SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3820-16T2

DIRECT COAST TO COAST, LLC and SELECTIVE TRANSPORTATION CORP.,

Plaintiffs-Respondents,

v.

DOOR TO DOOR COURIER SERVICE, LLC, ABA PACKAGING CORP., CAPITAL HARDWARE SUPPLY, INC., R. AMATEAU PRODUCTS, INC., and US DUCT ADHESIVE, INC.,

Defendants,

and

EMPIRE SPECIALTY FOODS, INC. and SUN GROVE FOODS, INC.,

Defendants-Appellants.

Submitted February 27, 2018 – Decided April 12, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-4336-15.

Miller, Meyerson & Corbo, attorneys for appellants Empire Specialty Foods, Inc. and

Sun Grove Foods, Inc. (Gerald D. Miller, on the brief).

Ronald Horowitz, attorney for respondents.

PER CURIAM

Defendants Empire Specialty Foods, Inc. (Empire) and Sun Grove Foods, Inc. (Sun) appeal from two orders dated April 24, 2017, entering judgments against them in the amounts of $11,893.81 and $6,022.66, respectively. We affirm because under the governing bills of lading, Empire and Sun were responsible for the shipping costs, and there are no facts supporting an equitable estoppel.

I.

This appeal arises out of disputes over payments for the shipment of goods. The parties stipulated to the material facts. Plaintiffs, Direct Coast to Coast, LLC (Direct) and Selective Transportation Corporation (Selective), are common carriers that transport goods. Empire and Sun are shippers that used a broker, Door to Door Courier Service, LLC (Door to Door), to arrange for the transportation of their goods by Direct and Selective.

Direct and Selective successfully transported three shipments for Empire and three shipments for Sun. Each shipment was

accompanied by a bill of lading issued by Empire and Sun. None of the bills of lading contained a non-recourse provision.[1]

Under the shipping arrangements, if Direct and Selective were paid within thirty days, they offered defendants a discounted rate. If they were paid after thirty days, they were owed a much higher shipping rate. The discounted rates for the shipments made for Empire and Sun totaled $990 and $513, respectively. The full rates for the shipments were $12,883.81 for Empire, and $6,535.66 for Sun.

Empire and Sun paid the broker, Door to Door, the discounted rates for the transportation provided by Direct and Selective. Door to Door, however, did not pay Direct and Selective.

Direct and Selective sued Door to Door, Empire, Sun, and several other shippers who had used Door to Door as a broker. The other shippers either defaulted or settled. Door to Door also settled by paying Direct and Selective the discounted rates, which for the shipments for Empire was $990, and for the shipments for Sun was $513.

Direct and Selective then pursued their claims against Empire and Sun. The case came on for trial. At trial, the parties agreed

[1] In submitting stipulated facts, the parties apparently elected not to submit the actual bills of lading. In that regard, the parties did not submit the bills of lading in the record presented to us.

to submit the case on stipulated facts. The parties then provided those stipulated facts to the trial court, together with legal memoranda. After reviewing the stipulated facts and analyzing the law, the trial court found that the bills of lading did not excuse Empire and Sun from having to pay Direct and Selective the remainder of the full shipping rates because the non-recourse provisions in the bills of lading were not signed, and there were no separate contracts for the transportation of the goods. The court also held that equitable estoppel did not apply under the facts of this case. Accordingly, the trial court issued two orders on April 24, 2017, together with a written opinion.

II.

Empire and Sun appeal from the April 24, 2017 orders. They make one argument, contending that Direct and Selective are equitably estopped from seeking the full shipping rates from them because Direct and Selective settled their claims against Door to Door and accepted the discounted rates. In other words, Empire and Sun argue that when Direct and Selective accepted payments of $990 and $513 from Door to Door, as part of a settlement in a litigation, they became equitably estopped from seeking the remainder of the full shipment rate of $11,893.81 and $6,022.66 from Empire and Sun. We disagree and affirm.

The issue presented to us is a question of law. The facts were stipulated. Thus, our review is de novo. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (explaining that a trial court's interpretation of the law and the legal consequences that flow from established facts are reviewed de novo on appeal).

The governing law is well-established. A bill of lading is "the basic transportation contract between the shipper-consignor and the carrier" for the interstate shipment of goods, and the shipper and all connecting carriers are bound by its terms. S. Pac. Transp. Co. v. Commercial Metals, Co., 456 U.S. 336, 342 (1982) (citing Tex. & Pac. Ry. Co. v. Leatherwood, 250 U.S. 478, 481 (1919)). Accordingly, a bill of lading is subject to the general principles of contract law. E.F. Operating Corp. v. Am. Bldgs., 993 F.2d 1046, 1050 (3d Cir. 1993).

