

**FIREMAN'S FUND INSURANCE COMPANY,
PLAINTIFF-APPELLANT, VS. COMPAÑIA GENERAL DE TABACOS DE
FILIPINAS, AND/OR MANILA PORT SERVICE AND/OR MANILA
RAILROAD COMPANY, DEFENDANTS-APPELL...**

G.R. No. L-22625. April 27, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal from the decision of the Court of First Instance of Manila, in its Civil Case No. 54284, dismissing, for lack of jurisdiction, the complaint of the plaintiff-appellant Fireman's Fund Insurance Company against the Manila Port Service and Manila Railroad Company, as alternative defendants with Compañia General de Tabacos de Filipinas.

On 15 May 1962, the International General Electric Co., U.S.A., of which the Compañia General de Tabacos de Filipinas was the agent in the Philippines, shipped at the port of New York fifteen (15) cartons on board the ocean vessel "Susan Maersk". The shipment, valued at \$1,722.19 was consigned to the order of the First National City Bank of New York, Manila, with arrival notice to the General Electric Company (P. I.) and was insured by the plaintiff Fireman's Fund Insurance Company against loss or damage.

On 17 June 1962, the vessel arrived in Manila, unloaded its cargo and allegedly delivered the cartons, 2 of them in bad order, to the arrastre operator, the defendant Manila Port Service, a subsidiary of the Manila Railroad Company. In turn, the Manila Port Service delivered the goods to the consignee but short of one (1) carton, with a value of \$390.72 (Case No. 6652) while another one was short of contents, with a value of \$9.84 (Case No. 218).

The consignee filed formal claims with the carrier's agent, Compañia General de Tabacos de Filipinas, with the arrastre operator, Manila Port Service and with the insurer, Fireman's Fund Insurance Company (through its agent, E.E. Elser, Inc.) for the insured value of the loss. The carrier rejected the claim on the ground that it had discharged the shipment complete from the vessel; however, it sent a communication on 4 October 1962 to the consignee, advising that Case No. 6652 "was discharged against clean tally sheet #6353" and that the claim should be referred to the arrastre operator and the underwriters. The carrier requested that the consignee's claim be amended on Case No. 218 only; but the consignee did not heed the requested amendment. On the part of the arrastre operator, it contended that one case was not landed, and refused to pay. The plaintiff-insurer, through E.E. Elser, Inc., paid the claim at the dollar-peso conversion rate in the sum of P1,898.66.

On 17 June 1963, the plaintiff, as subrogee to all rights of recovery in connection with the loss that it had insured and paid, filed an action in the Court of First Instance of Manila against the carrier and the arrastre operator as alternative defendants, claiming that it was uncertain as to which of them is liable for the lost cargoes.

After trial, the lower court rendered its decision dismissing the complaint against the Manila Port Service and Manila Railroad Company for lack of jurisdiction over the subject matter of the action as against said

defendants; but sentenced the defendant Compañia Ge-neral de Tabacos de Filipinas to pay the plaintiff the sum of P38.25, with interest.

Not satisfied with the decision, the plaintiff interposed the pre-sent direct appeal.

The sole issue in this case is whether or not the Court of First Instance of Manila has jurisdiction over the subject matter of the ac-tion insofar as the defendants Manila Port Service and Manila Rail-road Company are concerned and considering that the amount demanded in the complaint is only P1,898.66, considering that these defendants were joined as alternative defendants with a carrier of goods by sea, the Compañia General de Tabacos de Filipinas.

We agree with plaintiff-appellant that the Court below erred in dismissing its action against defendants Manila Port Service and the Manila Railroad Company. Not only because Section 13 of Rule 3 permits it, in case of uncertainty, to sue several defendants in the alternative, but also because Section 5, Rule 2 of the Rules of Court permits a joinder of causes of action in the alternative, or otherwise, if said causes of action arise out of the same contract, transaction or relation between the same parties. Furthermore, the second para-graph of the last cited provision prescribes that in the cases afore-mentioned -

"the action shall be filed in the inferior court unless any of the causes joined falls within the jurisdiction of the Court of First Instance in which case it shall be filed in the latter court." (Emphasis supplied).

