

THE SWEDISH EAST ASIA CO., LTD., PETITIONER, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, RESPONDENTS.

G.R. No. L-26332. October 26, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition for review of the decision of the Court of Appeals in CA-G.R. 34279-R, entitled "The Swedish East Asia Co., Ltd. vs. Manila Port Service, et al."

The petitioner, The Swedish East Asia Co., Ltd., a corporation duly organized and existing under the laws of Sweden with principal offices at Gothenburg, Sweden, is admittedly not licensed to do business in the Philippines.

On December 3, 1967 the MS "SUDAN," owned and operated by the petitioner, arrived at the port of Manila and discharged car-go destined thereto unto the custody of the respondent Manila Port Service, a subsidiary of the respondent Manila Railroad Company, contractor and operator of the arrastre service of the port of Manila. By mistake, cargo destined for Hongkong consisting of sixteen bundles of "lifts of mild steel tees window sections" covering which the petitioner had issued a bill of lading in the name of S.A. Citals Lodelinsart, as shipper, and of Welmore Trading Co. of Hongkong, as consignee, were also landed at Manila. The erroneous discharge was obviously engendered by the fact that the same ship on the same day discharged forty similar bundles destined for consignees in the Philippines.

Vicente Pacheco, claims manager of the International Harvester McCleod and Company, the petitioner's agent in Manila, upon being notified by letter from Hongkong of the erroneous discharge, sent the company's customs men to investigate, who found the sixteen bundles at the customs piers. Pacheco then instructed their customs men to arrange for the reshipment of the sixteen bundles to Hongkong and accomplish all necessary papers for payment of customs, arrastre and storage charges due on the goods, which charges were as a matter of fact paid by the petitioner. However, the reshipment of all the sixteen bundles was not effected, because only eight of these were available at the time that all were scheduled to be loaded on board the M.S. "Minikoi" bound for Hong-kong, as the remaining eight could not be found. After an exchange of letters between Pacheco and the Manila Port Service, in the last of which the latter advised the International Harvester of its inability to locate the eight missing bundles, the petitioner, on January 10, 1958, presented a formal claim for the value of the missing cargo to the Manila Port Service in the sum of P2,349.62. On March 8, 1960 the petitioner received a letter from the respondents rejecting the claim.

On March 13, 1961 the petitioner filed a complaint in the Court of First Instance of Manila, for recovery of the amount of P2,349.62, the value of the missing goods, which sum it had paid to the consignee in Hongkong, as well as the amount of P2,000 in moral damages and P1,000 as attorney's fees, and costs.

On April 29, 1964, after due trial, the lower court rendered judgment ordering the respondents, jointly and severally, to pay the petitioner the sum of P2,349.62, with interest thereon at the rate of 6% per annum from March 13, 1961, the date of the filing of the complaint, and the sum of P600 as attorney's fees, plus costs.

From this judgment, the respondents interposed an appeal to the Court of Appeals, which on April 30, 1966 promulgated its decision reversing that of the lower court and absolving the respondents.

Hence, the present recourse.

The petitioner contends in this appeal that the Court of Appeals erred "(1) in holding that the obligation of the Manila Port Service to a non-resident consignee of cargo not destined for Manila but mistakenly discharged at Manila is governed by its management contract with the Bureau of Customs and not by article 2154 of the Civil Code of the Philippines; (2) assuming arguendo that the management contract of the Manila Port Service with the Bureau of Customs governs the obligations of respondents and is binding on petitioner, in holding that a claim filed thirty-eight days after the discharge of the cargo but within fifteen days from the time the cargo was placed at the disposal of the consignee is time-barred; and (3) in not holding that suit against the Manila Port Service for loss of cargo may be filed within one year from notice of the rejection of consignee's claim."

The Court of Appeals held that the petitioner's action in the lower court was time-barred, its claim having been filed only on January 10, 1958, or thirty-eight days from December 3, 1957, when the cargo in question was landed at the port of Manila, and court action having been commenced only on March 13, 1961, or more than three years thereafter, in violation of the provisions of the management contract between the Manila Port Service and the Bureau of Customs, which, in part, reads:

"x x x in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery and/or non-delivery of goods unless suit in the court of proper jurisdiction is brought within a period of one (1) year from the date of the discharge of the goods, or from the date when the claim for the value of such goods have [sic] been rejected or denied by the CONTRACTOR, provided that such claim shall have been filed with the contractor within 15 days from the date of discharge of the last package from the carrying vessel x x x."

