

SAINT VINCENT

IN THE COURT OF APPEAL

MAG. CIVIL APPEAL NO. 11 of 1976

BETWEEN: LIAT (1974) LIMITED - Appellant/Defendant

AND

CARL COLLYMORE - Respondent/Complainant

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: E.A.C. Hughes for Defendant/Appellant
Bayliss Frederick for Plaintiff/Respondent

1977, 12th January

J U D G M E N T

PETERKIN, J.A.:

This is an appeal against the judgment of the Magistrate District I awarding the Plaintiff/Respondent \$75.04 special damages, and \$30.00 general damages, with \$12.60 costs, against the Defendant/Appellant for breach of contract.

The facts are that on 16th January, 1975, the Plaintiff/Respondent purchased an airline ticket from ~~the~~ Defendant/Appellant for travelling from St. Vincent to Tobago. The designated carrier from St. Vincent to Trinidad was Liat, and from Trinidad to Tobago was Trinidad and Tobago Air Services (T.T.A.S). On 19th January the Plaintiff/Respondent boarded Liat flight 361 at Arnos Vale for Trinidad, but his baggage, along with that of other passengers, had to be off
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loaded because of a weight problem due to excessive winds. The Plaintiff/Respondent arrived in Tobago on the same day without his baggage. It was sent from St. Vincent to Barbados by Liat, and thence to Trinidad by B.W.I.A., arriving there on 20th January. It eventually arrived in Tobago on 22nd January by T.T.A.S.

Liat's right to off load the baggage at Arnos Vale has not been called into question. It is also conceded that the baggage arrived in Trinidad by B.W.I.A. no later than it would have arrived if sent on the next subsequent Liat Flight to Trinidad following that on which the Plaintiff/Respondent had travelled.

The learned Magistrate made inter alia, the following findings:-

- (a) "I find that the contract of carriage commenced in St. Vincent when the Plaintiff boarded Liat flight 361 and therefore para 4 of article (2) prevents the application of para 2(a) of article 10 to substitute another carrier and as such the defendant cannot claim the protection of para 2 of article 9".
- (b) "I also find that from the very way in which this bailment was created that it was an implied term of it that Liat by themselves or their agents would deliver the Plaintiff's baggage to T.T.A.S. without any reasonable delay or negligence. As contended by the Defendant, that delay was caused by T.T.A.S. I do not find this. I find that the delay was caused by Liat's agent not handing over the baggage to T.T.A.S."

The sections referred to by the Magistrate are to be found in the general conditions of carriage of Liat (1974) Ltd.

Para 4 of article 2 provides;

/"Except.....

"Except as may be required by applicable laws, government regulations orders and requirements Carrier's rules, regulations and conditions of carriage are subject to change without notice; provided, that no such change shall apply to a contract of carriage after the carriage has commenced."

Para 2(a) of article 10 provides:-

"Carrier may, without notice substitute other Carrier or aircraft."

Para 2 of article 9 provides:-

"Checked baggage will be carried in the same aircraft as the passenger, unless such carriage is deemed impracticable by carrier, in which event carrier will move the baggage on the next preceding or subsequent flight on which space is available".

Counsel for the Defendant/Appellant referred the court to the ticket itself and to the general conditions of carriage. He contended that they govern the entire relationship between passenger and carrier and that they are made part of the contract by condition 3 of the ticket under the heading "Conditions of Contract". I agree. It reads:

(3) "To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to (1) provisions contained in this ticket, (ii) applicable tariffs (iii) carriers conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply".

He then submitted that there was no duty on Liat other than to deliver the baggage at the termination of the journey for which it was the designated carrier, namely, Trinidad, and that Liat had fulfilled its obligations under the contract by doing so on 20th January as it was entitled to pray in aid the general conditions of carriage as they existed. Again

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I would agree. It may well be that Liat owed the Plaintiff/Respondent a duty in the special circumstances of the instant case to inform T.T.A.S. beforehand of the expected arrival in Trinidad by B.W.I.A. on the following day of the Plaintiff/Respondent's baggage. But if such a duty was owed by Liat it could in my view only have been as agents of T.T.A.S., and they have not been joined as Defendants in the Plaintiff/Respondent's claim. Indeed, one of the conditions on the ticket specifies that an air craft issuing a ticket for carriage over the lines of another aircraft does so only as its agent.

There has been no finding on the part of the Magistrate that the general conditions of carriage were not clearly drawn to the attention of the Plaintiff/Respondent by the ticket, or that they were not part and parcel of the contract. Indeed on the front cover of the ticket is clearly printed the following exhortation:-

"Each passenger should carefully examine this ticket, particularly the conditions of contract on page 2, the advice on page 3 the IMPORTANT NOTICE ON PAGE 4 and the check in times detailed on page 5".

He has found that the contract commenced when the Plaintiff/Respondent boarded flight 361 and that para 4 of article 2 prevented the application of para 2(a) of article 10 to substitute another carrier. I do not agree. What para 4 of Article 2 means is that though the Carrier's rules, regulations and conditions of Carriage are subject

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to change without notice, no change shall apply to a contract of carriage after the carriage has commenced. In short, that the general conditions of Carriage (Liat 1974) cannot be changed after the Carriage has commenced. In the instant case Liat does not seek to allege their right to change anything in the general conditions of Carriage. The submission made on their behalf is that one of the existing conditions, namely para 2 of article 9 which deals with movement of baggage, permitted them to move baggage already checked on to the next subsequent flight on which space was available because carriage in the same aircraft as the passenger was deemed impracticable. The evidence shows Passengers baggage was off loaded in the interest of the safety of the passengers because of a wind factor. A right which Counsel has not questioned. The exercise of the discretion to remove baggage rests with the captain of the aircraft and in my view can be exercised at any time prior to take-off and after the baggage has already been weighed and checked. It makes no difference in my opinion that passengers have already boarded the aircraft as para 2 of article 9, which is one of the conditions of the contract, specifically provides for such an eventuality. I am of the opinion that there has been no breach on the part of the Defendant/Appellant of any of the general conditions of carriage, and consequently no breach of the contract.

There is one other aspect which calls for consideration.

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It is that there is no evidence whatever on the record of what flights existed between Trinidad and Tobago by T.T.A.S. and consequently no evidence for instance that it was possible for the Plaintiff/Respondent's baggage to have arrived in Tobago on 20th or even on 21st January, that is to say earlier than it had in fact arrived, namely, 22nd January. Consequently, even if the Magistrate's findings were to be sustained, the Plaintiff/Respondent in my view still could not succeed in his claim for breach of contract.

Accordingly, I would allow this appeal, and order that judgment be entered for the Defendant/Appellant on the claim.

(N.A. Peterkin)
JUSTICE OF APPEAL

(E.L. St. Bernard)
JUSTICE OF APPEAL

(Sir Maurice Davis)
CHIEF JUSTICE