Algocen Transport Inc. V. Hinspergers Poly Industries Ltd.

(Dist. Ct.)\*

**Area of law**

Commercial law - financial relations

Economic relations are relations arising in the course of organization and implementation of economic activities between business entities, as well as between these entities and other participants in economic relations.

Commercial law is a comprehensive branch of law based on and specifying the rules of civil law regarding the legal capacity of individuals and legal entities, property rights, civil law transactions, and also contains administrative, financial, and labor law rules that regulate business activities. In other words, this branch of law combines property and organizational elements.

Economic relations as a subject of regulation consist of only two elements - organizational (organization of production, circulation) and property.

Financial relations are

* a part of monetary relations related to the formation and use of;
* monetary funds in order to ensure expanded reproduction, satisfaction of the needs of business entities and the population, and the implementation of economic, social, political and other functions: economic, social, political and other functions of the modern state.

**Facts**

The defendant manufacturer repeatedly used the services of a transportation broker to organize the shipment of goods. The broker hired the plaintiff, who transported the goods and invoiced the broker, who in turn invoiced the defendant. The defendant paid the broker, but the broker did not pay the carrier. The latter filed a lawsuit against the manufacturer to recover the cost of transportation.

 The court ruled that the judgment should be rendered in favor of the plaintiff.

The plaintiff's claim relates to the transportation of nine consignments of cargo, for which freight in the total amount of USD 14,218.73 is allegedly due. In the course of its business, the defendant used various carriers to transport its products to customers.

If the money is not transferred to the creditor, the burden of proof for the creditor's failure to pay is on the debtor to prove:

 (1) that the creditor actually authorized the third party to receive the money on its behalf, or (2) that the creditor represented the third party as authorized, or (3) that the creditor, by its conduct or otherwise, induced the debtor to draw such a conclusion, or (4) that there is a trade custom according to which, in this particular trade and under these particular circumstances, both the creditor and the debtor would normally expect payment to be made to the third party.

 In the case at hand, no such facts were established.

**Issue**:

The defendant has paid the amount to the third party, but the third party has not reimbursed the plaintiff for unknown reasons, should the third party reimburse the funds?

**Desion**:

First, that the defendant is the shipper of the cargoes described in the bills of lading filed. Secondly, that the defendant shipped the goods to Heldor Industries Inc. at various points in the United States pursuant to its obligation by contract to do so. Thirdly, that the defendant retained the services of Mr. Westgarth, either to transport or arrange for the transportation of the various cargoes.It appears from the evidence that neither Mr. Westgarth nor the company through which he carried on business was properly licensed under s. 3 of the Public Commercial Vehicles Act which reads as follows:for or on behalf of whom the commercial vehicle is operated, is not the holder of the required license.

The shipper bears the primary obligation to pay the transportation charges. The fact that the defendant had already paid the amount due to the broker was irrelevant, as the plaintiff had not authorized the payment and there was no trade custom that would have provided for such a method of payment.

Even if it is established that a person acting as an agent of the principal acted on its behalf and is entitled to remuneration for its services, this does not mean that the agent is necessarily authorized to receive payments due to the principal from the other party to the contract.

The court concluded that under the circumstances, the payment made by the defendant in favor of a third party is not a payment in favor of the plaintiff.

As a result, the judgment will be rendered in favor of the plaintiff in the amount of USD 14,218.73.

References

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Eric Baskind, Greg Osborne, Lee Roach. (2021) Commercial Law.