Michigan Law Review

Volume 36 | Issue 1

1937

CARRIERS - SHIPPING - LIMITATION OF LIABILITY BY STIPULATION ON TICKET

Michigan Law Review

CARRIERS — SHIPPING — LIMITATION OF LIABILITY BY STIPULATION ON TICKET — Libelant through an agent purchased a steamship ticket to the West Indies. Neither libelant nor his agent had actual knowledge of a stipulation on the back of the ticket which required passengers to lodge a written notice of any claim against the steamship company within thirty days after termination of the voyage. All passengers were required to sign their tickets, but libelant failed to do so until the day after the cruise began. The district court dismissed

a suit for personal injuries suffered while aboard the ship because of non-compliance with the limitation of the ticket. *Held* on appeal, reversing the district court, the stipulation requiring notice was not part of the contract between the passenger and the carrier. The entire contract was contained in the "box" on the left hand side of the ticket stating the price paid and the itinerary. Such contract was complete at the time the passenger embarked and could not be changed by the signature subsequently affixed to the ticket since that was without consideration. *The Kungsholm*, (C. C. A. 2d, 1936) 86 F. (2d) 703.

Contrary to the English common-law rule,[1] American courts do not permit a carrier to limit its liability to passengers by mere notice.[2] However, the carrier and passenger may *contract* for limited liability, provided the limitation is a reasonable one. A condition in a contract that a passenger's claim, whether for baggage or for personal injury, must be presented and/or suit commenced within a certain time after termination of the journey, is generally regarded as reasonable.[3] Since it is necessary to show a contract embodying these limitations before the courts will concede their effectiveness, the passenger's assent thereto must be proved. In the case of a railroad passenger, mere acceptance of a ticket with a limitation printed upon it is not sufficient to show assent. A railroad ticket is regarded merely as a token and not as a contract, and therefore actual assent must be shown. However, a steamship ticket, because of its more formal nature and the deliberate circumstances under which it is usually purchased, is ordinarily held to be a contract which the passenger is deemed to accept by virtue of his physical receipt of the ticket.[4] In applying this rule with

[1] England now has a statute which precludes a carrier from limiting its liability by posting public notice. 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1001 (1911). But limitation by contract is legal. Hood v. Anchor Line, Ltd., [1918] A. C. 837; Cooke v. T. Wilsons, Sons & Co., 85 L. J. (N. S.) (K. B.) 888 (1915); The Marriott v. Yeoward, [1909] 2 K. B. 987.

[2] 1 HUTCHINSON, CARRIERS, 3d ed., § 399 (1906).

[3] Limitations in the following cases have been held reasonable. Silverman v. Bermuda & West Indies S. S. Co., (D. C. N. Y. 1935) 12 F. Supp. 164 (three days to file notice and two months to bring suit); The Majestic, (D. C. N. Y. 1928) 30 F. (2d) 822 (fifteen days to file notice); Henderson v. Canadian Pac. Ry., 258 Mass. 372, 155 N. E. 1 (1927) (fifteen days to file notice and ninety to bring suit); Murray v. Cunard S. S. Co., 235 N. Y. 162, 139 N. E. 226 (1923) (forty days to file notice and one year to bring suit); Lee v. Swedish American Line, (D. C. N. Y. 1933) 6 F. Supp. 342 (one year to bring suit barred an infant.)

Limitations in the following cases have been held unreasonable. The Arabic, (C. C. A. 2d, 1931) 50 F. (2d) 96 (three days to bring notice); Hessler v. North German Lloyd, (C. C. A. 2d, 1932) 55 F. (2d) 927 (five days to file notice and ninety to bring suit; but failure to give notice until fourteen months and suit not until twenty-two months barred recovery); Sutton v. Pacific S. S. Co., (C. C. A. 9th, 1925) 7 F. (2d) 579, cert. denied 269 U. S. 586, 46 S. Ct. 202 (1926) (ten days to file notice); The Europa, (D. C. N. Y. 1934) 6 F. Supp. 686 (ten days to file notice when personal representatives not appointed until after lapse of period); Kemelhor v. Furness, Withy & Co., 139 Misc. 64, 248 N. Y. S. 659 (1931) (two months to start suit).

[4] For collection of cases and the earlier cases contra, see 26 A. L. R. 1375 (1923).

respect to steamship tickets, the federal courts since the leading case of *The Majestic* [5] have developed the doctrine that the passenger by mere physical acceptance of the ticket is deemed to assent only to those limitations on liability which are either set forth in full in the formal contractual part of the ticket or incorporated therein by reference.[6] The formal contractual part of the ticket is that section of the ticket usually enclosed in a box where appear the details with respect to the passenger's name, price of the ticket, description of accommodations obtained, etc. According to the federal decisions mere notice of a limitation, whether appearing on the face [7] or on the back [8] of the ticket, is not

In determining whether any given ticket is a contract, "much might depend upon the appearance of the ticket and the nature of the trip contemplated." 1 WILLISTON, CONTRACTS, 2d ed., § 90B (1936). In general, see Goddard, "Passenger Tickets as Contracts," 25 MICH. L. REV. 1 (1926); Beale, "Tickets," 1 HARV. L. REV. 17 (1887).

