

Weintraub & Sons, Inc. v. E.T.A. Transportation, Inc.

United States District Court for the Southern District of New York: 2003 U.S. Dist. LEXIS 14851 (not yet officially reported): 28 August 2003

SHIPPING: CARRIAGE OF GOODS BY SEA ACT 1936: FREIGHT FORWARDER: COMMON CARRIER: AGENT: BILLS OF LADING: WHETHER DEFENDANT WAS A FREIGHT FORWARDER OR COMMON CARRIER

Summary

Weintraub, an apparel importer and wholesaler, brought suit in the United States District Court for the Southern District of New York against defendant E.T.A. Transportation, Inc. ("ETA"), a transportation broker licensed as a motor carrier in the United States. Weintraub alleged that ETA held itself out as a common carrier and breached a contract of carriage. The Court held that ETA was a freight forwarder, and not a common carrier, and thus was not liable for the loss.

Facts / Background

Claimant Weintraub sent instructions to have a shipment of men's apparel sent from Mexico to its customer in Texas. A copy of the instructions was also sent to Schaefer Transportation, Inc., a freight forwarding company that arranged transportation for all of Weintraub's shipments into the United States. Schaefer, in turn, faxed ETA requesting that the shipment be moved. ETA Logistics Services, a subsidiary of ETA which makes arrangements for third-party shipments on behalf of ETA, sent instructions to a Mexican trucking company, Transportation Especial Autostrada, S.A. de C.V. ("TEA") to pick up the goods in Mexico and transport them to ETA's terminal in Texas. While in transit from Mexico to Texas the truck was hijacked and the goods were stolen.

Judgment

In considering the question of ETA's liability, the Court noted the distinction between a freight forwarder, which arranges carriage by common carrier on behalf of its client, and a common carrier, which actually undertakes to perform some or all of the carriage for a fee. As the court noted, "[a] freight forwarder is liable to the shipper for lost or damaged goods only for its own negligence, including negligence in selecting a carrier. A forwarder/common carrier is liable for lost or damaged goods whether it or an underlying carrier had been at fault."

The court determined that ETA was a freight forwarder and not a common carrier with respect to the shipment and therefore was not liable for the loss of the goods. In making its determination that ETA had not held itself out as a common carrier, the court considered the following factors: 1. Claimant did not have a written transportation agreement with ETA and did not directly communicate with ETA regarding the shipment; 2. While there was no invoice for this shipment, in the past ETA would generally submit invoices to Schaefer's agent for payment, and not to the shipper; 3. ETA did not physically transport plaintiff's goods on this or any prior occasion; and 4. ETA did not issue a bill of lading for the shipment. Instead, TEA issued a bill of lading in this case to Claimant's vendor, Confecciones, upon picking up the cargo in Mexico.

Claimant further alleged that ETA breached its duty as a bailee. The court found, however, that ETA was not a bailee, since TEA was in possession of the goods at the time they were stolen and TEA was not ETA's subcarrier.

Conclusion

A freight forwarder is liable only for its own negligent acts, whereas a common carrier is liable for lost or damaged goods even if the sub-carrier was at fault. Since the court found that ETA was acting as a freight forwarder and not a common carrier, it was not liable for any loss while the goods were in TEA's possession.