

Docket No. 103562.

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

JOHN BUENZ, as Special Adm'r of the Estate of Olga L. Buenz, Deceased, v. FRONTLINE TRANSPORTATION COMPANY *et al.* (Frontline Transportation Company, Appellant; China Ocean Shipping Company Americas, Inc., Appellee).

Opinion filed January 25, 2008.

JUSTICE GARMAN delivered the judgment of the court, with opinion.

Justices Fitzgerald, Karmeier and Burke concurred in the judgment and opinion.

Chief Justice Thomas and Justices Freeman and Kilbride took no part in the decision.

OPINION

On October 1, 2003, Olga Buenz was involved in a multiple-vehicle traffic accident that resulted in her death. Twelve separate actions were filed by various plaintiffs and later consolidated. Each action named China Ocean Shipping Company Americas, Inc. (COSCO), and Frontline Transportation Company (Frontline) as defendants. Plaintiff John Buenz, Olga's husband, filed a wrongful-death action alleging negligence on the part of defendants COSCO,

Frontline, and Vincente A. Zepeda, Frontline's alleged employee and the driver of the tractor-trailer that Buenz alleges caused the accident.

In June 2004, COSCO filed a counterclaim against Frontline and Zepeda. Count IV of this counterclaim sought a declaration that Frontline be obligated, pursuant to express contractual terms set forth in an equipment interchange agreement, to indemnify COSCO for "any and all costs, expenses, damages, and liability *** in the Buenz litigation." COSCO moved for and was granted summary judgment on this count by the circuit court of Cook County.

In addition to granting the motion for summary judgment, the court entered a written finding pursuant to Rule 304(a) that there was no just reason to delay appeal or enforcement of the judgment. 210 Ill. 2d R. 304(a). Subsequently, the court specified that its order applied to all pending consolidated cases. It is undisputed that the meaning and legal effect of the equipment interchange agreement is identical in each case.

After its motion to reconsider was denied, Frontline appealed. The appellate court affirmed and remanded. 368 Ill. App. 3d 10. Frontline then petitioned for and was allowed leave to appeal to this court pursuant to Rule 315 (210 Ill. 2d R. 315).

BACKGROUND

John Buenz's complaint alleged that a tractor-trailer operated by Zepeda, a Frontline employee, struck a minibus in which his wife Olga was a passenger, causing her death. The complaint further alleged that COSCO "owned and/or owned a leasehold on, maintained, and/or controlled the trailer and/or container which were part of the tractor trailer" driven by Zepeda. While the complaint alleged that Frontline committed various negligent acts which caused the accident and the death of Olga Buenz, it also alleged that COSCO committed several negligent acts that contributed to the accident. These acts and omissions included COSCO's permitting the tractor and/or container to be used and operated when it knew or should have known that it was not in safe operating condition; permitting the trailer to be used and operated when it knew or should have known that it was not equipped with proper brakes; and failing to inspect and repair the trailer.

