

**INSURANCE COMPANY OF NORTH AMERICA,
PLAINTIFF-APPELLANT, VS. DELGADO BROTHERS, INC.,
DEFENDANT-APPELLEE.**

G.R. No. L-15156. March 30, 1962

Ponente: DIZON, J.

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DIZON, J.:

On January 24, 1957 the appellant, Insurance Company of North America, a foreign insurance corporation duly licensed to do business in the Philippines, commenced the present action (Civil Case No. 31655) in the Court of First Instance of Manila to recover from Delgado Brothers, Inc., as arrastre contractor for the Port of Manila, the sum of P368.38 representing the value of an alleged short delivery of 14.3 kilograms of dental cream flavor. The complaint alleged that on or about November 17, 1955, the Colgate Palmolive Company shipped at New York, U.S.A., for Manila, Philippines, on board the SS Femfield of the Barber Steamship Lines, Inc., and consigned to the Colgate Palmolive Philippines, Inc., Manila, Philippines, "23 drums of dental cream flavor weighing 5,188 kilos" for which the Barber Steamship Lines, Inc. issued Bill of Lading No. 70. The shipment was insured by the consignee with the appellant. Upon its arrival at the Port of Manila on December 25, 1955, the shipment was unloaded and placed in the custody of the appellee who, in turn, delivered it to C. M. Cansipit, Inc.—customs broker—"short of from Drums Nos. 5978, 5996 and 5931, the aggregate amount of 14.3 kilograms of dental cream flavor, with a total value of \$182.82 or at P201.50 per \$100.00, P368.38", for delivery—as it was actually delivered to the consignee. When the latter filed its claim for the loss, appellant, as insurer, paid the same, and subsequently demanded reimbursement from the appellee. As the latter refused to pay or make the reimbursement, J the present action was instituted.

Appellee's answer denied the material allegations of the complaint and alleged several special defenses. However, on December 18, 1957 appellee filed a motion to dismiss the complaint on the ground that the action was not one in admiralty and was therefore within the original exclusive jurisdiction of the Municipal Court of Manila, as the amount involved was only P368.38. After due hearing on this motion, the court dismissed the case, with costs against appellant. Hence this appeal.

This case is on all fours with *Insurance Company of North America vs. Manila Port Service and/or Manila Railroad Company* (G. R. No. L-16573, promulgated November 29, 1961) and *Macondray & Company, Inc. vs. Delgado Brothers, Inc.* (107 Phil., 779). In the latter we said, *inter alia*:

"The case at bar does not deal with any maritime matter or with the administration and application of any maritime law. As custodian of the sixty-eight (68) cartons of paints it had received from the MS Pleasantville, it was defendant's duty, like that of any ordinary depository, to take good care of said goods and to turn the same over to the party entitled to its possession, subject to such qualification as may validly been imposed in the contract between the parties concerned. Such duty on the part of the defendant would be the same if the final destination of the goods were Manila not Iloilo, and the goods had not been imported from another state. The only issues raised in the pleadings are (1) whether or not defendant had fully discharged its obligation to

deliver the aforesaid sixty-eight (68) cartons of paint; and (2), in the negative case, the amount of indemnity due the plaintiff therefor. The determination of those questions does not require the application of any maritime law and cannot affect either navigation or maritime commerce. The foreign origin of the goods if—under the attending circumstances—immaterial to the law applicable to this case or the rights of the parties therein, or the procedure for the settlement of their disputes. Indeed, it is well settled that—

" 'In case of controversy involving both maritime and non-maritime subject matter, where the principal matter involved belongs to the jurisdiction of a court of common law or of equity, admiralty will not take cognizance of incidental maritime matters. connected therewith but will relegate the whole controversy to the appropriate tribunal.' (2 C.J.S. 66)" (*Italics supplied*).

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" 'To give admiralty jurisdiction over a contract as maritime, such contract must relate to the trade and business of the sea; it must be essentially and fully maritime in its character; it must provide for maritime services, maritime transactions, or maritime casualties.' (The James T. Furber, 129 Fed. 808, cited in 66 L.R.A. 212; *Italics supplied*)."

WHEREFORE, the order appealed from is affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, and De Leon, JJ., concur.

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