

NOT DESIGNATED FOR PUBLICATION

INTER CITY EXPRESS, INC. * **NO. 2006-CA-1340**
VERSUS * **COURT OF APPEAL**
MALLORY GROUP, INC. * **FOURTH CIRCUIT**
D/B/A LUV N CARE * **STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-20201, DIVISION "B-15"
Honorable Rosemary Ledet, Judge

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Judge Roland L. Belsome

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(Court composed of Judge James F. McKay III, Judge Max N. Tobias Jr., Judge Roland L. Belsome)

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AFFIRMED

On December 7, 2001, Inter City Express, Inc. (“Inter City”) filed a petition for damages alleging several causes of action against Luv N’ Care, Ltd (“LNC”).¹ Inter City sought to collect reimbursement for charges it had incurred because LNC failed to timely accept delivery of cargo. The trial court judge conducted a trial on the merits and subsequently entered judgment in favor of Inter City. By judgment dated July 28, 2006, Inter City was awarded \$36,028.55 together with legal interest from date of judicial demand until paid and all court costs. LNC appeals that judgment.

The trial court found that Inter City presented prima facie proof of a claim for detrimental reliance. However, the court also found that after incurring a year of charges without payment it was unreasonable for Inter City to continue relying on assertions by LNC’s warehouse manager, Brady Gray. Thus, the trial court awarded standby, freight and per diem charges for 1999.

On appeal, LNC argues that the court erred in determining that there was detrimental reliance on the part of Inter City. The essential elements to state a detrimental reliance theory of recovery in Louisiana are: (1) a representation by

conduct or word; (2) justifiable reliance thereon; and (3) a change of position to one's detriment because of the reliance. *Martin v. Schluntz*, 589 So.2d 1208, 1211 (La. App. 4 Cir. 1991). The doctrine of detrimental reliance is "designed to prevent injustice by barring a party from taking a position contrary to his prior acts, admissions, representations, or silence." *Babkow v. Morris Bart, P.L.C.*, 1998-0256, p.8 (La. App. 4 Cir. 12/16/98), 726 So.2d 423, 427. To prevail on a detrimental reliance claim, Louisiana law does not require proof of a formal, valid, and enforceable contract. *Suire v. Lafayette City-Parish Consol. Government*, 2004-1459, pp.31-32 (La. 4/12/05), 907 So.2d 37, 59; *Babkow* p. 12, 726 So.2d at 429.

LNC supplies infant clothes and toys to stores including Wal-Mart. The merchandise is shipped from China. LNC used Alexander International ("Alexander"), an international customs brokerage house, to arrange marine carriers and inland carriers to transport the merchandise from China to LNC's warehouse in Monroe, Louisiana. The issues of this case arise from the shipping arrangements made by Alexander to move the cargo from Avondale, Louisiana to Monroe, Louisiana. The inland transportation was sub-contracted in part to Evergreen Shipping ("Evergreen"). In turn, Evergreen hired Inter City as a local carrier to transport the cargo from Avondale to the LNC warehouse in Monroe. Inter City transported LNC's cargo from 1999 until 2000. The agreement between Evergreen and Inter City made Inter City legally liable for LNC's merchandise until time of delivery. The agreement further called for Inter City to pay a per

¹ The original petition named the defendant as Mallory Group d/b/a Luv N' Care. Inter City filed a supplemental and amending petition naming Luv N' Care, Ltd. as a defendant.

diem charge to Evergreen for cargo containers that were not returned within 3 days.

Inter City paid the drivers of the trucks by run. An additional \$35 an hour cost was incurred if LNC could not accept delivery within 2 hours. On numerous occasions from 1999 until 2000, LNC indicated to Inter City drivers that the cargo could not be accepted due to inadequate space in its warehouse. At trial Mike Sibley, one of Inter City's truck drivers, testified that LNC was often unable to accept delivery within two hours, which would lead to standby charges for Inter City.

Ms. Debbie Freeman, the District Sales Manager for Alexander, also testified at trial. She stated that she was aware that there was a shortage of space at LNC's warehouse due to an increase in inventory arising from the Wal-Mart account. She stated she had communicated Inter City's concerns regarding LNC's inability to accept cargo with Eddie Hakim, LNC's president and Mr. Gray. Mr. Gray acknowledged that there were times when LNC did not have available warehouse space. According to Jim Cobb, owner of Inter City, Mr. Gray represented that he would pay the extra fees incurred by Inter City when LNC refused or was unable to take delivery. Additionally, Mr. Gray did approve payment of some invoices received from Inter City.

At trial Mr. Cobb testified that Inter City was incurring stand by charges from the truck drivers, per diem charges from Evergreen for not timely returning

containers as well as extra drayage charges brought about by the transfer of containers to a storage yard until LNC could make space in its warehouse.

In connection with Mr. Cobb's testimony, copies of the invoices were sent from Inter City to LNC, documenting the charges. The invoices paid by LNC had been approved by Mr. Gray. According to Mr. Cobb, he relied on Mr. Gray's word that LNC would take care of the charges. That belief was furthered by LNC's payment on the initial invoices. At trial Mr. Gray denied guaranteeing the payment of fees. Mr. Hakim described the payment of the initial invoices as an oversight.

If there is a conflict of testimony, as we find in this case, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). As long as the determination is reasonable, based upon the record as a whole, an appellate court should not substitute its own judgment over the factfinder's. *Arceneaux v. Domingue*, 365 So.2d 1330, 1333 (La. 1978). This "manifest error" standard must allow a "great deference to the trier of fact's findings; for they are in a better position to judge the credibility of the witnesses. *Rosell* at 844. Applying the law of detrimental reliance to the facts and evidence of this case, we cannot find that the trial court was manifestly erroneous or clearly wrong.

LNC also asserts that if a claim for detrimental reliance exists as to per diem charges, Inter City waived that claim by filing a suit against Evergreen. LNC suggests that through a settlement with Evergreen, Inter City's right to collect per diem from LNC was waived. The record does not support this assignment of error.

Lastly, LNC raises an exception of prescription. LNC argues that the trial court's finding that it was only reasonable for Inter City to rely on LNC's

representations for a period of one year renders Inter City's lawsuit untimely. The trial court awarded damages for all of 1999. Thus, if this Court were to agree with LNC's assertion that a one-year prescriptive period applied, Inter City would have had until January 1, 2001 in which to file suit against LNC. The original petition in this matter was not filed until December 7, 2001.

However, we find that this cause of action gives rise to a three-year prescriptive period as provided for in La. C.C. art. 3494. La. C.C. art. 3494 reads in pertinent part: "[t]he following actions are subject to a liberative prescription of three years: (1) An action for the recovery of compensation for services rendered, including payment of salaries, wages, commissions, tuition fees, professional fees, fees and emoluments of public officials, freight, passage, money, lodging, and board...." Hence, LNC's petition was timely filed.

In sum, we find no error in the trial court's judgment. The judgment of the trial court is hereby affirmed.

AFFIRMED