

SCANSHIP (LIBERIA) INC., by and thru its Marketing Manager, A. HANSEN, and the
LIBERIA PORT STORAGE COMPANY INC., by and thru its Manager, SAMUEL H.
FREEMAN, Appellants, v. **ATEF EL ALI**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: January 3, 1984. Decided: February 9, 1984.

7. Warehouse system is a system of public store or warehouse, established or authorized by law, called 'bonded warehouse' in which an importer may deposit goods imported, in the custody of the revenue officers, paying storage, but not being required to pay the customs duties until the goods are finally removed for consumption in the home market, and with the privilege of withdrawing the goods from the store for the purpose of re-exportation without paying any duties.

8 .Where any goods are brought to a warehouse for re-warehousing after importation from another warehouse, the importer or owner of the goods shall make entry thereof in such form and manner and containing such particulars as the Ministry of Finance shall prescribe; otherwise, the provision of the law relating to warehouse goods shall apply to such goods which have been re-warehoused.

Appellee, Atef El Ali, filed a suit for damages against Scanship (Liberia) Inc., appellant, in the Civil Law Court, Sixth Judicial Circuit, Montserrado County. Appellant, who operated a bonded warehouse within the Freeport of Monrovia, known as the Liberia Port Storage Company, Inc.(LPSC), was sued based on the allegation by the appellee that on January 17, 1980, he took delivery from the customs warehouse of the National Port Authority twenty (20) cases of goods, being ten (10) cases of embroidery materials and ten (10) cases of polyester stripped suiting materials and rehoused them in the bonded warehouse of the Liberia Port Storage Company. The appellee attached to his complaint a re-warehousing entry and a delivery tally from the Bureau of Customs and Excise and the National Port Authority, marked, respectively, as exhibits "A" and "B" and annexed to his complaint.

The plaintiff/appellee further alleged in his complaint that the consignment was ordered from Seoul, South Korea, at an initial cost of \$15,750.00 (Fifteen Thousand Seven Hundred and Fifty Dollars), plus handling and transportation charges of Sixty Dollars (\$60.00); warehouse charges of Thirty Seven Dollars Ninety-Three Cents (\$37.93); loss of profit in the amount of Eight Thousand Eight Hundred Seventy Five Dollars (\$8,875.00); and customs duty to be paid at sixty-five percent of the cost of the goods, amounting to Ten Thousand Two Hundred Thirty Seven Dollars and Fifty Cents (\$10,237.50); therefore making a total claim of Thirty Four Thousand Nine Hundred Sixty Dollars and Forty-Three Cents (\$34,960.43).

An amended answer filed by the appellant, Scanship, had been dismissed by the trial court on the issues of law. Whereupon the Liberia Port Storage Company (LPSC) Inc., moved the court to intervene. The motion was granted and LPSC was made a party defendant to the action.

The intervener/appellant then filed an answer denying ever receiving twenty (20) cases of any goods in its bonded warehouse on January 17, 1980, belonging to appellee, and challenged the appellee to produce proof that the twenty (20) cases of goods were delivered to its bonded warehouse, and also demanded that the proving be done by presentation of the necessary documents, such as a copy of the bill of lading for the twenty cases, bill of charges from the National Port Authority, the National Port Authority Tally and Customs Forms MF 420 and MF 426.

A jury trial was had and ended with a verdict for the plaintiff. A judgement confirming the verdict was thereafter rendered against the appellants, following the filing and denial of a motion for a new trial. To this judgment, the appellants excepted and announced an appeal to the Supreme Court. In appealing to the Supreme, the appellants filed a six-count bill of exceptions for the Court's review.

The Supreme Court reversed the judgment of the trial court with costs against the appellee.

John T. Teewia and *Victor D. Hne* of the Carlor, Gordon, Hne & Teewia Law Offices appeared for the appellants. *E. Winfred Smallwood* of the Cooper & Togbah Law Firm appeared for the appellee.

MR JUSTICE SMITH delivered the opinion of the Court.

As gathered from the records in this case on appeal, Atef El Ali, a Lebanese national doing business in the City of Monrovia, appellee herein, filed a damages suit in the Civil Law Court for the Sixth judicial Circuit, Montserrado County against Scanship (Liberia) Inc., which operates a bonded warehouse within the Freeport of Monrovia, known as the Liberia Port Storage Company (LPSC) Inc., alleging that on January 17, 1980, he took delivery of the customs warehouse, National Port Authority, twenty cases of goods, that is ten cases of embroidery materials and ten cases of polyester striped suiting materials and rewarehoused the said goods in the bonded warehouse of the Liberia Port Storage Company. He attached to his Complaint a rewarehousing entry and a delivery tally from the Bureau of Customs and Excise and the National Port Authority, respectively, marked exhibits "A" and "B" to form part of his complaint.

