

BENITO CHUA KUY, PETITIONER, VS. EVERRETT STEAMSHIP CORPORATION, RESPONDENT.

G. R. No. L-5554. May 27, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of the decision of the Court of Appeals dated February 15, 1952 affirming that of the Court of First Instance of Manila which holds that the action of petitioner "has already been barred by operation of law."

The pertinent facts of this case as found by the Court of Appeals are:

"It appears from the evidence that prior to January 6, 1947, the plaintiff placed with the indenter Cumberco and Sons an order for 500 cases of evaporated milk of 96 babies. The indenter bought the merchandise for the plaintiff from the Columbia Pacific Distributing Company of Portland, Oregon, and its purchase price, or the sum of \$3,825, including the freight charges therefor amounting \$127.94, were paid by the plaintiff to said company through the China Banking Corporation of Manila. On January 6, 1947, the Columbia Pacific Distributing Company loaded at the port of Portland, Oregon, on board the S/S H. H. Raymond of the American Mail Line, Ltd., consigned to the order of the China Banking Corporation and Min Sheng Trading, Manila, a quantity of goods described in the bill of lading as follows:

Loading

Description of goods

Gross weight

Measurement cu. ft.

MTCO

500 Cases evaporated milk 96 babies loaded on board, January 6, 1947.

(Sgd.) Illegible

11,500

500

"The S/S H. H. Raymond arrived at the port of Manila on February 21, 1947, discharged the cargo covered by the above bill of lading and delivered it to the custody of the Manila Terminal Company. On February 26, 1947, the Manila Terminal Company delivered the cargo to Min Sheng Trading, through the Serrano Transportation, a local broker, under a receipt of the following tenor:

Received from the Serrano Transportation the following merchandise in good order and condition:

Marks & No. of packages

Contents

Remarks

MTCO

Manila 500

Ctns. Evap. Milk

(48 Babies)

CPH, 62026

(Exh. "B")

Five hundred only

When the contents of the cases were unpacked, the plaintiff discovered that the cargo delivered to him consisted of 500 cases of 48 babies of evaporated milk, and not 96 babies as ordered by him. The plaintiff immediately gave notice to the defendant of the shortage in the cargo delivered, and later on filed with the latter a formal claim for said loss which amounted to P3,911.06. Certain negotiations for the amicable settlement of the matter having failed, this action was instituted on May 7, 1948."

The main issues raised in this appeal are: (1) Whether the Carriage of Goods by Sea Act is applicable to this particular case, as claimed by respondent, or the same should be governed by the Code of Commerce or other laws, as claimed by petitioner; (2) Whether the action of petitioner has already prescribed; and (3) Whether respondent should pay the indemnity claimed in the complaint.

(1) The Carriage of Goods by Sea Act was enacted by the United States Congress on April 16, 1936 (46 U.S.C.A. 1300). Section 13 of said Act provides that it shall apply "to all contracts of carriage of goods by sea to or from ports of the United States in foreign trade". The term "United States" was therein defined as including its districts, territories and possessions.

When said Act was enacted by the United States Congress the political status of the Philippines was then a Commonwealth Government and, therefore, was a territory of the United States. In view of the particular relations then existing between the United States and the Philippines, Congress gave the latter the choice of making or not making the provisions of said Act applicable to transportation to or from ports of the Philippines by inserting in section 13 thereof a proviso to the effect that "the Philippine Legislature may, by law, exclude its application to transportation to or from ports of the Philippine Islands". The Commonwealth Government, however, elected to accept and make applicable to the Philippines said Act through Commonwealth Act No. 65 approved on April 22, 1936, wherein it was provided (section 1) that the provisions of the Carriage of Goods by Sea Act are "hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade; Provided, That nothing in this Act shall be construed as repealing any existing provisions of the Code of Commerce which is now in force, or as limiting its application".

In view of the fact that section 13 of the Carriage of Goods by Sea Act provides, among other things, that "Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions," petitioner now contends that said Act cannot apply to the contract for carriage of the goods in question because at the time said Act was made applicable to the Philippines the latter was still a possession or territory of the United States. In other words, it is contended that the Act has application only to

transportation of goods in foreign trade, or between ports of the United States and ports of foreign countries, and since the Philippines was not a foreign country at that time, it does not come within the purview of said Act, unless proper amendment is previously made in the law.

Granting *arguendo* that the Philippines was a territory or possession of the United States for the purposes of said Act, a different situation obtained after it had become an independent state on July 4, 1946, which eventuality fully places it within the purview of said Act. If before its declaration of independence, the trade relations between the Philippines and the United States could only be considered in a domestic sense, after it had become independent said trade relations must have of necessity acquired the character of foreign within the meaning of said Act. And there is no need of an express legislation to have the provisions of said Act applicable to the Philippines upon the advent of independence, as claimed by petitioner, for the simple reason that, foreseeing that eventuality, our legislative body, in enacting Commonwealth Act No. 65, already provided therein that said provisions should be made applicable "to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade." This express proviso clearly paves the way for the application of the Carriage of Goods by Sea Act to all contracts from Philippine ports to other foreign countries, including the United States. We therefore find that the Court of Appeals did not err in holding that Act applies to the transaction under consideration.

(2) Having arrived at the foregoing conclusion, the next question to consider is whether the present action has already prescribed. To answer this question we need to resort to the provisions of said Act which, as already stated, applies to the present case. Section 3, subsection 6, of this Act provides in part.

