

THE AMERICAN INSURANCE CO., PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE AND MANILA RAILROAD COMPANY, DEFENDANTS AND APPELLANTS.

G.R. No. L-22780. February 18, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

A shipment of 146 pails of ceramic colors was discharged in good order from the carrier S/S "Pioneer Myth" and received into custody by the arrastre operator Manila Port Service on December 21, 1960. On the same day, a provisional claim in connection therewith was filed with the arrastre operator on behalf of the consignee San Miguel Brewery, Inc.

Subsequently, the arrastre operator delivered to the consignee only 141 pails of ceramic colors; and of these, 18 pails were in damaged condition and short of contents.

A formal claim was then filed with the arrastre operator on February 8, 1961 by the consignee, for the damages and partial non-delivery. Receipt of this formal claim was acknowledged by the Manila Port Service; but no action was taken thereon until January 12, 1962.

On January 12, 1962 the arrastre operator denied the claim on the ground that there having been no suit filed in court against it within one year from the date of discharge of the last package from the carrying vessel,[1] as provided in the management contract binding upon the consignee, the claim had prescribed.

The American Insurance Co., subrogee to the consignee after having paid the latter P2,017.96 for the loss and damage it sustained, filed suit on October 26, 1962 in the City Court of Manila against the Manila Port Service (MPS) and the Manila Railroad Company (MRR), the former being a subsidiary of the latter.

After trial, the City Court ordered the defendants to pay P1,196.47 with interest and attorney's fees.

The defendants, however, appealed to the Court of First Instance. And the CFI thereafter rendered a decision on February 20, 1964, absolving the defendants, stating as reason that the formal claim was filed on February 8, 1961 and reckoning this as more than one year from the date of discharge of the goods on December 21, 1960.

Rectifying itself, the Court of First Instance on March 14, 1964, amended its decision; finding that the formal claim was filed only 49 days after the date of discharge of the goods, it ordered the defendants to pay P1,196.47, plus interest and costs.

From this the defendants appealed to Us directly, raising as questions the timeliness of the claim and the alleged prescription of the suit.

It is true that Section 15 of the Arrastre Management Contract requires the filing of a claim with the arrastre operator within 15 days from the date of discharge of the last package from the carrying vessel. The date in this case is December 21, 1960. Now, the record shows that there was filed on that same day a provisional claim with

the arrastre operator. A provisional claim seasonably filed is sufficient compliance with the aforesaid proviso in Section 15 of the Management Contract (State Bonding & Insurance Co. vs. Manila Port Service, L-21833, Feb. 28, 1966; Yu Kimteng Construction Corp. vs. MRR, L-17027, Nov. 29, 1965).

Appellants would further contend, as they did below, that even with the filing of a claim on time, the arrastre operator is released because of failure to bring the suit in court within the one-year period stated also in Section 15 of the aforementioned contract. This provision says:

"* * * in any event, the contractor [MPS] shall be relieved and released of any and all responsibility or liability for the loss, damage, misdelivery and/or non-delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one year from the date of discharge of the goods or from the date when the claim for the value of such goods has been rejected or denied by the contractor".

Respecting this portion of the contract, this Court had occasion to elucidate in *Consunji vs. MPS*, 110 Phil. 231, as follows: "It is clear that the paragraph, while imposing a condition precedent to the filing of any suit for losses, at the same time gave demandant (who has filed the claim) the option either to bring his action (in one year) without waiting for the contractor's resolution on this claim or to wait for such resolution and then sue if it is unfavorable (in one year)."

And pursuing the same interpretation, this Court further clarified the point in two subsequent cases: *Continental Insurance Co. vs. MPS*, L-22208, March 30, 1966; and, *Delgado Bros. vs. MPS*, L-21781, June 30, 1966. Said this Court in the *Delgado* case, reiterating the holding in the *Continental* decision: "When the arrastre operator fails to act on the claim within a period of one year from the date of discharge of the goods, the claim must be deemed rejected as of the expiration of one year from the date of discharge of the last package or cargo, in which case the action should be filed within one year from said rejection".

Since the same circumstances obtain in the present case as those in the *Continental* and *Delgado* cases, namely, the arrastre operator led the demandant to believe that its claim would be considered, that is, decided upon its merits, the latter had the right to await the former's decision on its claim before resorting to the courts. For the same reason, the MPS, after positively giving the impression that it would resolve the merits of the claim, cannot sit thereon, wait for the lapse of one year from discharge of the goods, and thereafter deny the claim upon the premise that no suit was filed in court by the demandant within said period of one year.

Applying the rulings in the aforementioned decisions of this Court, We find that the suit in court in the present case was seasonably filed—on October 26, 1962—within one year from the date of rejection of the claim—on December 21, 1961—since in this case the claim should be deemed rejected upon the lapse of one year from the discharge of the goods from the vessel on December 21, 1960.

Apart from the foregoing questions on the requisites under the provisions of Section 15 of the Contract, defendants-appellants do not dispute their liability for the damage to and shortage in the goods.

Wherefore, the decision appealed from, ordering defendants solidarily to pay plaintiff-appellee P1,196.47, with interest at the legal rate from the date of filing of the complaint until fully paid, and the costs, is hereby affirmed—Costs against appellants. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Decision affirmed.

[1] December 21, 1960, as afore-said.

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