

Federal Court



Cour fédérale

Date: 20180618

Docket: T-1974-17

Citation: 2018 FC 633

Ottawa, Ontario, June 18, 2018

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

**NADA ELROUMI
AND
9147-1425 QUÉBEC INC.**

collectively the “Plaintiffs” or individually the “Plaintiff”

and

**SHENZHEN TOP CHINA IMP & EXP CO.,
LTD CHINA
AND
FOSHAN HAOJIA CRAFTS CO., LTD.
AND
HAOJIA INDUSTRY CO LIMITED
AND
CHINA PACIFIC PROPERTY INSURANCE
CO., LTD.
AND
JET-SEA INTERNATIONAL SHIPPING INC.
AND
ENTREPOT CANCHI**

collectively the “Defendants” or individually the “Defendant”

and

CMA CGM

third party

ORDER AND REASONS

I. Overview and Relevant Facts

[1] Entrepot Canchi and CMA CGM have each presented a motion for an order striking out, respectively, the Plaintiffs' claim against Entrepot Canchi, and Entrepot Canchi's third party claim against CMA CGM. They both argue that this Court lacks jurisdiction to hear the claim against Entrepot Canchi. Should the latter fall, so will Entrepot Canchi's third party claim against CMA CGM.

[2] In their action, the Plaintiffs state that they purchased certain goods from Defendants Foshan Haojia Crafts Co., Ltd. and Hoajia Industry Co. Limited and paid for the shipment of those goods from Huang Pu, China, to Montréal, Quebec.

[3] The three original bills of lading, issued by King Freight International Corp., indicate that the container containing the Plaintiffs' goods was loaded on board the vessel Hai Bang Da. Montréal was identified as the port of discharge and delivery and the Plaintiff Nada Elroumi was named as the consignee and notifying party.

[4] A few days later, a sea waybill was issued by CMA CGM. This document identified King Freight International Corp. as the shipper and Jet-Sea International Shipping Inc. [Jet-Sea] as the consignee and notifying party. It also indicated Hong Kong as the port of loading, Vancouver as the port of discharge and Montréal as the port of delivery.

[5] The purchased goods were transported from Vancouver to Montréal by train and once at the final destination, the Plaintiffs and/or Jet-Sea hired Entrepot Canchi to pick them up at the train terminal and deliver them to Ms. Elroumi's residence in Laval, Quebec.

[6] After having cleared customs, Ms. Elroumi was told that the purchased goods were damaged and that the container had to be delivered to her residence by Entrepot Canchi, as she was responsible for unloading the goods.

[7] The Plaintiffs made a claim against the defendant insurer and received partial compensation for their loss.

[8] Not knowing when, how and by whom the goods were damaged, the Plaintiffs issued their statement of claim, almost three years after receiving the shipment, against the vendors/shippers, the insurer, the transport agent and the land storage and transportation company. Neither of the ocean carriers, who were both named on the bills of lading, was initially named as defendants.

II. The Law

[9] In order to determine whether this Court has jurisdiction over a subject matter, the test set out by the Supreme Court of Canada in *ITO-Int'l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752 [*ITO*] at page 766, must be met:

1. There must be a statutory grant of jurisdiction by Parliament.

2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.

3. The law on which the case is based must be a “law of Canada” as the phrase is used in s. 101 of the *Constitution Act*, 1867.

[10] The Federal Court’s statutory grant of jurisdiction in maritime law is found in paragraph 22(2)(f) of the *Federal Courts Act*, RSC 1985, c F-7 [Act], and reads as follows:

22.(1) ...

(2) Without limiting the generality of subsection (1), ...

(f) any claim arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading, or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit;

[11] The jurisprudence sets out that the jurisdiction of this Court to hear claims against ocean carriers extends beyond marine transportation when goods continue their journey after discharge under a through bill of lading. In other words, a claim falls within the purview of paragraph 22(2)(f) of the Act when it is made pursuant to a through bill of lading contract (*Matsuura Machiner Corp v Hapag Lloyd AG*, [1997] FCJ No 360 (QL) at para 7; *Garfield Container Transport Inc v Uniroyal Goodrich Canada Inc*, [1998] FCJ No 584 (QL) at para 4; *Marley Co v Cast North America (1983) Inc*, [1995] FCJ No 489 (QL) at para 9; *Certain underwriters at Lloyd’s v Mediterranean Shipping Company SA*, 2017 FC 893 at paras 50-51).