[5] 166 U. S. 375, 17 S. Ct. 597 (1897).

[6] Maibrumn v. Hamburg-American S. S. Co., (C. C. A. 2d, 1935) 77 F. (2d) 304; Smith v. North German Lloyd, (C. C. A. 2d, 1907) 151 F. 222. Cf. Pacific S. S. Co. v. Cackette, (C. C. A. 9th, 1925) 8 F. (2d) 259, cert. denied 269 U. S. 586, 46 S. Ct. 203 (1926).

The Massachusetts cases, on the other hand, fail to make the distinction between a mere notice and a condition which is an integral part of the contractual part of the ticket, with the result that in this jurisdiction acceptance of the ticket gives rise to an implication of assent to the terms thereon; hence the passenger is bound by any stipulation whether appearing on the face or the back of the ticket. The leading Massachusetts cases, Fonseca v. Cunard S. S. Co., 153 Mass. 553, 27 N. E. 665 (1891), and O'Regan v. Cunard S. S. Co., 160 Mass. 356, 35 N. E. 1070 (1894), were situations where the tickets had been purchased in England with express provision that the law of England should govern any dispute. The same is true of Secoulsky v. Oceanic Steam Navigation Co., 223 Mass. 465, 112 N. E. 151 (1916), which was decided after but did not consider The Majestic, 166 U. S. 375, 17 S. Ct. 597 (1897). Henderson v. Canadian Pacific Ry., 258 Mass. 372, 155 N. E. 1 (1927), is more sweeping in its terms than the earlier cases. Cf. O'Flaherty v. Cunard S. S. Co., 281 Mass. 447, 183 N. E. 712 (1933).

A much cited New York case, Murray v. Cunard S. S. Co., 235 N. Y. 162, 139 N. E. 226 (1923), seemingly supports the Massachusetts doctrine, but analysis shows it is entirely consistent with, if not controlled by, the federal rule. The opinion, by Justice Cardozo, specifically found the condition was integrated into the contract, bringing the case within the doctrine of The Majestic, supra; this was the first recognition of the federal doctrine in New York. An early case, Wheeler v. Oceanic Steam Navigation Co., 72 Hun 5, 25 N. Y. S. 578 (1893), affd. 149 N. Y. 576, 43 N. E. 990 (1896), adopted the view taken by the Massachusetts court in the Fonseca case, supra. In Tewes v. North German Lloyd S. S. Co., 186 N. Y. 151, 78 N. E. 864 (1906), it was assumed that the stipulation was part of the contract. For the latest expression by the New York court, see Garcin v. Compagnie Generale Transatlantique, 160 Misc. 687, 289 N. Y. S. 1075 (1936).

The only Illinois case on the subject specifically rejected the authority of the Tewes case, supra. Levensohn v. Cunard S. S. Co., 162 Ill. App. 421 (1911).

[7] Bellocchio v. Italia Flotte, etc. Line, (C. C. A. 2d, 1936) 84 F. (2d) 975; Baer v. North German Lloyd, (C. C. A. 2d, 1934) 69 F. (2d) 88; Wood v. Cunard S. S. Co., (C. C. A. 2d, 1911) 192 F. 293.

[8] The Leviathan, (C. C. A. 2d, 1934) 72 F. (2d) 286; The Finland, (D. C.

sufficient to make the limitation enforceable if the limitation is not contained in the formal contractual part of the ticket or incorporated therein by reference. However, if the passenger signs his name to the ticket, he is bound by all the conditions printed therein, whether included in the formal contractual part or not and regardless of actual notice.[9] His signature is deemed to be proof of his assent to all the conditions appearing in the ticket. The difficulty in the principal case was that the limitation in question was not contained in the formal contractual part of the ticket or incorporated therein, so that the passenger was not regarded as having assented thereto before the cruise began. Although the passenger signed the contract after the cruise began, the signing was without contractual significance since there was no consideration for this delayed assent to all the terms of the contract. It would appear that there is an exaggerated emphasis of the principles of contract law in these cases. The theory that a passenger has freedom of contract to bargain with the carrier is largely mythical; in reality he must accept what amounts to regulations laid down by the steamship company, the validity of such regulations being governed by a vague standard of reasonableness which varies in each individual case. Although the federal rule admittedly is technical, inasmuch as the passenger is deemed to have assented to only a part of what appears on the ticket, it may be justified because of the protection it affords the public. At the same time it places no undue burden on the carrier acting in good faith since it is a simple matter so to print tickets that the entire contract may be brought to the attention of the passenger without straining over clauses set up in fine print, or to require the passenger's signature before boarding the vessel. Perhaps a happier result would be reached by declaring any and all restrictions on liability void as against public policy. Then by legislation the time limit in which to file claims against carriers could be made uniform.

N. Y. 1929) 35 F. (2d) 47; The Cretic, (D. C. Mass. 1914) 224 F. 216; The Morro Castle, (D. C. N. Y. 1909) 168 F. 555.

[9] Backman v. Clyde, (C. C. A. 2d, 1907) 152 F. 403.