

[A. LOIZOU, J.]

ANTONIOS ANDREOU,

*Plaintiff,*

v.

1. CYPRUS TRAVEL (LONDON) LTD.,
2. A.L. MANTOVANI & SONS LTD.,
3. ADRIATICA DI NAVIGATIONE,

*Defendants.*

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ANTONIOS  
ANDREOU

v.

CYPRUS  
TRAVEL  
(LONDON) LTD.  
AND OTHERS

(Admiralty Action No. 64/72).

*Contract—Carriage of goods by sea—Goods lost or damaged on the voyage—Liability and duty of ship owners—Conditions attached to contract of carriage—Proof of conditions and their context and fact that they were incorporated in contract of carriage not established—Ship owner cannot take advantage of their provisions—Goods lost before delivery to plaintiff—Ship owners liable.*

*Contract—Agency—Agents acting as agents for disclosed principals—Cannot be held liable.*

The plaintiff in this action claimed the sum of £575 being the value of a trunk which was lost whilst carried for reward on board defendants' 3 ship "ENOTRIA" from Marseilles to Limassol.

The defendants denied plaintiff's claim and they asserted that whatever was loaded at Marseilles was actually discharged at Limassol; they also alleged that they are not liable or accountable for luggage or goods unless Bills of Lading were signed therefor, in accordance with the condition expressed on a document attached to the passage ticket or on the receipt for the money paid for the passage. They further invoked the general conditions attached to the ticket for the carriage of passengers and their luggage.

The actual ticket issued, if issued at all, was not produced and defendants 3 have not been able to trace copies from their archives. Plaintiff was positive in testifying that no condition was brought to his knowledge and there was no evidence to suggest that any condition whatsoever was brought to the knowledge of any person acting on his behalf in respect of his

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passage or the carriage of his luggage. The defendants adduced evidence of general practice which in their submission was the next best secondary evidence as to the issue of tickets and the conditions contained therein.

*Held*, (1) I have not been persuaded that there have been any conditions attached to the contract of carriage of the lost trunk and in particular the conditions alleged by defendants. 5

(2) Proof of the conditions and their context and the fact that they were incorporated in the contract of carriage, is a matter that has to be established before one party to a contract takes advantage of their provision. 10

(3) When a ship owner receives goods to be carried for reward, it is implied in common law, in the absence of express contract that he is to carry and deliver the goods in safety answering for all loss or damage which may happen to them while they are in his hands as carried. (See Carver, Carriage by Sea 12th ed. Vol. 1, pp. 18 and 19 and *Yiannakouri and Another (No. 3) v. Cyprus Sea Cruises (Limassol) Ltd.* (1965) 1 C.L.R. 397). 15

(4) Defendants 1, who were travel agents selling tickets for and on behalf of Shipping Companies, have acted all along as agents for disclosed principals. They cannot be held liable themselves for the loss of the trunk. (See page 191 of the judgment *post*). 20

*Judgment for plaintiff against defendants 3 as claimed with costs. Action against defendants 1 dismissed with costs.* 25

Cases referred to:

*Yiannakouri and Another (No. 3) v. Cyprus Sea Cruises (Limassol) Ltd.*, (1965) 1 C.L.R. 397. 30

#### Admiralty Action.

Admiralty action for damages for the breach by the defendants of an express and/or implied contract of carriage of a trunk belonging to the plaintiff. 35

*G. Mitsides*, for the plaintiff.

*A. Angelides* for *G. Tornaritis*, for defendant No. 1.

*St. McBride*, for defendants 3.

The following judgment was delivered by:-

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A. LOIZOU, J.: The plaintiff's claim against the defendants is for "damages for the breach by the defendants of an express and/or implied contract of carriage effected on the 15th December, 1970 under which the defendants undertook to carry a trunk containing books, stamp albums, legal textbooks, legal reference books, copy paper, cassettes, blankets and other personal items belonging to the plaintiff who was carried as passenger by the defendants from Victoria Station, London, through the port of Marseilles and on defendant's No. 3 ship "ENOTRIA" to Limassol and/or from the defendants' failure to deliver the above trunk on the 22nd December, 1970 in breach of the said contract".

The value of the said trunk and its contents was agreed, in the course of the hearing, at £575 and the case was heard on the question of liability only.

There were, originally, three defendants in the action. Defendants 1, were travel agents, having their registered place of business in London. The second defendants are the firm A.L. Mantovani & Sons Ltd., of Larnaca, who are the general agents of defendants 3 in Cyprus. In the course of the hearing, after an admission made to the effect that the stevedores engaged in the unloading of luggage from the said S/S "ENOTRIA" were in the employment of defendants 3, the action was discontinued against defendants 2.

