1983 July 20

[HADJIANASTASSIOU, J.]

JOSEPH CHR. CONSTANTINIDES,

Plaintiff.

v.

1. INTERCARRIERS MARITIME CO. LTD.,
2. THE SHIP "THASA" OWNED BY THE DEFENDANTS 1,

Defendants.

(*Admiralty Action No.* 12/79).

Contract—Carriage of goods by sea—Bill of lading—It affords prima facie evidence of the terms of the contract but not exclusive evidence—Bill of lading exempting carrier from liability for the short delivery of goods—Burden on plaintiff to negative presumption that bill of lading sets out the terms of the agreement between the parties.

The plaintiff claimed damages against the defendants which arose out of the shortlanding of his goods which the defendants undertook to carry from Volos to Limassol under a bill of lading. The defendants denied liability and in support of their case they relied on the exemption clause which appeared in the bill of lading exempting them of liability "for a number of packages, contents, quality and/or liability or damages to any either contents or packing".

Held, that the dispute turns exclusively on the contract of the parties regulating the carriage of goods; that a bill of lading affords prima facie evidence of the terms of the contract for the carriage of goods, but not conclusive evidence; that as in the present case it clearly exempts the defendants from liability for the short delivery that took place, there remains to be decided whether the terms of the agreement were anything other than those set out in the bill of lading; that the burden in the present case is on the plaintiff to negative the presumption that the bill of lading sets out the terms of the agreement between the parties; and that the plaintiff has failed to prove that the terms of the

agreement between the parties were different from those incorporated in the said bill of lading which was accepted by the plaintiff and acted upon signifying thereby the agreement embodied in the bill of lading; accordingly the action must fail.

Action dismissed.

Cases referred to:

Archangelos Domain v. *Adriatica* (1978) 1 C.L.R. 439;

Sze Hai Tong Bank Ltd. v. *Rumbler Cycle Co. Ltd.* [1959] A.C. 576 at p. 587.

Admiralty action.

Admiralty action for damages for breach of contract and/or breach of duty and/or negligence of defendant's servants or agents for failure to deliver and/or shortlanding and/or missing of five cases of goods shipped on defendant ship.

J. Erotokritou, for plaintiff.

Fr. Saveriades, for defendants No. 1.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In this case the plaintiff Joseph Chr. Constantinides claimed damages against the defendants for breach of contract and/or breach of duty and/or negligence of the defendants' servants or agents for failure to deliver and/or shortlanding and/or missing of five cases of goods of the plaintiff shipped on board the defendants 1 said vessel under a bill of lading No. V/L 26 from Volos to Limassol.

There is no doubt that the plaintiff was at all material times the holder of a bill of lading dated Volos 24th January, 1978, and the owner of 47 cartons industrial domestic sewing machines and clutch motors, shipped thereunder. By a contract contained in or evidenced by the said bill of lading the defendants undertook to carry the said goods from Volos to Limassol in their said ship and there to deliver the same to the plaintiff or his order.

The plaintiff was the importer of machinery, and the first defendants were sea-carriers and the owners of the ship de-

fendant 2. In addition, an agreement was reached between the plaintiff and the defendants for the transportation of 47 boxes containing items of machinery from Volos to the port of Limassol. The defendants delivered at Limassol only 42 boxes and the plaintiff now holds them liable for the shortlanding of these boxes. Indeed after long and protracted negotiations as to who was liable for the short-fall the plaintiff gave evidence seeking the recovery of £813.360 mils, i.e. £536.900 mils costs of value of the goods, and £225.670 mils loss of profits plus interest. The defendants denied liability and in support of their case relied on the (exemption clause) which appears in the bill of lading set out in the said document exempting them of responsibility "for a number of packages, contents, quality and/or damages to any either contents or packing".

It is clear that the dispute turns exclusively on the contract of the parties regulating the carriage of goods. It is well established that a bill of lading affords prima facie evidence of the terms of the contract for the carriage of goods, but not conclusive evidence. The bill of lading in the present case clearly exempts the defendants from liability for the short delivery that took place. Indeed there remains to decide whether the terms of the agreement were anything other than those set out in the bill of lading.

Having listened carefully to both counsel I have reached the clonclusion that the burden in the present case is on the plaintiff to negative the presumption that the bill of lading sets out the terms of the agreement between the parties.

Having considered the whole matter I have reached the conclusion that the plaintiff had failed to prove that the terms of the agreement between the parties were different from those incorporated in the said bill of lading. There is no doubt that from the whole of the evidence it appears to me that the bill of lading was accepted by the plaintiff and acted upon signifying thereby the agreement embodied in the bill of lading.

In *Archangelos Domain v. Adriatica,* (1978) 1 C.L.R. 439, I had the occasion to deal with a bill of lading on which it was stamped "exemption clause". In doing so I have relied on the authority of *Sze Hai Tong Bank Ltd. v. Rambler Cycle Co. Ltd.,*

[1959] A.C. 576, in which Lord Denning delivered a unanimous judgment and had this to say at p. 587:-

> "But their Lordships go further. If such an extreme width were given to the exemption clause, it would run counter to the main object and intent of the contract. For the contract, as it seems to their Lordships, has, as one of its main objects, the proper delivery of the goods by the shipping company, 'unto order or his or their assigns', against production of the bill of lading. It would defeat this object entirely if the shipping company was at liberty, at its own will and pleasure, to deliver the goods to somebody else, to someone not entitled at all, without being liable for the consequences. The clause must therefore be limited and modified to the extent necessary to enable effect to be given to the main object and intent of the contract: see *Glynn* v. *Margetson & Co.* [1893] A.C. 351, 357; *G. H. Renton & Co. Ltd.* v. *Palmyra Trading Corporation of Panama* [1956] 1 Q.B. 462, 501.
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> To what extent is it necessary to limit or modify the clause? It must at least be modified so as not to permit the shipping company deliberately to disregard its obligations as to delivery. For that is what has happened here. The shipping company's agents in Singapore acknowledged: 'We are doing something we know we should not do'. Yet they did it. And they did it as agents in such circumstances that their acts were the acts of the shipping company itself."

With respect that case is distinguishable from the present case, because here there was no question of delivery of the goods but because the exemption clause clearly and unambiguously says that under that clause the defendants are not liable.

For all these reasons, the action fails.

Having regard to the result, I think with respect that it is unnecessary to deal further and make a finding as to the damages once the appellate bench is in an equally good position to arrive at a proper conclusion on the subject.

In the result, the action is dismissed, but in the particular circumstances of this case I am not making an order as to costs.

Action dismissed with no order as to costs.