists in that of their managing director (P.W. 1) ; their accountant (P.W. 5) ; the surveyor (P.W. 2) ; the produce-inspector and one of his assistants (P.W. 3, and P.W. 4). The evidence for the defendants consists in that of two of their managing directors (D.W. 1 and D.W. 2).

The material facts of the case present no difficulty. On the evidence before me, I find them as follows :—

The consignment in question was bought by the plaintiffs from the shipper, a London firm, through the Bank of Cyprus Ltd., upon the shipping documents : the invoice

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and certificate of origin of the goods (*exhibit 1*) ; their official certification as Scotch seed potatoes of a specified type, fit for export to Cyprus (*exhibit 2*) ; and the bill of lading (*exhibit 3*).

The seller had the goods shipped at Glasgow on the 26th November, 1961, on the terms and conditions of the bill of lading (*exhibit 3*) which constitutes the contract between the plaintiffs as consignees of the goods, and the first defendants as common carriers by sea. The goods were shipped in apparent good order and condition as described in *exhibit 2*.

The ship at the material time *i.e.* November/December, 1961, was engaged in the transport of goods, including perishables, between the United Kingdom and Israel, on an itinerary covering the west coast of the United Kingdom, Portugal, Italy, Greece and Cyprus. This itinerary was advertised in the ordinary course of business, and I can have no doubt in my mind that the shipper enquired of the ship's suitability to carry the perishable goods in question ; of her itinerary on this particular journey ; and of the probable duration of the trip. Accepting, as I do, the evidence of witness Papavassiliou (D.W. 2) in this connection, I draw the inference that the shipper received assurances that the goods would be shipped in electrically ventilated stowage under-deck ; and that the probable duration of the voyage would be about one month.

As to stowage, I find that the truth lies between the description of the cargo in the ship's hold on arrival at Famagusta, by the first witness for the plaintiffs (P.W. 1) on the one hand, and that given in evidence by the first witness for the defendants (D.W. 1) on the other. I find that the lower rows of bags were stowed cross-wise, as usual, and as described by the witness for the defence ; but this may well not have been strictly observed in the upper rows. I also find that the ventilation corridors were neither all as poor, and as narrow and defective, as described by the witness for the plaintiffs ; nor as clear, wide, and effective, both horizontally and vertically, as described by the witness for the defence. After all, considering the length of the ship's journey, and the time of the year in which it was done, the stowage of these goods at Famagusta may not have been in the same form as when the ship left Glasgow. Be that as it may, however, in the light of the evidence as a whole, particularly the evidence regarding the damage to the goods from rotting, I find that the stowage and ventilation of the cargo, while in the ship's hold, was not done or maintained,

as required for the safety and preservation of the goods, considering their perishable nature and the probable duration of the voyage.

The "Atzmaut" arrived at Famagusta on the 27th December, 1961 ; and owing to congestion in the harbour, the goods were discharged in lighters on the 28th and the 29th December. The allegation of the defendants that the damage found was caused by the goods having been discharged in lighters and by their having remained therein, overnight, was not established. The damage to the goods, as described by the Produce Inspector (P.W. 3) developed during the voyage and while on the ship, owing to their perishable nature.

In the ordinary discharge of his duties, the Produce Inspector, an officer of the Ministry of Commerce and Industry, went on board the "Atzmaut" soon after her arrival, for the purposes of the clearance certificate required for the importation of seed potatoes into the Island. The goods were still in their stowage under-deck, where they had travelled from Glasgow to Cyprus. He looked at them from the opening of the hold and directed that a few sample-bags, taken at random from different parts of the cargo, be brought up to the deck for examination (P.W. 3 at p. 19-20). Some eight to ten bags were so examined, in the presence of the ship's captain, the consignees' managing director, and others.

Damaged potatoes, (moist, stained and rotting) were found in the bags, representing roughly, the Inspector said, about one per cent (1%) of the contents (about 8 or 10 rotting potatoes in each bag). This being more than the $\frac{1}{2}$ % of damaged potatoes, allowed by the regulations, led the Inspector to the decision to reject the consignment unless the importer signed an undertaking as required in exhibit 4, to have the goods "re-selected to the satisfaction of the Produce Inspector, at an approved packing house at Famagusta". The importer (plaintiffs) agreed to these conditions ; and the goods were unloaded on the terms embodied in exhibits 4 and 15, and 16 herein, on the 28th and 29th December. I find the facts in this connection from the evidence of the Inspector, (P.W. 3) which I accept. The figures in handwriting on exhibit 16 were added there by the witness (P.W. 3) after completion of the work, as he explained in evidence. They indicate that out of the 3,000 bags, 2230 had to be opened and re-selected, while the remaining 770 bags, showing no signs

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of damage, were not opened at all. Some bags, probably affected by rotting potatoes close to the jute material, broke in a way which let some of their contents escape loose on the floor. These were only a few.

The process of re-selection, as explained in evidence, consisted in separating the bags showing signs of damaged goods inside, and emptying the contents of some five or ten of them on the stand where the sound potatoes were selected and re-packed in bags of 50 kilos, while the rotting potatoes were rejected. This work was carried out under the supervision of the Produce Inspector or his representative, by women-labourers usually employed in packing houses, and trained in the work. It took 6 working days to do (four full and two half days), commencing on the 2nd and ending the 9th January, 1962, (P.W. 2 at p. 7 and *exhibit* 14). And it resulted in 2034 re-selected bags (out of the 2230 opened) re-packed in their original bags, excepting for 834 of them which, affected by rotting potatoes, had to be replaced by new bags. The re-selected 2034 bags, together with the 770 unopened, making a total of 2804 bags, were released for import and marketing. The discarded potatoes amounting to the equivalent of 196 bags, or 9,800 kilos, were rejected as seed, and were disposed of by the plaintiffs in a manner which they failed to explain.

