

1987 November 14

[A LOIZOU, J.]

AHILLEAS ELIADES TRADING AS
SOPHOCLES ELIADES (SUCCESSORS),

Plaintiffs,

v

1 ADRIATICA DI NAVIGAZIONE SOC PER AZIONE,
THROUGH THEIR AGENTS A L MANTOVANI AND SONS LTD ,
2 THE VESSEL «SERENISSIMA EXPRESS»,

Defendants

(Admiralty Action No 72/81)

*Damages — Breach of contract — Short delivery of goods — Measure of damages
— The Contract Law, Cap 149, section 73 — In the circumstances of this case
the carrier is not liable for the plaintiff's loss of profit*

5 In this Admiralty Action the plaintiffs claim the amount of £412 - Cyprus
pounds, damages for breach of contract in respect of short delivery of goods
the property of the plaintiffs

The sum of C£412 - consists of (a) £300 - actual cost of the cargo, and (b)
£112 clear profit thereon -

10 The question that arose for consideration was whether the plaintiff is
entitled to «clear profit»

15 Held, (1) The law governing the question of damages is contained in section
73 of our Contract Law, Cap 149, and had extensively been considered by
this Court in the case of *Thunder Shipping Co Ltd v Lloyds Triestino Di Nav
S P A* (1984) 1 C L R 135 Generally whether one is entitled to recover for
loss of profits depends entirely on the circumstances

20 (2) In the present case there was no evidence of any special circumstances,
nor of any contract of immediate resale, nor any evidence that the goods short
landed could not be obtained later To the contrary, such goods which were
ordinary goods were readily available as there was an available market to
obtain them and one must not lose sight of the plaintiff's duty to mitigate his
loss Of course though they would be obtained at a later date, there has been

no allegation that there would not be a market for such goods at such later date.

*Judgment for plaintiffs for
£300 - with 3/4ths of their costs.*

Cases referred to.

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Anglo - Saxon Petroleum v Adamastos Shipping Co [1968] 1 Lloyd's Rep 73

THE ARPAD, 49 Lloyd's Rep 313.

Hadley v. Baxendale [1854] 9 Exch 341

Thunder Shipping Co Ltd v Lloyds Triestino Di Navigazione S P A 10
(1984) 1 C L R 135

Victoria Laundry v Newman Industries Ltd [1949] 2 K B 528

Admiralty action.

Admiralty action for £412. = damages for breach of contract in respect of short delivery of goods. 15

St. Mc Bride, for the plaintiffs.

Chr. Mitsides, for the defendants

Cur. adv. vult.

A. LOIZOU J. read the following judgment. In this Admiralty Action the plaintiffs claim the amount of £412.- Cyprus pounds, damages for breach of contract in respect of short delivery of goods the property of the plaintiffs. 20

The facts, as they appear in the petition and which are not disputed are briefly as follows:

The plaintiffs were at all material times, the owners of goods shipped on board the vessel «Serenissima Express» at the port of Venice, Italy, and/or holders and/or indorsees of bill of lading No. 50 dated 30th September 1979. 25

Defendants 1, a company incorporated in Italy, were at all material times the owners and/or charterers of the defendant 2 ship, and carried on inter alia, the business of carriers for reward. 30

Pursuant to a contract of affreightment contained in the aforesaid bill of lading, defendants 1, received on board the defendant 2 ship «Serenissima Express» at Venice, Italy, two pallets containing 24 boxes of household articles which they 35

agreed to carry and deliver to the plaintiffs upon the terms and conditions stated therein.

It is alleged by the plaintiffs that the defendants failed to deliver to them goods the market price of which amounted to £412.- in
5 view of which the plaintiffs claim:

(a) C£412.- damages for breach of contract and/or breach of duty and/or fault and/or negligence of the defendants and/or their servants and/or agents and/or

10 (b) the same amount by way of damages sustained by the plaintiffs by reason of the conversion of the non-delivered goods by the Defendants and/or their servants and/or their agents.

(c) Interest on the above amount at 9% per annum as from 17th October, 1979.

15 (d) Costs.

It was stated by the plaintiff, in evidence that the sum of C£412.- consists of

(a) £300 actual cost of the cargo, and

(b) £112 clear profit thereon.

20 It was contended by the plaintiff that they were entitled to recover damages for the loss of «clear profit» which they would have made on the goods, «clear profit» being a profit unaffected by any special considerations such as a further contract of sale within the knowledge of the seller/carrier, since it was submitted in
25 cases of short delivery the measure of damages is the value of the goods they would have had at the time and place at which they ought to have been delivered and not the invoice or CIF value.

