

YB XXI / NYC / NL 18 / 1996

YB XXI (1996)

Part V-A (NYC)

Netherlands no. 18

Found: Gaja

Translated/summarized by SB

English checked.

Footnotes:

AJ:

original?

18. Rechtbank [Court of First Instance], Rotterdam, 21 December 1990

Parties: Petitioners: NV Carbomet (Belgium) and NV Belgian Bunkering & Stevedoring (Belgium)
Respondents: Gans Transport BV (Netherlands) and Koninklijke Frans Swarttouw BV (Netherlands)

Published in: 10 Nederlands Internationaal Privaatrecht (1992, no. ...) p. 417; English summary in Gaja no. 376

Articles:

Subject matter: -

Commentary Cases:

Facts

In a dispute before the Court of First Instance of Rotterdam, it was maintained that the Dutch Court did not have jurisdiction because of the arbitration clause contained in the general conditions applicable to the contract concluded by NV Carbomet (Carbomet) and NV Belgian Bunkering & Stevedoring (BBS) with Gans Transport BV (Gans).

The Court agreed, holding that the reference to the general conditions, including the arbitration clause, made in the invoices issued between the parties met the requirements of the New York Convention.

Excerpt

JF: PLEASE CHECK: I TRANSLATE EXPEDITEUR WITH CARRIER, CARGADOOR WITH SHIPPER AND OPSLAG WITH STORING, BUT I AM NOT THAT CERTAIN....

[1] "First of all, we must determine which are the parties to this contract. Gans maintains that it acted 'merely as carrier' when having the coal cargo stored with [Koninklijke Frans Swarttouw BV] on behalf and at the expense of BBS or Carbomet. In so far as Gans thereby maintains that it did not accept this task and related activity as a contractual party, its allegation must be denied. [BBS and Carbomet] concluded a contract only with Gans, and Gans accepted the contractual task. The manner in which Gans had the task, which it had accepted, duly performed is Gans' responsibility.

(...)

[2] "The question to be further answered is whether we must consider that the FENEX conditions or other general conditions apply between Gans and BBS. Gans has sufficiently proven, against the allegation of BBS and Carbomet that the earlier contacts between BBS and Gans had not been 'very intensive', ... that before the conclusion of the present contract several, different business relationships already existed between BBS and Gans, which regularly agreed by contract on various activities. According to Gans, a reference [to the Rotterdam Shipping Conditions and the Dutch Carriage Conditions] was printed on all those many invoices as well as on its stationery.

[3] "The Court leaves aside the allegation, raised by Carbomet and BBS 'only for lack of knowledge', that that text is not printed on the original invoices, not only because the allegation is too vague to be significant, but especially because Carbomet and BBS in fact recognise the presence of that text on the invoices in their statement of defence.

[4] "Under these circumstances, it must be deemed that the parties agreed on the applicability of the conditions relied upon by Gans, that is, in the Court's opinion, the Rotterdam Shipping Conditions, considering the nature of the activity involved: after all, nowhere it appears that BBS (and Carbomet) accepted that Gans, to which the task of storing the goods had been entrusted, would act in this case as carrier. In so far as DDE can prove that it entered into the contract (also) in the name of Carbomet, also Carbomet is bound to the contract.

[5] "It results from the considerations above that the Court must declare that it has no jurisdiction to hear the dispute between Carbomet and BBS on the one side and Gans on the other, as it is undisputed that the Shipping Conditions provide for arbitration. The Court holds that the written provision, appearing several times on the invoices sent and accepted by BBS, that said Conditions apply to that type of activity - which Conditions are also in writing and can be examined in the manner described in the provision itself - meets the requirements of the New York Convention relied upon by BBS and Carbomet, although not in the most beautiful manner."