

### **Maurice Oparaji v. Atlantic Container Line United States District Court for the Southern District of New York 2008 A.M.C. 2187 (Decided August 28, 2008)**

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**DISTRICT COURT HELD THAT FREIGHT FORWARDER DID NOT BREACH ITS CONTRACT WHEN IT ARRANGED A SUITABLE CARRIER FOR THE CLIENT, AND WHEN THE CARRIER DELIVERED THE CLIENT'S CARGOES AS FAR AS THE LAW ALLOWS.**

**The United States District Court for the Southern District of New York dismissed a shipper's claims against a freight forwarder and a carrier for breach of contract. Although the freight forwarder did not issue a bill of lading, the court held that the freight forwarder did not breach its contract by properly arranging for a carrier to ship the cargoes. The court also held the carrier did not breach its contract because the carrier properly handled the process of the shipping the cars as far as it was allowed to under Nigerian maritime law as required by the Harter Act.**

Maurice Oparaji v. Atlantic Container Line  
United States District Court for the Southern District of New York  
2008 A.M.C. 2187  
(Decided August 28, 2008)

In the fall of 2005, plaintiff Maurice Oparaji hired defendant Penbroke to arrange for the transport of six vehicles from New York City to Lagos, Nigeria. In accordance with the plaintiff's request, Penbroke arranged shipment of vehicles through Atlantic Container Line ("ACL"). ACL then engaged Grimaldi Compagnia di Navigazione, S.p.A. ("Grimaldi") for a portion of carriage from Italy to Nigeria. Grimaldi, in turn, subcontracted that portion of carriage to RoRo Oceanic Shipping Services ("RoRo Lagos"). Penbroke, as a freight forwarder, did not issue a bill of lading for the shipment, nor did it play any role in the actual transport of the vehicles. However, Penbroke did issue an invoice on October 28, 2005 that memorialized the details of the transaction and referred Maurice Oparaji to the carrier's bill of lading for the terms of shipping. Maurice Oparaji prepaid the ocean freight charges, instructions and delivered the cars to Maher Terminal where they were to be loaded. Maurice Oparaji received proper documentation proving that it dropped off the vehicles.

Although ACL claims it generated a bill of lading for the transport of plaintiff's vehicles, Maurice Oparaji denies ever receiving it. Moreover, Maurice Oparaji could not locate three of the vehicles shipped when it went to retrieve them at the Port of Lagos, Nigeria. According to the "tally sheets kept by RoRo, Lagos and the [Nigerian Port Authority ("NPA")] show that all three of plaintiff's missing vehicles were present at the time of the vessel's arrivals."<sup>1</sup> The District Court found that the NPA is an agency of the Nigerian Government that is charged by law with controlling the discharge of cargo from vessels docking at the Port of Lagos. Stevedores, hired and controlled by the NPA, discharge all imported cargo, at which point the NPA assumes "sole control over the care, custody and delivery of the cargo. By law and custom, ship owners and ocean carriers destined for the Port of Lagos have no control over the NPA or its hired stevedores."<sup>2</sup> After failing to retrieve the three missing cars from the NPA, Maurice Oparaji contacted Penbroke and returned to the United States.

Maurice Oparaji claimed that defendants breached their contracts and are liable for the cost of the three vehicles and other damages. In response, "defendants argue that they fully performed all contractual obligations owed to plaintiff."<sup>3</sup> Both parties moved for summary judgment. Based on the evidence provided, the District Court found that Penbroke served the role of a freight forwarder in the transaction. Freight forwarders are intermediaries that "make arrangements for the movement of cargo

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<sup>1</sup> *Oparaji v. Atlantic Container Line*, 2008 WL 4054412 at 2 (S.D.N.Y., 2008).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 3.

at the request of clients.”<sup>4</sup> The court held that, unlike carriers, freight forwarders play no role in the actual transport of cargo. Moreover, since a freight forwarder does *not* issue a bill of lading, it is generally not liable to a cargo owner for damage to or loss of the goods shipped. Once a freight forwarder arranges for the transportation of cargo from one point to another, that arrangement “fulfills the forwarder’s obligations in the absence of proof that the [carrier] selection itself was negligent.”<sup>5</sup>

The evidence showed that Penbroke only agreed to take on the role of a freight forwarder and fulfilled its obligation as such. Penbroke never issued a bill of lading. Maurice Oparaji did not provide any evidence that Penbroke failed to fulfill its obligation as a freight forwarder, thus Penbroke’s motion for summary judgment is granted as to plaintiff’s breach of contract claim.

