
CANADA / JUDGMENT

Resolute Shipping Ltd. v. Jasmin Const. Inc.

[1978] 1 SCR 907

COURT

Supreme Court of Canada

DECIDED

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Resolute Shipping Ltd. v. Jasmin Const. Inc.

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Date

1977-09-30

Report

[1978] 1 SCR 907

Judges

Judson, Wilfred; Ritchie, Roland Almon; Pigeon, Louis-Philippe; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Federal Court of Appeal

Subjects

Maritime law

Decision Content

Supreme Court of Canada

Resolute Shipping Ltd. v. Jasmin Const. Inc., [1978] 1 S.C.R. 907

Date: 1977-09-30

Resolute Shipping Limited (Plaintiff) Appellant;

and

Jasmin Construction Inc. (Defendant) Respondent.

1977: March 11; 1977: September 30.

Present: Judson, Ritchie, Pigeon, Beetz and de Grandpré JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Maritime law—Contract for carriage of goods at fixed price—Excess of weight about 30 per cent more than stipulated—Breach of contract—Civil Code, arts. 992, 1065.

The appellant had agreed to transport 14 mobile units on the deck of its vessel from Quebec to Baffin Island at a fixed price of \$14,000 per unit. In the contract of carriage, the respondent had estimated the weight of twelve units at 20,000 lbs each and two at 30,000 lbs each. In fact the combined weight of the units was over 30 per cent in excess of that which had been agreed to with the result that it was necessary to hire additional cranes and for this much time was lost. The appellant sued the respondent for breach of contract and in the Trial Division of the Federal Court, it was awarded \$25,833.49 as damages. The Federal Court of Appeal reversed that judgment on the basis that: (1) the trial judge erred in basing the claim on unjust enrichment; (2) the mistake as to the weight did not constitute a breach of the contract on the part of the respondent.

Held: The appeal should be allowed.

The Court of Appeal erred in adopting the view that the contractual obligation of the respondent was fulfilled so long as it delivered 14 units to the dockside irrespective of their weight, notwithstanding the fact that the approximate weights had been stipulated as a term of the contract. As the units were to be carried on deck and the voyage might well involve navigating in icy waters, their weight was a material if not a critical term of the contract. The statement of the Court of Appeal that the fact that both parties might have been mistaken as to the weight of the units did not constitute a breach of the contract on the part of Jasmin, is also unacceptable. The respondent was in position to know the weights of the units which had been constructed according to its own specifications, whereas the appellant could only rely on Jasmin's undertaking. This is not a situation which could be characterized as mutual mistake. The fact that the appellant undertook to carry the units despite the great increase in weight does not deprive it of any claim since as soon as the increase was ascertained it advised the respondent that it would be held responsible for the consequences. The error in the weight estimate was not such as to render the contract null but rather one where a subsisting contract was breached. Therefore art. 1065 of the Civil Code applies.

Even if the trial judge was in error in referring as he did to unjust enrichment, he did not, however, assess the damages on the basis of unjust enrichment but on the basis of breach of contract for "additional expenses incurred as a result of the excessive weight of the cargo".

APPEAL from a judgment of the Federal Court of Appeal[1] allowing an appeal from a judgment of the Trial Division. Appeal allowed.

W. David Angus and Marc deMan, for the appellant.

Denis Rousseau, for the respondent.

The judgment of the Court was delivered by

RITCHIE J.—This is an appeal from a judgment of the Federal Court of Appeal allowing an appeal from a judgment rendered by Mr. Justice Walsh in the Trial Division whereby he awarded to Resolute Shipping Limited (appellant) the amount of \$25,833.49 with interest, being the amount of damage which he found it to have sustained as a result of Jasmin Construction (respondent) being in breach of a contract for the carriage of goods by sea from Quebec to Baffin Island, whereby the appellant had agreed to transport 14 mobile units on the deck of its vessel charging \$14,000 per unit payable on a minimum of 14 units on the completion of loading at Quebec, freight to be earned lost or not lost. The units in question were such that when assembled they would constitute hospitals and it appears from the evidence that the placing of these hospitals at Broughton Island and Clyde River on Baffin Island was a matter of some urgency. The damages awarded to the appellant by the learned trial judge are related to delays in both loading and unloading, additional loading charges at Quebec and other matters hereinafter referred to, all of which were allegedly sustained as a result of the respondent being in breach of the contract of carriage which said of the units to be carried “two units weigh 30,000 lbs and the other twelve weigh about 20,000 lbs each”. In the result, the combined weight of the units was over 30 per cent in excess of that which had been agreed to with the result that it was necessary to hire additional cranes and for this and other reasons much time was lost.

