

OCEANIA LINE, INC.
vs.
HERMAN'S MODERN BAKERY

Appellate Action No. 83-9008
Civil Action No. 81-278
District Court NMI

Decided July 30, 1984

1. Admiralty - Jurisdiction

A contract relating to a ship in its use as such, or to commerce, or navigation on navigable waters, is subject to maritime law and the case is one of admiralty jurisdiction.

2. Admiralty - Conflict of Laws

Maritime substantive law applies in causes of action measurable by standards of maritime law, even those actions brought in state courts.

3. Admiralty - Jurisdiction

Federal maritime law allows for concurrent jurisdiction of maritime matters by state and local courts, but nowhere does it provide, nor is there room for, the application of local laws to maritime matters.

4. Admiralty - Statute of Limitations

Where the bills of lading at issue contained express statements that the plaintiff's responsibilities were subject to the provisions of the Carriage of Goods at Sea Act, the one-year statute of limitations in that act applied and not the local statute of limitations. 46 U.S.C. §1303 (6).

5. Admiralty - Doctrine of Deviation

The doctrine of deviation, where deviation is defined to be a voluntary departure

without necessity or reasonable cause from the regular and usual course of the voyage, allows cargo interests to void the contract of carriage under certain conditions.

6. Remedies-Recoupment

Recoupment is a right to reduce the plaintiff's claim, and it exists only so long as the plaintiff has a cause of action; it is never barred by the statute of limitations, so long as the main action itself is timely.

7. Remedies-Recoupment

Recoupment may result only in the reduction of the plaintiff's claim; not an affirmative judgment for any excess over that claim.

8. Remedies-Recoupment

The doctrine of recoupment may be applied even though it was not specifically pleaded nor argued, where the recoupment claim was asserted by way of a counterclaim, which is often used interchangeably with recoupment.

9. Remedies-Recoupment

Recoupment is limited to those claims arising out of the same transaction on which the plaintiff's claims are based.

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FILED
Clerk
District Court

JUL 30 1984

For The Northern Mariana Islands

By [Signature]
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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS
APPELLATE DIVISION

OCEANIA LINE, INC.,) DCA NO. 83-9008
)
Plaintiff/Appellant,) CTC NO. 81-278
)
vs.)
)
HERMAN'S MODERN BAKERY,) OPINION
)
Defendant/Appellee.)

BEFORE: Judges LAURETA, SCHNACKE, and SOLL*
LAURETA, District Judge:

BACKGROUND

Plaintiff, Oceania Lines, Inc. (Oceania), alleged that the defendant, Herman's Modern Bakery (Herman's), failed to pay freight and detention of container charges due and owing Oceania for its shipment of dairy products for Herman's aboard vessels chartered and operated by Oceania. The shipments occurred in October of 1979 and February of 1980, and the Complaint was filed July 16, 1981.

*Honorable Herbert D. Soll, Commonwealth Trial Court Associate Judge sitting by designation pursuant to 48 U.S.C. § 1694b.

1 On September 4, 1981 Herman's filed its answer and
2 counterclaim, alleging that Oceania had breached its obligations
3 as a carrier by providing defective containers for shipment of
4 chilled dairy products which resulted in damage to the cargo.

5 Oceania defended, pursuant to 46 U.S.C. § 1300, et.
6 seq. (Carriage of Goods by Sea Act (COGSA)), and Article 17 of
7 the bills of lading, which provided that Oceania would not be
8 subject to liability for Herman's claim unless suit were brought
9 within one year after delivery of the goods.

10 The trial court found that the containers were those of
11 Oceania, that they were defective, and that this was the cause of
12 the loss of the milk. Additionally, the court held that the
13 local statute of limitations (6 TTC § 313) was applicable to this
14 case, and that it prohibited the application of a one-year
15 limitation period to Herman's counterclaim.

16 The trial court awarded Oceania \$4,242.22 on its claim
17 against Herman's. The court also allowed Herman's counterclaim
18 and awarded judgment for Herman's in the amount of \$6,553.44;
19 prejudgment interest was awarded on both claims. By setting off
20 the amounts awarded to Herman's by the amounts awarded to
21 Oceania, judgment was entered for Herman's in the amount of
22 \$2,312.22, with 9% interest per annum from February 10, 1982.

23 Plaintiff appeals the award to Herman's contending that
24 COGSA applies to this action, as provided in the contracts of
25 carriage, to bar Herman's counterclaim as untimely.

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1 Given the policy considerations behind the federal
2 maritime law (the international character of much of the activity
3 and the desire for uniformity), it is difficult to see how a
4 locally enacted general limitations statute would ever preempt
5 the federal law. Moreover, there is no indication that the NMI
6 has such a significant interest here that 6 TTC § 313 should be
7 applied in lieu of substantive maritime law and COGSA. Substan-
8 tive maritime law takes precedence over locally enacted statutes,
9 such as 6 TTC § 313, even though the action was brought in the
10 local court and maritime law permits the inclusion of a period of
11 limitations in the contract of carriage.