Defendants No. 3 are a shipping company and the owners of the passenger ship "ENOTRIA" which, at the material time, to these proceedings, was sailing from Marseilles to Limassol.

During the first week of December, 1970, the plaintiff, an advocate practising in Larnaca, was in London and requested George Nicolaou (P.W.2), a colleague of his who was also minded to travel to Cyprus from London, to secure a passage for both of them for that purpose. The latter called at the London offices of defendants 1 and paid £10 as a deposit for each of them, for which a receipt was issued. The balance was to be paid to the representative of defendants 1 at the Victoria Station, where they would meet and depart by rail for Marseilles. On the morning of the 15th December they brought there their luggage which included, *inter alia*, the plaintiff's trunk, subject matter of these proceedings. The luggage was weighed and after some bargaining the plaintiff

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paid to the person who appeared to be the representative of defendant 1, the sum of £20 which was to be the transportation fee for his luggage from Victoria Station to Limassol. He also paid to the same person the balance for his passage. No ticket was issued to him, but his name was, together with that of his friends George Nicolaou (P.W.2), Agamemnon Xenophontos, (P.W.3), and Nicos Nicolaides (P.W.4), on a list. There were also other Cypriot passengers from London to Cyprus and the man who was in charge of the arrangements was apparently the leader of this group. The said trunk was loaded on the train at the Station and the plaintiff never saw it again.

They arrived at Marseilles but owing to a strike there was a delay in the departure of the "ENOTRIA" and accommodation was arranged for them at a hotel, whilst their luggage was taken care of at the port of Marseilles. On the 18th of December they boarded the S/S "ENOTRIA" and they were told by the person who accompanied them on the trip that their luggage had been placed in the hold of the ship.

It is an admitted fact that the plaintiff never saw his trunk either being loaded on the ship or at any time thereafter. It is also admitted that he did not obtain a bill of lading for the said trunk. The boat left on the same day and arrived at Limassol on the 22nd of December. On the day before their arrival to Limassol, whilst the plaintiff and his aforesaid friends were playing cards in the lounge, an official of the boat who appeared to them to be the purser, approached them and after reading out their names from a list, he had in his hands, he asked the plaintiff to pay £1—as a fee for the transportation of his two suit cases and the big trunk. A pink ticket was issued to him on which there was no other writing, except a big number. Upon their arrival at Limassol, porters came on board who asked and were handed the tickets for the luggage that were in the hold, so that they would unload them and carry them to the customs terminal. At the customs, the plaintiff discovered that his big trunk was missing. He complained to the representative of ex-defendants 2 about the missing trunk and together they went back to the S/S "ENOTRIA" where they searched, with the assistance of the person in charge of the hold, but without success. They also searched in the customs stores where other articles from the ship were discharged, but they did not find the missing trunk. From there they went to

the Mantovani office, where the plaintiff was taken to the person responsible for taking down details for lost luggage. In actual fact, a cable was sent by ex-defendants 2 to the headquarters of defendant 3.

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5 Mario Lendiski (D.W.1), an employee of defendant 3 since 1936 and for the last 15 years or so an Assistant Purser in charge of luggage on S/S "ENOTRIA" gave evidence regarding the procedure followed on the arrival of passengers and their luggage, in groups. According to this witness, the leader of  
10 the group comes with a list of the luggage of each passenger. He would himself check the list with the luggage actually on the quay and issue a ticket consisting of three parts, for the purpose of the identification of each luggage. One part of the ticket was stuck on the luggage, the other kept by him in the  
15 archives and the third given to the passenger after the departure of the ship so that he would collect the fee for the carriage of the luggage which was five shillings for ordinary suit cases and more for suit cases or trunks of bigger size. The passengers were called at the office through the loud speaker so that they  
20 would go there and pay the appropriate fee on receipt of their tickets, but if the passengers do not respond to such a call, he might go around, find them and collect the luggage fee.

Apart from the disagreement between this witness and of the plaintiff and his witnesses regarding the colour of the ticket  
25 issued in respect of luggage placed in the hold of the ship, the testimony of this witness strengthens that of the plaintiff and his witnesses and furthermore, it makes it abundantly clear that the trunk in question was accepted on board the ship "ENOTRIA" by defendants 3 for transportation and delivery to the  
30 plaintiff at Limassol at a fee which was paid by the plaintiff to the officer of the ship, employee of defendants 3 on the day before arrival at Limassol, and there is no doubt that this is the fee collected by defendants 3 for the carriage of the luggage in the hold, which is, according to Mario Lendiski (D.W.1),  
35 five shillings for ordinary luggage and more as excess luggage, as the case of the trunk was, for which, apparently, the plaintiff paid ten shillings as against five shillings for each of his two suit cases.