Appellee further alleged in his complaint that the consignment was ordered from Seoul, South Korea, at an initial cost of \$15,750.00 plus handling and transportation charge of \$60.00 warehouse charges, \$37.93; loss of profit in the amount of \$8,875.00, and customs duty to be paid to the Liberian Government at sixty-five percent of the cost of the goods,

amounting to \$10,237.50, making a total claim of \$34,960.43. He also attached to his complaint, as exhibits "C" through "E", other commercial documents which do not have any bearing on the twenty cases of goods, subject of this case.

Scanship, as defendant, filed an amended answer which was dismissed by the trial court on the issues of law. But the Liberia Port Storage Company (LPSC) Inc., moved the court to intervene, which motion was granted and LPSC was made a party defendant to the action. Intervenor/defendant filed an answer denying ever receiving in its bonded warehouse twenty cases of any goods on January 17, 1980, belonging to the plaintiff. The intervenor/defendant challenged the plaintiff to produce as proof, that the twenty cases were delivered to its bonded warehouse, the following documents; (1) copy of the bill of lading for the twenty cases; (2) bill of charges from the National Port Authority; (3) National Port Authority tally; and (4) customs forms MF 420 and MF 426; for, it is upon these documents and their inspection by the bonded warehouse authorities, which must prove satisfactory, can a consignee, like the plaintiff in the instant case, be given the history sheet and the storage condition sheet by the bonded warehouse authorities for him to review. The transaction then comes to its final stage by the execution and delivery of a copy to the consignee, a document known as the storage condition sheet wherein the rights and interests of both parties are specified and the quantity and other specifications of the goods warehoused are shown.

There is no showing in the records of plaintiff's reply to the intervenor's answer or of a resistance to the motion to intervene. In ruling on the issues raised in the motion and the answer of the Intervenor, the trial court observed that: "The motion as filed by the Liberia Port Storage Company (LPSC) Inc., not having been resisted, and the intervenor's answer not having been replied, the plaintiff has conceded the intervenor's right to intervene..." There was no exception noted to this ruling by the appellee, and so it must therefore be concluded that it is binding on him.

Under our Civil Procedure Law, three kinds of pleadings are required: there shall be a complaint and an answer, and there shall be a reply to an answer which should contain affirmative matter or a counterclaim. No other pleading is required. And if a defendant appears within the time prescribed by the Civil Procedure Law, Rev. Code 1: 3.62, which is within ten days of service of summons, his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint Civil Procedure Law, Rev. Code 1: 9.1(1) and (2).

From this provision of the statute cited *supra*, the three kinds of pleadings are mandatorily required except in case of an answer which may be excused where defendant appears by filing a notice of appearance within the prescribed ten-day period. But the filing and service of a reply to an answer which shall contain affirmative matter or a counterclaim is mandatory

and not excused; otherwise, the allegations contained in the answer will be deemed admitted. *Ibid.* § 9.8(3). The ruling of the trial court, in our candid opinion, is therefore supported by the statute *supra*.

A jury trial was had and ended with a verdict for the appellee, and a judgement confirming the verdict was rendered against the appellants to which they excepted and have brought this appeal to this Court on a six-count bill of exceptions. The appellants in their brief presented four issues which they asked us to pass upon in deciding the case; these issues are, as follows:

1. Whether the lower court was right in dismissing the amended answer of Scanship (Liberia) Inc.?
2. Whether the mere allegation of appellee that he delivered twenty cases of goods to the appellants on January 17, 1980, can be sustained as against the plea of intervenor/Co-appellant LPSC, supported by documentary evidence?
3. Whether the lower court was right in denying the motion for a new trial despite all the legal and factual issues therein raised?
4. Whether the final judgement founded on the illegal verdict is supported by the evidence adduced at the trial of this case?

Having listened carefully to the arguments *pro et con*, and to the contentions of both sides, we have concluded that there is only one issue on which the determination of this case rests, and that is whether or not on January 17, 1980, appellee delivered to the bonded warehouse of the appellants twenty cases of goods in keeping with business practice. We therefore deem it necessary to exclude from our consideration all other issues and contentions raised in both the bill of exceptions and appellants' brief, as those issues and contentions are procedural in nature and do not go to the crux of the matter as would tend to either establish or disprove the claim.

