

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2430
Lower Tribunal No. 17-10316

Mauricio Importadora y Exportadora,
Appellant,

vs.

Jet Speed Logistics (USA), LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Pedro P. Echarte, Jr., Judge.

Bales Sommers & Klein, P.A., Richard M. Bales, Jr. and Jason Klein; Klein and Fortune, P.A., Ronald G. Klein and Daniel S. Plasencia (Hollywood), for appellant.

Shadowitz Associates, P.A., and Mitchell L. Shadowitz (Boca Raton); Russo Appellate Firm, P.A., Elizabeth K. Russo and Paulo R. Lima, for appellee.

Before EMAS, C.J., and SALTER and GORDO, JJ.

GORDO, J.

Mauricio Importadora y Exportadora appeals the trial court's grant of a directed verdict in favor of Jet Speed Logistics (USA), LLC in this international commercial dispute. Mauricio is a Chilean importing company that, acting through its agent, hired Jet Speed to coordinate the overseas shipment of about 3,500 laptop computers from Miami, Florida to Chile. Jet Speed is a non-vessel operating common carrier that arranged for the laptops to be delivered in containers to a warehouse in Miami, transported to Port Everglades and then loaded onto the ocean carrier. The containers departed the warehouse in Miami on August 30, 2016. When the containers arrived in Chile on September 26, 2016, Mauricio discovered that more than 1,200 laptops were missing. Mauricio filed suit against Jet Speed for negligence, conversion and replevin.

Jet Speed's involvement in the transaction was governed by a bill of lading, specifically providing: "this Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act" (COGSA), which "shall govern before loading on and after discharge from the vessel and throughout the entire time the Goods are in the custody of the Carrier." The bill contained a limited liability provision of \$500 per package and a statute of limitations relieving the carrier of liability "unless suit is brought within one year."

Although Jet Speed's bill of lading expressly incorporated the provisions of COGSA, Mauricio never asserted a COGSA claim. Following a jury trial in

December 2019, Jet Speed moved for a directed verdict claiming that the state law causes of action were preempted by COGSA and that the claims were time-barred under COGSA's one-year statute of limitations. The trial court directed verdict finding the dispute was governed exclusively by COGSA and entered final judgment in favor of Jet Speed. Mauricio appeals, arguing COGSA is inapplicable to the asserted claims.

We review an order on a motion for directed verdict de novo. Christensen v. Bowen, 140 So. 3d 498, 501 (Fla. 2014).

The agreement here is governed by the bill of lading. “A bill of lading records that a carrier has received goods from the party that wishes to ship them, states the terms of carriage, and serves as evidence of the contract for carriage.” Norfolk S. Ry. Co. v. Kirby, 543 U.S. 14, 18–19 (2004). “[S]o long as a bill of lading requires substantial carriage of goods by sea, its purpose is to effectuate maritime commerce—and thus it is a maritime contract. Its character as a maritime contract is not defeated simply because it also provides for some land carriage.” Id. at 27.

While “COGSA governs bills of lading for the carriage of goods ‘from the time when the goods are loaded on to the time when they are discharged from the ship’ . . . COGSA also gives the option of extending its rule by contract.” Id. at 29 (quoting 46 U.S.C.App. § 1301(e) (2001)); see 46 U.S.C.App. § 1307 (“Nothing contained in this chapter shall prevent a carrier or a shipper from entering into any

agreement . . . as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.”). Here, the express terms of Jet Speed’s bill of lading extended COGSA’s reach to pre-loading activities, thus bringing the claims under COGSA’s scope.

“COGSA, when it applies, supersedes other laws.” Polo Ralph Lauren, L.P. v. Tropical Shipping & Const. Co., Ltd., 215 F.3d 1217, 1220 (11th Cir. 2000). “COGSA leaves no state remedy in its wake; it provides an exclusive remedy and is therefore completely preemptive.” Continental Ins. Co. v. Kawasaki Kisen Kasha, Ltd., 542 F. Supp. 2d 1031, 1034 (N.D. Cal. 2008)). Mauricio specifically argues that COGSA is void as against public policy in regard to his claim for conversion. Yet, federal courts have found that “COGSA’s preemption of general maritime and state law remedies extends to claims for conversion.” Jones v. Compagnie Generale Mar., 882 F. Supp. 1079, 1082–83 (S.D. Ga. 1995) (citing Reisman v. Medafrica Lines, 592 F. Supp. 50, 52 (S.D.N.Y. 1984) (stating that “breach of contract, negligence, and conversion claims are the common law equivalents of the actions for which COGSA was meant to be an exclusive definition of liability in the shipper-carrier context”)).

Because COGSA was expressly incorporated in the maritime contract governing the shipment of the laptops, it provides the exclusive remedy for the claims in the underlying action. Additionally, the one-year statute of limitations period applies and Mauricio is precluded from bringing the action as being time-barred. See Brown v. Betty K. Agencies (USA) LLC, 61 So. 3d 1156, 1157 (Fla. 3d DCA 2011). We, therefore, affirm the trial court's entry of directed verdict in favor of Jet Speed.

Affirmed.