In addition to the denial of the plaintiff's claim and the  
40 assertion that whatever was so loaded at Marseilles was actually discharged at Limassol and delivered to the plaintiff, defendants claimed by their answer that they are not liable or accountable

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for luggage or goods or other description of property, unless Bills of Lading were signed therefor, in accordance with the condition expressed on a document attached to the passage ticket or on the receipt for the money paid for the passage. They further invoke the general conditions attached to the ticket for the carriage of passengers and their luggage, a photostatic copy of which was attached to the answer and produced as exhibit, and in particular Articles 14, 16, 19, 20 and 22 thereof. It remains, therefore, to consider whether there has been any condition attached to the contract or carriage of this trunk or the ticket or the contract of the carriage of the plaintiff himself.

The actual ticket issued, if issued at all, or other relevant document, has not been produced and the defendants 3 have not been able to trace copies from their archives in their possession, as it seems that same are destroyed after the lapse of a certain period. The plaintiff was positive in testifying, that no condition was brought to his knowledge and there is no evidence to suggest that any condition whatsoever was brought to the knowledge of any person acting on his behalf in respect of his passage or the carriage of his luggage and the trunk in question. The only evidence on this issue comes, in a way, from witness Mario Lendiski (D.W.1) and Mr. Benito Mantovani (D.W.2), one of the Directors of ex-defendants 2. Specimens of tickets for the years 1962-1968 and a ticket that replaced that one in that year, have been produced as *Exhibits* 4 and 5. In fact, the Serial No. of the ticket of *Exhibit* 5 is 571440 and it is a copy of same issued by the Italian General Shipping Agents of Adriatica in London at the time. It was issued on the 14th December, 1970 in London and it was for a passage from Marseilles on S/S "MESSAPIA". It states on top that it is issued subject to the conditions printed on the cover and it came to the possession of ex-defendants 2, as it was issued in London for a certain British family that would have embarked from Cyprus for Israel. It is also in evidence that when a ticket is issued, the passenger is asked to sign the general conditions of the passage and that was the type of ticket issued at that time in Cyprus as well.

There is further evidence regarding the preparation of the ship's manifest. *Exhibit* 7 is a copy of the ship's manifest on which, under Ticket No. 571434 is recorded the Chomatias Party and in *Exhibit* 8, the list of passengers, the plaintiff's name appears as a member of that group.

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Notices to produce the ticket issued or any copy thereof were served by the parties to these proceedings on each other, but it appears that no copy of the ticket issued, if issued at all, was available and learned counsel for defendants 3 has stated that although entitled to adduce secondary evidence, in the circumstances, he could not do so. What he could, was to adduce evidence of general practice, which, in his submission, was the next best secondary evidence as to the issue of tickets and the conditions contained therein. It was also the case that because Ticket No. 571440 referred to those conditions to be found in *Exhibit 6*, it should be inferred that the ticket bearing the preceding number, issued for the group of Chomatas, should have been issued on the same terms and conditions. I am afraid that on the preponderance of evidence, I cannot arrive at the conclusion that this is so. I have not been persuaded that there have been any conditions attached to the contract of carriage of the said trunk and in particular the conditions alleged by defendants 3. No doubt, the proof of the conditions and their context and the fact that they were incorporated in the contract of carriage, is a matter that has to be established before one party to a contract takes advantage of their provision. No doubt, when a ship owner receives goods to be carried for reward, it is implied in common law, in the absence of express contract that he is to carry and deliver the goods in safety answering for all loss or damage which may happen to them while they are in his hands as carrier. the exceptions to this rule that that has been caused by some act of God or the King's enemy or by some defect or infirmity of the goods themselves or their packages or through the voluntary sacrifice for the general safety, have not been invoked in the instant case. (See *Carver, Carriage by Sea*, 12th ed. vol. 1, pp. 18 and 19 and *Yiannakouri and Another (No. 3) v. Cyprus Sea Cruises (Limassol) Ltd.*, (1965) 1 C.L.R. p. 397 and the authorities therein cited, where Josephides J. deals extensively with the liability of ship owners regarding goods lost or damaged on the voyage).

With regard to defendants 1, travel agents selling tickets for and on behalf of shipping companies and/or railway companies, no evidence has been called and there is no evidence to show the exact relationship of defendants 1 and 3. In my view, they have acted all along as agents for disclosed principals who cannot be held themselves liable for the loss of the trunk, particularly so, in view of the fact that the said trunk was indeed

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loaded on S/S "ENOTRIA", as already concluded in this judgment and its carriage therefrom to Limassol was undertaken for reward by defendants 3.

In the result and having been satisfied that the trunk in question was lost before delivery to the plaintiff in circumstances that in law render defendants 3 liable for its loss, I give judgment for plaintiff against defendants 3 in the sum of £575 with costs.

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Claim against defendants 1 dismissed with costs.

*Judgment and order for costs  
as above.*

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