[12] In exceptional circumstances, the Supreme Court of Canada found in *ITO* that the jurisdiction of this Court extended to the responsibility of the terminal operator. Those special circumstances are enunciated at pages 775 and 776 of the Court’s reasons:

It is clear, in my view, that such incidental storage by the carrier itself or by a third party under contract to the carrier is also a matter of maritime concern by virtue of the “close, practical relationship of the terminal operation to the performance of the contract of carriage” (*per* Le Dain J. in the Court of Appeal). It may then be concluded that cargo-handling and incidental storage before delivery and before the goods pass from the custody of a terminal operator within the port area is sufficiently linked to the contract of carriage by sea to constitute a maritime matter within the ambit of Canadian maritime law, as defined in s. 2 of the *Federal Court Act*.

At the risk of repeating myself, I would stress that the maritime nature of this case depends upon three significant factors. The first is the proximity of the terminal operation to the sea, that is, it is within the area which constitutes the port of Montreal. The second is the connection between the terminal operator's activities within the port area and the contract of carriage by sea. The third is the fact that the storage at issue was short-term pending final delivery to the consignee. In my view, it is these factors, taken together, which characterize this case as one involving Canadian maritime law.

III. Analysis

[13] In the present case, the through bills of lading cover the liability of the ocean carriers, King Freight International Corp. and CMA CGM, from the port of loading to the port of discharge, which is Montréal. Had the Plaintiffs sued either one of them, they would have had a valid claim whether the damages occurred during sea transportation from Huang Pu to Vancouver or during rail transportation from Vancouver to Montréal, and this Court would have had jurisdiction to hear that claim.

[14] However, the fact that the ocean carriers were responsible for the entire segment covered by the bills of lading does not extend the jurisdiction of this Court to hear claims against parties to other contracts of carriage, such as rail and land carriers (*Marley Co*, above at para 17).

[15] Entrepot Canchi is a land carrier governed by provincial law. The Superior Court of Quebec (or the Court of Quebec if the value of the subject matter of the dispute or the amount claimed is less than \$85,000, exclusive of interest) has exclusive jurisdiction to hear a claim based on a contract entered into by the Plaintiffs and Entrepot Canchi, a land carrier.

[16] It is therefore plain and obvious that this Court lacks jurisdiction to entertain the Plaintiffs' claim against Entrepot Canchi and, as a consequence, it also lacks jurisdiction to entertain Entrepot Canchi's third party claim against CMA CGM. Rules 193 and 194 of the *Federal Courts Rules*, SOR/98-106, clearly stipulate that a third party is one whom the defendant claims is or may be liable to him or her for all or part of the plaintiff's claim. If the plaintiff's claim against that defendant does not fall under the statutory jurisdiction of this Court, nor does this defendant's third party claim.

IV. Conclusion

[17] For these reasons, Entrepot Canchi and CMA CGM's motions are granted, the Plaintiffs' claim against Entrepot Canchi and Entrepot Canchi's third party claim against CMA CGM are struck out.

ORDER in T-1974-17

THIS COURT ORDERS that:

1. Entrepot Canchi and CMA CGM's motions are granted;
2. The Plaintiffs' claim against Entrepot Canchi is struck out;
3. Entrepot Canchi's third party claim against CMA CGM is struck out;
4. Costs in the amount of \$500 are granted in favour of each of Entrepot Canchi and CMA CGM, inclusive of disbursements and interests.

“Jocelyne Gagné”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1974-17

STYLE OF CAUSE: NADA ELROUMI ET AL v SHENZHEN TOP CHINA
IMP & EXP CO., LTD CHINA ET AL

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 15, 2018

ORDER AND REASONS: GAGNÉ J.

DATED: JUNE 18, 2018

APPEARANCES:

Giovannina Diodati FOR THE PLAINTIFF

Alessandra Ionata FOR THE DEFENDANT

Jean-François Bilodeau FOR THIRD PARTY

SOLICITORS OF RECORD:

Giovanna Diodati FOR THE APPLICANT
Montréal, Quebec

Gasco Goodhue St-Germain LLP FOR THE DEFENDANT
Montréal, Quebec

Robinson Sheppard Shapiro LLP FOR THIRD PARTY
Montréal, Quebec