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."

There is no dispute in the evidence that the cargo in question was brought to the City of Manila, Philippines, from Portland, Oregon, U.S.A., on board a foreign ship; that the cargo was unloaded at the port of Manila and delivered to petitioner on February 26, 1947; that the alleged shortage in the cargo was discovered by petitioner on the same date and notice thereof was given to respondent, as local agent of the owner of the ship, also on the same date; and that this action was commenced only on May 7, 1948, or after the lapse of one year, two months and nine days from the delivery of the goods to petitioner. Considering that, under the provision above-quoted, an action for recovery of loss or damage in connection with certain cargo can only be brought against the carrier within one year after delivery of said cargo, it would seem evident that the action of petitioner has already prescribed.

Petitioner, however, contends that the prescriptive period embodied in the Carriage of Goods by Sea Act has no application to the case at bar because the period of prescription that should be considered is that embodied in the Code of Civil Procedure, which repealed the provisions of the Code of Commerce on the subject, and because, even assuming that the Carriage of Goods by Sea Act applied to this particular transaction, the prescriptive period provided therein could not apply to petitioner upon the theory that "such time-bar applies to the shipper only, and not to a person other than the shipper." In other words, it is contended that, under said Act, the action to recover loss or damage can only be brought by the shipper and not by any other person interested in the transaction.

The claim that the prescriptive period to be considered in this case is that embodied in the Code of Civil Procedure is untenable for the simple reason that this is a general law which only applies to cases not covered by any special act. As we have already stated, the transaction under consideration is covered by the Carriage of Goods by Sea Act, and since this is a special act, its provisions must necessarily limit or restrict a law of general application. To hold otherwise would be to render nugatory the prescriptive provision contained in that special

Act.

Neither do we find tenable the claim that the prescriptive period contained in said act can only be invoked by the shipper, excluding all other parties to the transaction. While apparently the proviso contained in the portion of section 3(6) of the act we have quoted gives the impression that the right to file suit within one year after delivery of the goods applies to the shipper alone, however, reading the proviso in conjunction with the rest of section 3(6), it at once becomes apparent that the conclusion drawn by petitioner is unwarranted. In the first place, said section provides that the notice of loss or damage for which a claim for indemnity may be made should be given in writing to the carrier at the port of discharge before or at the time of the removal of the goods, and if the loss or damage is not apparent said notice should be given "within three days of the delivery." From the language of this section, it seems clear that the notice of loss or damage is required to be filed not necessarily by the shipper but also by the consignee or any legal holder of the bill of lading. In fact, said section requires that the notice be given at the port of discharge and the most logical party to file the notice is either the consignee or the endorsee of the bill of lading. In the second place, a study of the historical background of this particular provision will show that although the word shipper is used in the proviso referred to by petitioner, the intention of the law was not to exclude the consignee or endorsee of the bill of lading from bringing the action but merely to limit the filing of the same within one year after the delivery of the goods at the port of discharge. [The Southern Cross, 1940 A. M. C. 59 (SDNY); Lindgren vs. Farley, 1938 A. M. C. 805 (SDNY)].

Arnold W. Knauth, an eminent authority on admiralty, commenting on this proviso, says:

"The American Act contains an added proviso, which is not found in any other Hague Rules text, intended to clarify the foregoing. This was one of the American amendments agreed to at the 1930 Chamber of Commerce Conference. It provides, in addition to the text of the Rules, that

"If a notice of loss or damage, either apparent or concealed is not given as provided for in this section, the fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."

It seems evident that this language does not alter the same of the text of the Hague Rules; it merely reiterates in another form the rule already laid down. Curiously, the proviso seems limited to the rights of shippers, and might strictly be construed not to give any rights to consignees, representatives, or subrogated parties; whereas the Hague Rules phraseology is broader. As the Act contains both phrases, it would seem to be as broad as the broader of the two forms of words." (Ocean Bills of Lading, by Knauth, p. 229.)

Petitioner finally contends that the negotiations between petitioner and respondent conducted with a view to reaching an amicable settlement between them and which caused the delay in the filing of the present action constitute a waiver on the part of respondent to set up the prescriptive period or operates as an estoppel on his part to rely on such prescriptive period to the prejudice of petitioner. This contention is also untenable. The rule is well-settled that a mere proposal for arbitration or the fact that negotiations have been made for the adjustment of a controversy, even if the proposal is not acted upon, or the adjustment is not carried out, does not suspend the running of the period of prescription, unless there is an express agreement to the contrary. Here there is no such agreement.

"The mere pendency of negotiations for the adjustment of a controversy does not suspend the statutory prescription against an action on the claim involved. Where the negotiations result in an agreement to submit a controversy to the attorneys of the respective parties for them to advise a plan of settlement, but the attorneys do not act on such agreement, limitations are not tolled during the period of submission in the absence of a provision of the agreement specifically tolling limitations, and the mere fact that there are negotiations with a view of referring a disputed matter to arbitrators does not suspend the running of the statute, there being no

express agreement to suspend legal remedies to await the issue of the negotiation." (54 C. J. S., pp. 284-285.)

Having reached the foregoing conclusion, the other issues raised by petitioner need not be considered.

Wherefore, the decision appealed from is hereby affirmed, with costs against petitioner.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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