Under the default terms of a bill of lading, the shipper is primarily liable to the carrier for payment for the shipping services. S. Pac. Transp. Co., 456 U.S. at 343. Parties to a bill of lading may modify the default liability standards either by including a non-recourse provision in the bill of lading, or by creating a separate contract. See C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 478-79 (9th Cir. 2000) ("If the non-recourse clause is signed by the consignor and no provision

is made for the payment of freight, delivery of the shipment to the consignee relieves the consignor of liability."); see also Oak Harbor Freight Lines, Inc. v. Sears Roebuck & Co., 513 F.3d 949, 956 (9th Cir. 2008) ("The parties to a freight shipment generally are free to assign liability for the payment of freight charges through a contract separate from the bill of lading.").

Shippers may, and often do, retain a broker to arrange for the transportation or physical movement of the goods. Oak Harbor, 513 F.3d at 952. Often, shippers will pay the broker with the understanding that the broker will pay the carrier. Payment to the broker, however, does not relieve the shipper of primary liability for the transportation charges to the carrier. Id. at 958 ("Although it is well-established that a contract between the parties to a bill of lading——the shipper, the carrier, and the consignee——can allocate liability for payment of freight charges, there is no support for the proposition that a contract with a broker, who is not a party to the bill of lading, can do the same."). To protect itself from primary liability for the shipping charges, the shipper must make that clear to the carrier by either signing the non-recourse clause in the standard bill of lading or executing a separate transportation contract. Id. at 956-57 (holding that using a broker does not "insulate" a shipper from

liability for the payment of transportation charges to the carrier).

Here, the parties stipulated that "[n]one of the bills of lading contained a non-recourse provision against the shippers (i.e. Empire and Sun)." Empire and Sun also presented no separate contract assigning liability for the payment to Door to Door or absolving them of the payment to Direct and Selective for the shipping costs.

Despite the lack of a non-recourse or other contractual provision, Empire and Sun rely on the principle of equitable estoppel. They point to certain cases that have estopped carriers from recovering payment when the carrier represented that it already had been paid. See, e.g., S. Pac. Transp. Co., 456 U.S. 336; Checker Van Lines v. Siltek Int'l Ltd., 169 N.J. Super. 102 (App. Div. 1979); Penbrook Hauling Co. v. Sovereign Constr. Co., 128 N.J. Super. 179 (Law Div. 1974). Reliance on those cases, however, is misplaced.

In the cases where equitable estoppel has been applied, generally there has been some misrepresentation by the carrier and detrimental reliance by the consignee. For example, equitable estoppel has been applied when the carrier misrepresents that it has been prepaid on the bill of lading and the consignee detrimentally relied on that prepayment representation. See

Checker Van Lines, 169 N.J. Super. at 106-09; Penbrook, 128 N.J. Super. at 184-85. Those cases did not apply equitable estoppel to relieve a shipper from liability for payment under a bill of lading that did not have a signed non-recourse provision. Instead, those cases involved a misrepresentation by the carrier upon which the consignee relied to its detriment.

Choosing to tender payment through a broker instead of directly to the carrier for shipping charges does not estop a carrier from collecting full payment from the shipper. Oak Harbor, 513 F.3d at 958 (finding that the Sixth Circuit's decision in Olson is an "outlier" and holding that a shipper assumes the risk of non-payment when it retains a broker to tender payment to the carrier); see also Olson Distrib. Sys., Inc. v. Glasurit Am., Inc., 850 F.2d 295 (6th Cir. 1988) (finding a shipper not liable for payment to a carrier under the equitable estoppel doctrine where the carrier instructed the shipper to pay the broker, the carrier failed to diligently bill the broker, and the carrier violated then-current credit regulations).

Here, there are no facts to support an equitable estoppel against Direct and Selective. As already noted, the non-recourse provisions in the bills of lading were not signed. Thus, Direct and Selective can justifiably look to Empire and Sun for payment, as well as Door to Door. While the bills of lading did indicate

that Door to Door would make the payment, that fact alone does not establish an equitable estoppel. Empire and Sun agreed to make payment through Door to Door, but there are no facts to show that they absolved themselves of liability to the carriers in the event of non-payment by Door to Door. See Oak Harbor, 513 F.3d at 960 ("[The shipper] took no actions to limit its liability. In particular, [the shipper] could have elected to pay [the carrier] directly, but did not, and thereby assumed the risk that [the broker] would fail to forward payment.").

Moreover, the acceptance of a settlement payment from Door to Door in the course of a litigation, does not, in and of itself establish a basis for equitable estoppel. The parties did not provide us with a settlement and release among Direct, Selective, and Door to Door. Absent an express provision stating that that partial payment was a full settlement of all of the claims, the settlement and release does not protect Empire and Sun.

In short, neither the governing contract——here, the bills of lading——nor principles of equitable estoppel excuse Empire and Sun from their obligations to pay for the shipment of their goods. Accordingly, the orders of April 24, 2017, are affirmed.

Affirmed.