Despite the effect of the failure on part of the appellee to deny the allegations of LPSC's answer and the challenge offered appellee to produce the relevant documents establishing the rewarehousing of twenty cases of goods allegedly owned by the appellee in appellants' bonded warehouse, we shall look at the evidence to see whether or not the said twenty cases of goods were in fact rewarehoused in appellants' bonded warehouse on January 17, 1980.

Taking recourse first to appellee's testimony under oath as a witness in his own behalf, we find his answers to questions on the cross-examination on sheets 15 and 16 of the minutes, 8' day's session, Tuesday, March 29, 1983. Here are the questions and appellee's answers thereto:

Q. Mr. Witness since you executed two documents for the twenty-eight cases of textile materials for the storage of said material at LPSC's warehouse, please refresh your memory and say, if you know, whether the twenty cases of embroidery and striped suiting materials that you allegedly delivered to LPSC on January 17, 1980, similarly documents for the storage of those goods were executed on the 17th of January, 1980?

A. What I know is if you want to transfer goods from the Freeport of Monrovia to Scanship (Liberia) bonded warehouse, you have to pass two entries, one for the customs duty and one for the bonding of the goods delivery check and the driver who brought that goods from the Freeport (sic) to the bonded warehouse, and I remember that time we reached with the goods to the bonded warehouse was at 12:00 noon on that day. We asked the watchman to open the gate to cross the goods and he said that the time was 12:00 noon and I had to wait until 2:00 p.m. before the gate was opened; the driver who brought the goods told me that if I kept the goods in his truck he is to make me pay double money. I was then compelled to give the gatekeeper \$10.00 and I went to the French man who was Manager at the time and explained to him what the driver told me and he then told his people to open the gate for me. The gate was opened and I myself, the driver and the delivery clerk went to the yard of the warehouse and the goods were put in the warehouse. From that time I gave my copy to the customs and I went back to the business. I do not remember giving any paper besides that.

Q. From the answer you have just given, it is suggested that you did not issue any paper for the storage of the twenty cases in question. But in the past, that is, in October 1979, you issued paper to LPSC. Why since it was 12:00 noon on that day and the driver told you that if you kept the twenty cases in his truck you will pay additional money to him and because of that you discharged the consignment to the warehouse of LPSC, that you did not go back to get a proper document as you did in October 1979?

A. I do not remember in October 1979 if they gave me any document or signed any document or not. But when I carried the goods on January 17, 1980, I did all necessary things such as bonded entry, customs entry, warehouse receipts, transferred tally and bonded tally.

Q. So the French man who was manager at that time did not sign any paper and give you for the goods, that is, the twenty cases in question that you allegedly delivered to LPSC's warehouse?

A. Because that time was 12:00 noon and I cannot remember that there is a signature on the delivery tally."

From the questions and answers *supra*, we gather that the Appellee himself went to the warehouse at the Freeport of Monrovia and took delivery of the twenty cases of goods in

question and according to him, had said goods rewarehoused in appellants' bonded warehouse. We also understand from these answers that despite the fact that the management of LPSC was in office and had ordered the gate to be opened for appellee to take the goods in, and according to him he entered and delivered the goods at the appellants' bonded warehouse, appellee did not obtain any document to show that he delivered said goods to the bonded warehouse of the appellants; instead, he "could not remember". Nevertheless, let us take recourse again to appellee's exhibits "A" and "B" to his complaint and other documents to which reference was made.

Appellee's species of written evidence are: (1) A copy of rewarehousing entry and warehouse delivery tally; (2) copies of National Port Authority delivery tallies nos. 14049 and 14050, all of which are related to the twenty cases of the goods in question, bearing date January 17, 1980. Although appellee was physically present at the Freeport and took delivery of his consignment from the customs warehouse on January 17, 1980, the National Port Authority delivery tallies which are required to be signed by the consignee or a person duly authorized, are shown to bear the signature of one Isaac Swen instead of that of appellee himself, the consignee. The records do not explain why.

We made a careful perusal also of the other documentary evidence, but could not find such documents having relevance to the delivery of the twenty cases of goods to appellants' bonded warehouse on January 17, 1980, by which evidence the authorities of the bonded warehouse, would be shown to have taken delivery of said goods into their warehouse to defeat the challenge offered by intervenor in its answer, for appellee to show that the intervenor/co-appellant company did in fact take delivery of the twenty cases of goods in question to the bonded warehouse of the appellants on January 17, 1980, we find that appellee had introduced as witness the Isaac Swen who signed the National Port Authority tallies for the consignee along with the delivery tally clerk. Here is his testimony in chief and answers to some questions on the cross examination as found on sheets 5 and 6 of the minutes of court, 9 th day's session, Wednesday, March 30, 1983.