The surveyor called in by the plaintiffs to report on the damage, gave evidence refreshing his memory from his report, *exhibit* 14, dated 28.2.62, prepared partly from personal observation and partly from information obtained at the time, he said. The carrier's agents, notified in due course, failed to attend the survey, and so the surveyor's information in matters beyond his personal observation, apparently came, mostly, from the consignee. Moreover, his (the surveyor's) evidence appeared to me to require careful weighing in the light of surrounding circumstances, and other available evidence in connection thereto.

From the evidence before me. (including that of the surveyor) I find the condition in which the goods arrived at Famagusta; the cause of the damage; and plaintiffs' consequential loss, as follows :—

The goods arrived in the condition described by the Inspector of Produce (P.W. 3) when he examined them on board the ship, on December 28, 1961, a few hours after arrival. Probably owing to the presence of rotting potatoes in most of the bags, and possibly to other reasons

as well, the presence of apparently harmful moisture was noticeable. I say "most of the bags", bearing in mind that more than two thirds of the whole quantity, had to be opened and re-selected. Some bags were stained ; others were also smelling. Where rotting potatoes affected the material of the bag to the extent of braking, the bags appeared as if they had been torn. These, however, could not have been very many as there was no suggestion of taking stock of them when the Inspector, examining the specimen bags in the presence of the Captain, found damaged potatoes in excess of the $\frac{1}{2}$ % allowed by the regulations ; and made the decision embodied in his certificate, *exhibit* 15. Moreover, answering a question by counsel for the plaintiffs, the Inspector said that he could only see very few potatoes out of the bags which appeared to be torn. (P.W. 3 p. 21) I find accordingly.

The Inspector's rough estimate of the damaged goods at about one per cent (1%) of the examined 8-10 sacks (P.W. 3 p. 21) is well below the actual damage found after the re-selection process. The equivalent of 196 bags of 50 kgs. each, amounting to 9,800 kilos of potatoes, in a total quantity of 150,000 kilos is nearer 6%. And I find the extent of the damage to the goods, on arrival, as established after re-selection.

But while on this point, I must add that at least a part of the 9,800 kilos found unfit as seed-potatoes, must have had a value in the market, for other purposes, which the plaintiffs failed to state ; or account for. On the evidence before me, I find myself unable to accept the surveyor's statement in *exhibit* 14 that this quantity of rejected seed-potatoes, represented a total loss.

As to the cause of the damage to the goods, I find it in the long duration of the journey, with insufficient ventilation in the circumstances. As I have already said earlier in this judgment, I do not accept as accurate or correct either the evidence for the plaintiffs (P.W. 1) or that for the defendants (D.W. 1) as to the state of the stowage of the goods on arrival. If stowage were as bad as described by the witness for the plaintiffs, the damage to the goods would probably be much more extensive. And, in any case, the condition of the goods as found by the Inspector on board the ship, was obviously connected with ventilation and stowage ; and an experienced importer, holding a bill of lading specially providing for "electrically ventilated stowage", would not have failed to draw the Inspector's

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attention to the fact, in the captain's presence. Similarly, if the stowage and ventilation were as good as described by the witness for the defendants, the experienced agent would have equally drawn attention to it at the time. I find that the truth lies between the two. And, in the circumstances, I find that for a voyage of about one month's duration, partly in the Atlantic, in the month of December, the carrier failed to provide, and failed to maintain throughout the voyage, sufficiently good stowage and sufficient ventilation-corridors for the preservation and safety of this cargo of seed potatoes.

The contract for the carriage of the goods is that embodied in the bill of lading, exhibit 3. As a contract between carrier and shipper or consignee, I find it as the agreement between the first defendants and the plaintiffs. I read the notes on the face of this bill of lading, "Goods shipped UNDER DECK" and "SHIPPED IN ELECTRICALLY VENTILATED STOWAGE" as material terms of the parties' contract; meaning that the seed potatoes constituting the cargo in question, would be carried duly protected under deck, in a sufficiently ventilated stowage for a voyage of about 30 days; the normal duration of the ship's voyage from Glasgow to Famagusta. And I, therefore, find that the first defendants' failure regarding stowage and ventilation as above, constitutes a breach of the contract between the parties, entitling the plaintiffs to appropriate damages.

Coming now to plaintiffs' loss, I find it as follows :

1. Approximately 85% of the value of 9,800 kilos of rejected goods	£ 300
2. Wages for sorting, re-selecting and repacking	65
3. Value of 834 new bags, less the value of the rejected ones	80
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The evidence does not show that the re-selected goods were sold at any lower price than the 770 unopened bags.

In fact it would seem reasonable to think, that the re-selected goods would be free of even that small percentage of damaged goods allowed by the regulations, and not unusually found, according to the evidence, in this kind of goods.

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The re-selected goods were released for importation and distribution as from January 9, 1962. Plaintiffs' evidence regarding any other damage has not been at all convincing or satisfactory. I find myself unable to accept it. The plaintiffs far from trying to minimise their loss, they have given me the impression of trying to present exaggerated claims, right from the start. Same as defendants' agents have, right from the start, tried to place the responsibility for the damage, elsewhere. None of the damage was due to discharging the goods by lighters.

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Plaintiffs' claim against the second defendants cannot succeed. I must confess that even at this stage, I cannot understand the ground upon which the plaintiffs could make this claim against the second defendants.

In these circumstances, I reach the conclusion that the plaintiffs are entitled to judgment against the first defendants for £500 with costs on the amount recovered. Action against the second defendants dismissed with £25 costs.

Judgment in terms. Order as to costs as aforesaid.