12 46 U.S.C. § 1313 provides that COGSA shall apply to all
13 contracts for the carriage of goods by sea in foreign trade from
14 ports of the United States, which include those of Guam as a U.S.
15 territory. Section 1312 goes on to state:

16 ... that any bill of lading or
17 similar document of title which is
18 evidence of a contract for the
19 carriage of goods by sea between
20 [any port of the United States or
21 its possessions and any other port
22 of the United States or its posses-
23 sions] containing an express state-
24 ment that it shall be subject to
25 the provisions of this Act, shall
26 be subjected hereto as fully as if
subject hereto by the express pro-
visions of this Act . . .

23 [4] The bills of lading herein contained express statements
24 that Oceania's responsibilities were subject to the provisions of
25 COGSA.

26 46 U.S.C. § 1303(6) provides, in relevant part:

1 In any event the carrier and
2 the ship shall be discharged from
3 all liability in respect of loss or
4 damage unless suit is brought with-
 in one year after delivery of the
 goods or the date when the goods
 should have been delivered.

5 It is thus clear, that the provisions of the bills of lading
6 which provided for a one-year limitations period in an action to
7 recover for damaged goods are controlling in this action.

8 More than a year has passed since discharge of the
9 cargo, and affirmative action by Herman's for damaged cargo is
10 thus barred. Nevertheless, Herman's has submitted two alterna-
11 tive theories upon which recovery may be had.

12 [5] The doctrine of deviation allows cargo interests to
13 void the contract of carriage (bill's of lading in this case)
14 under certain conditions. The basic concept is that certain
15 departures, even in the non-geographical sense, from the bill of
16 lading will be considered as fundamental breaches of contract,
17 sufficient to nullify the carrier's reliance on the provisions of
18 the bill of lading. A deviation is defined to be a voluntary
19 departure, without necessity or reasonable cause, from the
20 regular and usual course of the voyage. Whether there has been a
21 deviation is a question of fact. American Cyanamid Co. v. Booth
22 S.C. Co., Ltd., 99 F.Supp. 232, 1951 A.M.C. 1505 (S.D.N.Y. 1951),
23 aff'd, 195 F.2d 529 (2d Cir. 1952).

24 Here, the trial court found that the containers were
25 those of the plaintiff and that they were defective and this was
26 the cause of the loss of the milk. The court specifically held

1 that although the two containers involved were on the deck of a
2 barge, the damage to the milk was caused by faulty container
3 refrigeration and not from the fact of being on-deck cargo.
4 Thus, there is no deviation here,

5 [6,7] Herman's may, however, by way of recoupment, assert at
6 least a portion of its claim for damages resulting from the
7 damaged cargo. Recoupment is in the nature of a defense and is
8 never barred by the statute of limitations, so long as the main
9 action itself is timely. Bull v. United States, 295 U.S. 247
10 (1935). Recoupment is a right to reduce the plaintiff's claim,
11 and it exists only so long as the plaintiff's cause of action
12 exists. However, unlike a counterclaim, recoupment may result
13 only in the reduction of the plaintiff's claim; not an affirma-
14 affirmative judgment for any excess over that claim.
15 Pennsylvania R. Co. v. Miller, 124 F.2d 160 (5th Cir. 1942),
16 cert. den. 316 U.S. 676 (1942).

17 [8] Oceania argues that the doctrine of recoupment may not
18 be applied here as it was not specifically pled nor argued in the
19 court below. This argument has no merit. Herman's asserted its
20 claim for damaged goods by way of "counterclaim" which is often
21 used interchangeably with recoupment. Most jurisdictions have in
22 fact abolished all formal distinctions between the two. See,
23 e.g., Lesyik v. Public Industrial Corp., 144 F.2d 968 (2d Cir.
24 1944); Krausse v. Greenfield, 123 P.392. Oceania cannot claim
25 lack of notice, nor any other prejudice, simply because Herman's
26 time-barred "counterclaim" is limited in its amount to Oceania's

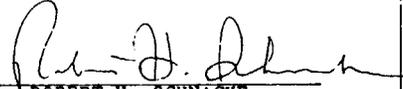
1 award.

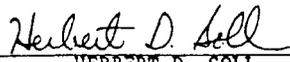
2 [9] Recoupment is, however, limited to those claims arising
3 out of the same transaction on which the plaintiff's claims are
4 based. Appellant has argued that the amount awarded to Herman's
5 includes some amount for claims arising from transactions not at
6 issue here. Thus, while it is clear that Herman's recovery
7 cannot exceed \$4,242.22 plus prejudgment interest, it may, in
8 fact, be somewhat less than this amount.

9 The decision of the trial court is, therefore,
10 REVERSED, and the case is REMANDED for a determination of the
11 amount of damages suffered by Herman's from the two transactions
12 at issue here.

13 DATED: July 30, 1984

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16 _____
17 ALFRED LAURETA
18 District Judge

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22 ROBERT H. SCHNACKE
23 District Judge

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25 _____
26 HERBERT D. SOLL
Designated Judge