"On January 17, 1980, I and my uncle were at the Port of Monrovia carrying goods for another Lebanese and entry was given to my uncle by the plaintiff Mr. Ali for the clearing of twenty cases from warehouse No.3 to Scanship's warehouse and when he came, my uncle was engaged and could not go with him, and he sent me to do the work for him and I went to warehouse No.3 and we cleared the goods and loaded it to LPSC and when we reached there, the LPSC workers said that we go there close to their lunch period and so they were not ready to take the goods. However, the plaintiff begged them and they agreed and took the goods, that's all, and we left. I rest.

Q. When you carried the goods, according to you, you delivered them to LPSC's warehouse; what document did LPSC sign in taking the goods or what document did you sign there in delivering the goods, if you know?

A. No document is to be signed in delivering goods in the warehouse, you only sign when you are clearing goods from the bonding warehouse.

Q. So you want to tell us that you are only required to deliver goods from Freeport's warehouse to LPSC's warehouse without any documentation signed for that goods from the warehouse authority with whom you deposited the goods?

A. You will only give document and they will write on it acknowledging receipt of the goods.

Q. With this particular consignment, are you sure that the documents you took along to deposit the goods in question were signed by LPSC management and, if so, who signed for LPSC, if you can remember?

A. No, I can't remember.

Q. You said earlier that when goods are delivered to LPSC they signed the documents accompanying such goods, in that particular instance, you said that no document was signed by LPSC. Please refresh your memory and say why no documents were signed by LPSC for that twenty cases consignment?

A. Because we got there during their lunch time."

And so from this evidence, it is clear that when the alleged twenty cases were withdrawn from the customs warehouse at the Free-port of Monrovia, they were never delivered to the appellants to hold them responsible for accountability. We observe from the documentary evidence of the appellants that, on October 2 and 23, 1979, respectively, appellee delivered to the appellant's bonded warehouse twenty-eight cases of goods and signed a document for LPSC to accept the twenty-eight cases of goods as described in said document along with copies of customs entries, NPA bills of charges and delivery tallies for said goods. These documents carried the number of cases for storage at the bonded warehouse, the nature of packing, description of the goods, the value of the goods according to invoice, the allocated consignment number, with the promise of consignee to pay all charges in accordance with LPSC's current tariff and the indication that he agreed with the company's condition of warehousing.

A similar document for the January 17, 1980 goods was absent from the records, and so the twenty cases of January 17, 1980, must have gone into space between the customs warehouse and the bonded warehouse along with the consignee, appellee in this case having been physically present when the goods were in transit. We cannot therefore comprehend the parity of reasoning as to how the jury could find for the appellee and the trial court could

confirm the verdict and adjudge appellants liable in damages in the absence of any showing that the said goods were ever delivered to and received by the appellants.

Warehouse system, according to Black's Law Dictionary, "is a system of public store or warehouse, established or authorized by law, called 'bonded warehouse' in which an importer may deposit goods imported, in the custody of the revenue officers, paying storage, but not being required to pay the customs duties until the goods are finally removed for consumption in the home market, and with the privilege of withdrawing the goods from store for the purpose of re-exportation without paying any duties." It goes with what is called a warehouse receipt, which is a receipt given by a warehouseman for the goods received by him on storage in his warehouse. It is evidence of title to goods thereby represented. BLACK'S LAW DICTIONARY 17551756 (4th ed.)

Under our statute, where any goods are brought to a warehouse for rewarehousing after importation from another warehouse, the importer or owner of the goods shall make entry thereof in such form and manner and containing such particulars as the Minister shall prescribe, but otherwise the provision of law relating to warehouse goods shall apply to such goods which have been rewarehoused. Revenue and Finance Law, Rev. Code 36: 53.208 - Rewarehousing of Warehoused Goods: Applicable Code Provision. In this case, such a receipt and the entry by the consignee for the twenty cases of goods alleged to have been deposited with the appellants, together with history sheet and the storage condition sheet are all absent from the records.

There being no evidence in the records that twenty cases of goods to the value of \$15,750.00 belonging to the appellee, which he withdrew from the customs warehouse, National Port Authority, were ever delivered to and received by the appellants, it is our considered opinion that the judgement of the trial court should be, and the same is hereby, reversed with costs against the appellee. The Clerk of this Court is hereby instructed to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over this case and to give effect to this opinion. And it is hereby so ordered.

Judgment reversed.