

CASE BRIEF: COOK SPECIALTY COMPANY v. RANDOLPH SCHRLOCK**Procedural History**

This is an action filed against the defendant, the machine seller and the carrier in shipment, to recover for the loss of the machine the buyer purchased. The buyer and seller cross-filed for summary judgment.

Facts

The buyer, Randolph Schrlock, contracted to purchase a brake press machine for \$28,000 from Cook Specialty Company. His contract terms with Cook were FOB Seller's Warehouse, and the seller obtained a \$100,000 certificate of insurance from the carrier with a \$2500 deductible. During transit, the product fell from the carrier's truck, causing damages, and the buyer was able to recover \$5000 for damages from the carrier, which was the carrier's policy limit. The buyer filed action against both the seller and carrier to recover for the machine's loss. The court found in favor of the seller's motion, because the seller met its duty to secure reasonable shipping for the machine to the carrier in accordance to 13 Pa. Cons. Stat. Ann. § 2-504, and that risk of loss shifted to the carrier. The court found that the seller did not ensure adequate insurance for the loss was immaterial.

Issue

The issue here was what exactly does the term FOB place of shipment obligate the seller, carrier and buyer to in a contracted transaction. Where does the responsibility

of the seller transfer to the seller and when does responsibility for the carrier transfer from seller to buyer.

Another question is what constitutes an acceptable level of attention paid and diligence in delivering the contracted item to the buyer from the seller, and who accepts the risk of loss of the shipment, and when. Did the seller, in transferring the product to the carrier, limit the seller to his entitlement to recover the cost of damages and risk of loss? Did the seller act reasonably with the selection of a carrier and the mode of transportation selected?

Answer/Holding

Under UCC Article 2 under performance, it is an improper contract for the seller to agree with the carrier for a limited valuation of the shipment and thus cut off the buyer from recovering damages from the carrier in the event of loss.

Whether or not the shipment is at the buyer's expense, the seller must ensure the proper arrangements, with regard to the circumstances, such as refrigeration, watering of livestock, and the like.

The reasonableness of the shipper's conduct is with regard to the mode of transport selected. The seller has no obligation to investigate the types and amounts of insurance coverage held by the carrier.

Reasoning

The court asserts that the seller did in fact act within its obligations under contract

terms FOB seller's warehouse, and the method of shipment was adequate for the product in question. The seller argued that the reputation of the carrier should be in question because of the general condition of such things as stationary and the carrier's name, which the seller argues is unprofessional in nature. However, these formalities generally do not confirm negligence or any sort of disfavor for the ability of a carrier to perform.

The court asserts that the seller is not expected to investigate the limits of insured coverage in case of loss or damage, despite the seller's argument with regard to *La Casse v. Blaustein*, 93 Misc. 2d 572, 403 N.Y.S.2d 440 (Civ. Ct. 1978). In this case the seller acted with negligence in selecting insurance in valuation significantly less than the value of merchandise being shipped.

The court in this case however affirms that whereas in the previous case there was significant measure of negligence including the mislabeling of shipping address, and theft tempting labeling on the shipment which caused the loss of shipment; in this case the only question is the responsibility of the seller in selecting an adequate carrier.

The court finds that the seller did nothing wrong in ensuring delivery of product to carrier, and that it is not the seller's responsibility to ensure proper coverage in case of loss under FOB seller's warehouse. The seller is responsible for ensuring the proper level of insurance in this case.

Disposition

The decision is in favor of the defendant; the defendant's motion is granted, and the plaintiff's motion is denied.

QUESTIONS:

1. How does this case impact decisions made by procurement managers?

This decision reminds procurement managers of the importance in doing due diligence in ensuring the level of coverage in case of loss, and detailing the terms of shipment of goods. It highlights the level of risk involved in shipping transactions and a good procurement officer asks questions regarding shipping terms well in advance of signing a contract.

2. What advice would you give to the parties to this case, following the court's decision?

I would suggest for better communication regarding the fine details of the contract, and although the seller is not responsible for the carrier's behavior in FOB origin situations, that does not mean the seller should avoid assisting the seller in making better arrangements and informing the seller of his entitlements with the carrier.