The provision of our Rules of Court accords with the American rule:

"Constitutions and statutory provisions conferring jurisdic-tion on the inferior courts of demands below certain amounts do not forbid determination of said demands in the superior court where they are connected with larger claims or with type of demand solely within the jurisdiction of the superior court." (21 C.J.S., p. 81.)

The Court below admitted that the action for damages to Case No. 218 was within its jurisdiction since it involved an issue in admiralty; wherefore, it must be held to have likewise acquired jurisdiction over the other cause of action alternatively joined thereto.

Nor is the suit filed by plaintiff in the Court of First Instance with-out precedent in this country. The same issue, on practically iden-tical facts, was posed in Switzerland General Insurance Co., Ltd. vs. Java Pacific and Hoegh Lines and the Manila Railroad Company, G.R. No. L-21760, decided on 30 April 1966. After referring to section 5, Rule 2, jam. cit., this Court observed:

"As may be seen, the instance case comes within the purview of the rule above-quoted for therein it is postulat-ed that a party may in one pleading state in the alterna-tive as many causes of action as he may have against an opposing party if they arise from the same transaction with the particularity that the case may be filed in the court of first instance if any of said causes of action falls exclusively within its jurisdiction. This is pre-cisely what was done in this particular case. Because of the uncertainty of the place where the disappearance of the shipment occurred, plaintiff brought the case in the alternative before the court of first instance upon the theory that it may have occurred while the shipment was in transit or while in the custody of the arrastre operator.

"This case also finds support in International Harvester Company of the Philippines v. Aragon, et al., 84 Phil. 363. In said case, the complaint was filed in the municipal court against both the shipping company as agent of the vessel on which the shipment was loaded and the Manila Railroad Company, Inc. as alternative defendants, seeking to recover the sum of P200.00 as value of the undelivered goods, it being uncertain whether said cargo was lost at sea or while in storage at the Port of Manila. In affirming the dismissal of the case this Court stated that the munic-ipal court had no jurisdiction over the same because it is predicated on the contract of carriage by

sea which falls within the exclusive jurisdiction of the court of first instance. And reasoning by analogy, we may say that the instant case also falls exclusively within the jurisdiction of the Court of First Instance of Manila upon the theory that the loss or disappearance of a portion of the shipment may have taken place during the voyage and hence it involves a maritime case which falls within the original jurisdiction of said court. The fact that the amount sought to be collected is less than its jurisdictional limit is of no moment, because the cause of action being indivisible, covering as it does laws on ordinary as well as maritime contract, such jurisdictional limitation as to amount must yield to the greater jurisdiction of the court as to subject matter for reasons of expediency and convenience."

The foregoing ruling was reiterated in *Rizal Surety vs. Manila Railroad Co.*, G.R. No. L-20875, 30 April 1966, and in *Insurance Company of North America vs. United States Lines Company*, G.R. No. L-21021, decided on 27 May 1966.

To be sure, the Court below declared that the consignee or its successor in interest could have easily verified the disclaimer of the agents of the vessel as to the loss of case No. 6652, "by asking for the particular cargo receipt which had been signed by the arrastre contractor and would therefore be binding upon it." This would only be true on the assumption that the cargo receipt was authentic, and in view of the denials of the arrastre operator that it had received case No. 6652, or that the same had been landed, the consignee was not in a position to be certain that the receipt was genuine, or that the arrastre operator would recognize its authenticity. The plaintiff's uncertainty, therefore, remained and justified it in suing both the carrier and the arrastre operator in the alternative as authorized by the Rules of Court.

And, it appearing that the Manila Port Service has had no opportunity to submit its own evidence as to its receipt of case No. 6652, a rehearing of the case is in order.

WHEREFORE, the decision appealed from is hereby reversed and set aside, and the Court of First Instance is directed to overrule the motion to dismiss of the defendants Manila Railroad Company and Manila Port Service, and to proceed further with the case in conformity with this decision. Costs against the defendants above named.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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