The reasons for judgment of the Court of Appeal included a statement that “the facts are really not in dispute in their essential details”, but the differences between that Court and the trial judge are so fundamental both as to the view to be taken of these facts and as to the inferences to be drawn from them, that it cannot, in my opinion, be said that there is no dispute as to the facts. The contract of carriage which was negotiated on behalf of the appellant through its agent, Federal Commerce and Navigation Company Limited and which is the subject matter of this action is reproduced in the reasons for judgment of the Court of Appeal which are now conveniently reported in [1974] 2 F.C. 187 (hereinafter referred to as “the Report”) at p. 193, and reads in part as follows:

[TRANSLATION] It is agreed between Messrs Jasmin Construction Inc., shippers, and Federal Commerce and Navigation Co. Ltd., agent for Messrs Resolute Shipping Ltd., shipowners, that the aforementioned parties absolutely undertake:

1. The shipper to make available, and the shipowner to carry, the following cargo:

14 house trailers of the sizes described below:

12 units

52 feet long

12 feet wide

14 feet high

2 units

52 feet long

8 feet wide

14 feet high

(heights excluding wheels, which may be removed without difficulty at the option of the shipowner) two units weigh 30,000 lbs and the twelve others about 20,000 lbs each.

Having regard to the fact that these units were to be carried on deck and that the voyage might well involve navigating in icy waters, it appears to me that the undertaking as to their weight was a material if not a critical term of the contract. The respondent had given its absolute undertaking as to weight and it is not disputed that the units delivered to the wharf at Quebec City for loading were 30 per cent in excess of that which had been specified.

In my opinion the fact that the weight of these units differed so excessively from that which had been agreed to constituted a breach of a material term of the contract and it is apparent that this was the view adopted by the learned trial judge who stated:

I cannot accept defendant's contention that the weight of the units was not material since the price quoted did not depend on the weight but was for a fixed price of \$14,000 per unit. Neither can I accept defendant's contention that plaintiff was imprudent in not arranging to have the units weighed before commencing loading them. The units in question were manufactured according to defendant's own plans and specifications by the Treco Company, a manufacturer acting for defendant. It was defendant who furnished to plaintiff the information as to their approximate weights, allegedly having obtained this information from Treco, and these weights were included in the contract. Plaintiffs representatives did inspect the units in the yard of Treco with a view to seeing their general appearance so as to determine the manner in which hooks or lifting equipment could be attached to them, and to verify the over-all dimensions given, but no further information was given them as to the weight. They were told they could not be weighed on public scales and the Treco representatives referred them back to the defendant Jasmin for figures as to their weight. Plaintiff's representatives again asked Mr. Proulx of the Jasmin company if the weight figures were correct and he said that there was nothing to worry about as they probably weighed less than the figures given. Certainly the defendant, as designer of the units, and the Treco company as manufacturer of them should be expected to know the weight of the units within a reasonable range of accuracy and plaintiff was entitled to rely on the information given. I cannot find that a difference between 150 tons and 215 tons is a small or

immaterial difference especially when all parties knew that this cargo was to be carried on deck to the arctic near the close of the navigation season there.

On the other hand the Court of Appeal found it possible, from a review of the evidence which had already been carefully analyzed by the trial judge, to make the following finding at p. 203 of the Report:

Inasmuch as the claim is based on breach of contract, we are of the opinion that it cannot succeed for the very simple reason that the loss suffered as a consequence of the weight of the cargo did not result from any breach of the contract by the appellant. In our view, the contract of affreightment was a contract for the carriage of specific objects previously agreed upon. In delivering those objects on the dock near the respondent's ship, the appellant performed one of its obligations under the contract and the fact that both parties might have been mistaken as to the weight of those objects did not constitute a breach of the contract on the part of the appellant.