The District Court next turned to ACL. The issuance of the bill of lading by ACL is the equivalent of a maritime contract, thus ACL had the responsibility of a carrier.<sup>6</sup> Once the court established that ACL is the carrier, the Harter Act governs. “The Harter Act reinstated the common law duty of carriers to deliver the goods from wharf to wharf, notify the consignee of the vessel’s arrival and . . . protect the cargo until the consignee ha[s] a reasonable opportunity to remove it.”<sup>7</sup>

“Under the common law, proper delivery may be either actual or constructive.”<sup>8</sup> Actual delivery occurs where the carrier completely transfers possession and control of the goods to the consignee or his agent. Constructive delivery, on the other hand, “occurs where the goods are discharged from the ship upon a fit wharf and the consignee receives due and reasonable notice that the goods have been discharged and has a reasonable opportunity to remove the goods or put them under proper care and custody.”<sup>9</sup> However, if there are local port laws that dictate the terms of the discharge, then the local law overrides the elements of a proper delivery and the terms listed in the bill of lading.<sup>10</sup> Therefore, if a carrier follows the laws listed in the local, then it constitutes as proper delivery under the Harter Act.

In the current case, Nigerian maritime law requires “all vessels delivering cargo to the Port of Lagos...to discharge their cargo into the custody of the NPA using NPA provided and controlled Stevedores.”<sup>11</sup> ACL, in accordance with Nigerian maritime law, properly provided safe delivery to the farthest point that it could deliver the cargoes within the limitations of the law, custom, and usage of the port. When transferred to the NPA, ACL was able to account for all six vehicles. Thus ACL properly delivered the cars to the extent that it was legally required. Since there was proper delivery, ACL’s motion for summary judgment is granted with respect to plaintiff’s breach of contract claim.

The District Court also addressed additional non-maritime claims. The court denied Maurice Oparaji’s defamation claim on the grounds of qualified privilege and lack of vicarious liability. The court also granted summary judgment for the defendants in regards to claims based on breach of fiduciary duty, unfair trade and business practices, civil conspiracy, deceptive and negligent misrepresentation, and fraud because Maurice Oparaji failed to respond to any of defendants’ argument supporting summary judgment on these claims.

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<sup>4</sup> *Id.* at 5 (citing *Prima U.S. Inc. v. Panalpina, Inc.*, 223 F.3d 126, 129 (2d Cir.2000)).

<sup>5</sup> *Id.* at 5 (citing *Prima U.S. Inc. v. Panalpina, Inc.*, 223 F.3d at 130 (2d Cir. 2000)).

<sup>6</sup> *See Fed. Ins. Co. v. Great White Fleet (US) Ltd.*, No. 07 Civ. 2415, 2008 WL 2980029, at 7 (S.D.N.Y. Aug. 1, 2008); *Norfolk Southern Ry. Co. v. Kirby*, 543 U.S. 14, 22-23, 27 (2004).

<sup>7</sup> *Oparaji v. Atlantic Container Line and Penbroke*, 2008 WL 4054412 at 7 (S.D.N.Y., August 28, 2008); citing *Chilewich Partners v. M/V ALLIGATOR FORTUNE*, 853 F.Supp. 744, 754 (S.D.N.Y.1994); *see also Farrell Lines Inc. v. Highlands Ins. Co.*, 696 F.2d 28, 29 (2d Cir. 1982).

<sup>8</sup> *Id.* at 7; citing *Seanto Exports v. United Arab Agencies*, 137 F.Supp.2d 445, 449 (S.D.N.Y.2001).

<sup>9</sup> *Id.*; quoting *C.P. USA v. Mercury*, No. 99 Civ. 4183, 2000 WL 1576885, at 2 (S.D.N.Y. Oct. 23, 2000).

<sup>10</sup> *Id.*; citing *Farrell*, 696 F.2d at 29; *Tan Hi v. U.S.*, 94 F.Supp. 432, 436 (N.D. Cal.1950).

<sup>11</sup> *Id.* at 9.