30 As authority for the above proposition Carver «Carriage of Goods by Sea» Vol. 2 [13th] Ed. para 2189, *Anglo-Saxon Petroleum v. Adamastos Shipping Co.*, [1968] Lloyds Rep. 73, and *The ARPAID*, 49 Lloyds Rep. 313 were cited. I may as well say here that neither of them help the case of the plaintiff on the issue of the loss of profits by the consignee.

35 On the other hand counsel for the defendants submitted that loss of profit can be recovered by the buyer of the goods only if his loss of profit was within the contemplation of both parties and if

the carrier was expected or could be assumed to have knowledge of the loss that might be caused to the buyer by the delay or non-delivery (see *Hadley v Baxendale* [1854] 9 Exch 341)

I would consider that the above statement of the law is correct
 In the present case there was no evidence of any special 5
 circumstances, nor of any contract of immediate resale, nor any
 evidence that the goods short landed could not be obtained later
 To the contrary, such goods which were ordinary goods were
 readily available as there was an available market to obtain them
 and one must not lose sight of the plaintiff's duty to mitigate his 10
 loss. Of course though they would be obtained at a later date,
 there has been no allegation that there would not be a market for
 such goods at such later date.

The law governing the question of damages is contained in
 section 73 of our Contract Law, Cap 149, and has extensively 15
 been considered by this Court in the case of *Thunder Shipping
 Co, Ltd v Lloyds Triestino Di Nav S P A* (1984) 1 C L R 135
 In this case it was held that

«That the defendants would be liable for damage resulting
 from special circumstances when those special circumstances 20
 have been brought home to them in such a way as to show
 that he has accepted or is taken to have accepted risk of
 payment of 2% by way of damages that this amount will be
 allowed as not only the parties contemplated that the
 damages resulting from the special circumstances might 25
 occur, but they further contemplated that the defendant was
 taking the risk of being liable for such consequences should it
 occur (see s 73 of Cap 149) »

Generally whether one is entitled to recover for loss of profits
 depends entirely on the circumstances; *Victoria Laundry v* 30
Newman Industries Ltd, [1942] 2 K B 528, where it was held that
 the carrier, on the facts known to him, as a reasonable man could
 have foreseen the loss of profit but not the loss under a special
 contract of which he had no knowledge.

On the issue of damages for nondelivery of goods, reference 35
 may be made to Pollock and Mulla, Indian Contract and Specific
 Relief Acts once section 73 of our Contract Law, Cap 149 is
 identical to section 73 of the Indian Contract Act. At pp. 615-616
 the following statement of the Law is to be found.

5 «Generally it is 'quite settled that on a contract to supply
goods of a particular sort, which at the time of the breach can
be obtained in the market, the measure of damages is the
difference between the contract price and the market price at
the time of the breach. The computation of damages by taking
the difference between the contract price and the lowest
market price on the date of the breach is neither illegal nor
unreasonable. Where the seller contracted to sell to another
party and without notice cancelled the contract, the buyer was
held entitled to damages for breach of contract. If the market
rate on the due date is not available, the Court may take into
consideration the rate prevalent just before and just after the
date. But the subject-matter of the contract may not be
marketable. In that case the value must be taken as fixed by
the price which actually has to be paid for the best and nearest
available substitute. *Hinde v. Liddell* (1875) L.R. 10 Q.B. 265,
269, *Elbinger Actien-Gesellschaft v. Armstrong* (1874) L.R. 9
Q.B. 573, 476. Where no such substitute is available, then if
there has been a contract to resell them the price at which the
contract was made will be evidence of their value, but if there
has been no such contract, the market value may be estimated
by adding to their price at the place where they purchased the
cost and charges of getting them to their place of destination,
and the usual importer's profits: *Borries v. Hutchinson* (1865)
18 C.B.N.S. 445; 44 R.R. 563; *O'Hanlan v. G.W. Ry. Co.*
25 (1865) 6 B. & S. 484; *Cooverjee Bhoja v. Rajendra Nath*
(1909) 36. Cal. 617; *Hajee Ismail & Sons v. Wilson & Co.*
(1918) 41 Mad. 709, 715; 45 I.C. 942. On a breach of contract
to supply goods by the seller the buyer is entitled to recover all
30 the expenses of procuring same or similar goods.»

In the present instance there is no evidence that no such
substitute is available, on the contrary there is evidence by the
plaintiff himself that similar goods could be obtained from the
same source but with some, however, delay, in which case the
recovery of profits would merely be deferred until the disposal of
such new consignment. Moreover there is no allegation and no
evidence that there was a contract to resell the goods in question
and there being no substitute available the price at which the
contract was made including the importer's profit might have been
40 evidence of their value.

In the premises the plaintiffs' claim for C£112.- profit is dismissed. There will therefore be judgment for the plaintiffs against the defendants jointly and severally for C£300.- with three fourths of their costs on that amount.

*Judgment and order
for costs as above.*

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