This paragraph epitomizes the essential difference between the trial judge and the Court of Appeal. The Court of Appeal appears to have adopted the view that the contractual obligation of the respondent was fulfilled so long as it delivered "14 house trailers" to the dockside irrespective of their weight, notwithstanding the fact that the approximate weights had been stipulated as a term of the contract. With all respect, I cannot accept this proposition and it is even more difficult to accept the statement that "the fact that both parties might have been mistaken as to the weight of these objects did not constitute a breach of the contract on the part of the appellant" (Jasmin Construction Inc.). This latter statement appears to me to ignore the fact that the respondent was in a position to know the weights of the units which had been constructed according to Jasmin's own specifications, whereas in signing the contract the appellant could only rely on Jasmin's undertaking supported by the statement of its representative that there was nothing to worry about as the units probably weighed less than the figures given. The appellant had no way of knowing that the respondent was presenting it with a deck load 30 per cent heavier than its undertaking had indicated. This does not appear to me to be a situation which can be characterized as mutual mistake; there is no doubt that the appellant was mistaken in relying on the respondent's undertaking as to weight, but there is nothing to suggest that the respondent had any reason to be mistaken as to the weight of the units which it had itself designed and caused to be manufactured; it may have been careless in preparing the contract, but the evidence does not appear to me to support a finding of "mistake" on its part.

In the result the appellant loaded the overweight cargo and notwithstanding the difficulties occasioned thereby, it carried out the contract and finally delivered the units to their destination. This voyage was undertaken subject to the terms of a telex dated September 21, 1971 which is reproduced at pp. 195 and 196 of the Report and which was the subject of the following comment by the learned trial judge, with the first paragraph of which I am in agreement:

The fact that plaintiff undertook to carry them despite the great increase in weight and the very hazardous nature of the voyage resulting from this does not, I believe, deprive it of any claim against defendant for additional expenses directly attributable to the increase in weight for which

defendant should be held responsible. As soon as the increase in weight was ascertained, the plaintiff advised defendant of this by telex dated September 21, 1971, notifying defendant that it would be held responsible for the consequences. Later the same day a more detailed telex gave the weights which had already been established for four of the units which had been weighed, referred to the extent to which they exceeded the weight stipulated in the contract and how this would affect the stability of the vessel and gave formal notice that defendant would be held responsible for all consequences, damages or losses that might occur through the excessive weight, including damages to the crane and equipment of the vessel. It further stated that plaintiff would hold itself harmless for any damage caused to the cargo through the excess weight, and that defendant would be held responsible for payment of additional freight in proportion to the excess of the cargo weight over that originally stipulated. This latter stipulation was never enforced and plaintiff's claim does not include anything for extra freight charges based on the weight of the units as finally determined, and in fact it is doubtful whether plaintiff could have succeeded in a claim on this basis in view of the fixed price contract, without a new agreement with defendant. The telex went on to state that:

In view of the extreme urgency of this entire operation we intend to mitigate damages as best as can be by proceeding with the loading operation and with the transportation of these units to destination.

Neither of these communications were acknowledged although defendant did have a representative, Leandre Turcot, its Construction Foreman, present during part of the weighing. In a further telex of September 25 advising that the ship had sailed, reference was again made to an eventual claim for compensation for excess weight. Defendant cannot therefore be said to have agreed to plaintiff's conditions for continuing to carry out the contract, maintaining throughout that the weight was immaterial. It did, however, benefit from the fact that plaintiff completed the contract successfully and since plaintiff was put to considerable additional expense in carrying it out as a result of the excess weight, defendant would benefit by an unjust enrichment and plaintiff suffer a corresponding impoverishment if it were not compensated for these additional expenses resulting from the fault of defendant in giving highly inaccurate information as to the weight of the units.

The reasoning of the learned trial judge in the second paragraph is in great degree linked to his finding that the error in the weight estimate was such as to bring into play the provision of art. 992 of the Civil Code which reads as follows:

992. Error is a cause of nullity only when it occurs in the nature of the contract itself, or in the substance of the thing which is the object of the contract, or in some thing which is a principal consideration for making it.

With the greatest respect, this does not appear to me to be a case in which the contract was a nullity but rather one where a subsisting contract was breached, and under these circumstances the applicable article of the Civil Code reads as follows: 1065. Every obligation renders the debtor liable in damages in case of a breach of it on his part. The Creditor may, in cases which admit of

it, demand also a specific performance of the obligation, and that he be authorized to execute it at the debtor's expense, or that the contract from which the obligation arises be set aside; subject to the special provisions contained in this code, and without prejudice, in either case to his claim for damages. (The italics are my own.)

In commenting on the last-quoted paragraph from the reasons for judgment of the learned trial judge, the Court of Appeal is reported as saying at p. 202:

It should first be observed that if the respondent's claim is founded on unjust enrichment, as held by the Trial Judge, then the compensation to which the respondent is entitled should not be assessed in the way that was adopted by the Trial Judge. On the basis of unjust enrichment, the only obligation of the appellant would be to pay to the respondent an amount equal to the value of the services rendered by the respondent; it would not be to compensate the respondent for the additional expense incurred by it as a result of the excessive weight of the cargo.

A second, and more fundamental, observation indicates clearly that the action is founded on breach of contract; it is not based on unjust enrichment: In our view, it was not open to the Trial Judge, if he were of opinion that the claim for damages could not succeed, to allow it on the basis of unjust enrichment.

I agree with the Court of Appeal that the learned trial judge was in error in referring as he did to unjust enrichment in such fashion as to indicate that his assessment of the damages was based on this finding. The trial judge, however, in fact assessed the damages on the basis of breach of contract and I reproduce hereunder the assessment which he made from which it will be seen that unjust enrichment did not enter into his considerations and that he in fact found that the claim for damages could and did succeed. His assessment follows:

Insurance on freight due to defendant's failure to provide letter of credit on agreed terms

\$ 1,000.00 Defendant's 75% portion of additional loading expenses at Quebec, including one day's loss of ship's time due to accident

\$ 4,900.00

Ship's time for additional day lost in loading at Quebec following accident

\$ 2,850.00

Differential in crane costs between 100 ton and 175 ton crane

\$ 1,347.50

Additional expenses resulting from delays in loading at Quebec and extra weight to be loaded after allowing for expenses already provided for above

\$ 6,775.38

Loss of ship's time in unloading at Broughton Island and Clyde River due to additional weight of units to be unloaded and problems resulting from this, 3 days at \$2,850

\$ 8,550.00

Cost of retaining surveyor at Quebec to supervise weighing

\$ 300.00

Top wharfage

\$ 110.61

TOTAL

\$ 25,833.49

As is pointed out by the Court of Appeal, if these damages had been assessed on the basis of unjust enrichment, they would be reckoned on a quantum meruit basis, and a similar result would flow from the finding of a nullity within the meaning of art. 992, but it will be seen that the damages which were in fact awarded were on the basis of "additional expenses incurred by the appellant as a result of the excessive weight of the cargo".

The award of \$1,000 in respect of insurance arose out of the fact that the respondent had failed to supply the appellant with a letter of credit as it had undertaken to do in the contract and this latter award was not disturbed by the Court of Appeal which also allowed the award as to "Top wharfage".

The award of 75 per cent of additional loading expenses at Quebec arose out of the fact that the appellant had readied itself for the loading of the anticipated weight by renting a 100-ton capacity crane for the purpose of lifting the units but when the first unit was loaded the burden proved excessive for this crane which was tilted by the weight of it so that its front wheels were lifted into the air and the housing unit was left hanging over the rail of the ship partly supported by it, but with the boom of the crane resting on the cribwork. As a result, part of the unit became submerged in the water before it could eventually be retrieved by hiring a larger crane with 175-ton capacity. In this regard, the appellant claimed for the extra expense of the second crane, equipment and labour and the respondent counter-claimed in the amount of \$2,707.61 for damage to its plumbing equipment which had been stored in the crawl space underneath the unit and had been damaged by falling in the water. The learned trial judge found that the appellant had been 25 per cent responsible for this incident because the crane operator of the 100-ton crane neglected to carry out a "test lift" before undertaking to load the unit. The damage awarded to the appellant of 75 per cent of its additional loading expenses as a result of this incident is reflected in the second item of the trial judge's award which also contained an award of 25 per cent of the respondent's claim in the amount of \$676.90. In the Court of Appeal the appellant's main claim in this regard was dismissed and the counter-claim of the respondent allowed in full on the ground that the damage to the plumbing equipment was caused entirely by the negligence of the appellant in having failed to appreciate that the load which it was called upon to lift

required heavier equipment than that which was provided. As I have indicated, in the view which I take of the matter this item of damage was occasioned primarily as a result of the respondent's breach of contract, although I would not disturb the finding of the learned trial judge that the appellant was 25 per cent responsible as a result of the crane operator having failed to carry out "a test lift" before undertaking to load the first unit.

The other items of damage assessed by the learned trial judge are clearly related to additional expenses incurred as a result of the excessive weight of the cargo and I would not disturb any of these items as specified by him. For all these reasons I would allow this appeal and restore the award made by the learned trial judge. The appellant will have its costs both in this Court and in the Court of Appeal.

Appeal allowed with costs.

Solicitors for the appellant: Stikeman, Elliott, Tamaki, Mercier & Robb, Montreal.

Solicitors for the respondent: Rousseau & Charbonneau, St-Laurent, Quebec.

[1] [1974] 2 F.C. 187.

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