The petitioner argues that the cases cited by the Court of Appeals, on the basis of which it absolved the respondents from liability, are not applicable to the case at bar, because the said cases involved cargo destined for the Philippines, and the consignees are residents of the Philippines who availed themselves of the services of the customs arrastre operator. These conditions, the petitioner states, do not exist in the present case as (1) the cargo herein involved was destined not for Manila but for Hongkong, (2) the consignee is not a resident of the Philippines, (3) the cargo was mistakenly discharged at Manila unto the custody of the arrastre operator, and (4) the consignee cannot be said to have availed itself of the services of the arrastre operator.

Admitting that the Hongkong consignee of the cargo involved is not bound by the management contract, for the reason that it was not charged with notice of the provisions thereof, the respondents nonetheless maintain that the petitioner is bound thereby, because the petitioner had been transacting business with the respondents regularly in the past and is charged with knowledge of the provisions of the management contract. They further argue that since it was the petitioner, and not the consignee, which had mistakenly delivered the goods, there could be no subrogation in favor of the petitioner entitling it to invoke in its favor the non-applicability of the management contract to the consignee.

It is our view that the position taken by the petitioner is correct. True it is that this Court has held in a number of cases that it is not only the parties to a management contract that are bound thereby, but also third parties who have availed themselves of the services of the arrastre operator, taking delivery therefrom in pursuance of a permit and a pass issued by the latter.^[1] The disparate facts of the present case, however, do not warrant application of this doctrine. For it is not disputed that the petitioner had no intention of availing itself of the services of the Manila Port Service, nor did it seek to derive benefit therefrom, in so far as the cargo in question is concerned. On

the contrary, its intention was to have the sixteen bundles discharged in Hongkong, pursuant to its contract with the consignee, the Welmore Trading Co., to deliver the cargo to that place. Discharge of the goods in Manila was made through mistake, in good faith.

The petitioner not being bound by the management contract either as a party thereto or as one who has taken advantage of the provisions thereof, it follows that its right to bring an action to recover the value of the missing goods can not be limited by the pre-conditions as to time set forth in the said management contract.

The respondents who had no right to the sixteen bundles delivered to them by mistake, had actually received them, thereby giving rise to an obligation on their part to return them to the one who delivered them by mistake, which, by virtue of this circumstance, acquired the character of creditor of the receiver, remaining at the same time answerable to the consignee thereof.[2] It results that the petitioner having acquired the right to demand in its own capacity the return of the shipment delivered by mistake to the respondents, this Court may grant relief to it not as subrogee of the consignee, but as creditor in its own right, in which capacity the petitioner has brought this action as shown by the allegations of the complaint considered as a whole.

In the case at bar, there is no question that the defendants received the sixteen bundles which were mistakenly discharged in Manila, as in fact they were located at the piers, and that the charges for their storage were paid by the petitioner. There was therefore an obligation on the part of the respondents to return them to the petitioner.

The defense that the agents of the shipper were negligent in allowing the landing of the cargo at Manila by mistake, will not exempt the respondents from liability, because the obligation of one who has erroneously received a thing to return the same to the one who delivered it by mistake remains unaffected by such circumstance. And this holds true even where, as in this case, the one who wrongfully delivered the thing, pays its value to the rightful owner thereof.

The foregoing disquisition dispenses with the need of passing upon the other two assignments of error.

The complaint having been filed on March 13, 1961, less than four years from the date the petitioner's right of action accrued, that is, from December 3, 1957, when the missing cargo was admittedly landed unto the custody of the defendants, the action of the petitioner has not prescribed, whether we apply article 1146 of the new Civil Code which provides for a prescriptive period of four years for an action "upon an injury to the rights of the plaintiff," or article 1149 of the same Code which provides that "all other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

The respondents challenge the petitioner's capacity to sue, it being admittedly a foreign corporation without license to engage in business in the Philippines, citing section 69 of the Corporation Law. It must be stated however that this section is not applicable to a foreign corporation performing single acts or "isolated transactions." [3] There is nothing in the record to show that the petitioner has been in the Philippines engaged in continuing business or enterprise for which it was organized, when the sixteen bundles were erroneously discharged in Manila, for it to be considered as transacting business in the Philippines. The fact is that the bundles, the value of which is sought to be recovered, were landed not as a result of a business transaction, "isolated" or otherwise, but due to a mistaken belief that they were part of the shipment of forty similar bundles consigned to persons or entities in the Philippines. There is no justification, therefore, for invoking the provisions of section 69 of the Corporation Law.

ACCORDINGLY, the judgment of the Court of Appeals is reversed, and another judgment is hereby rendered ordering the respondents, jointly and severally, to pay the petitioner the sum of P2,349.62 with interest thereon at the rate of 6% per annum from March 13, 1961, the date of the filing of the complaint, until the amount shall have

been fully paid, and the sum of P600 as attorney's fees. Costs against the respondents.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on leave.

[1] Northern Motors, Inc. vs. Prince Line, et al., L-13884, February 29, 1960; Mendoza vs. Phil. Air Lines, Inc., L-3678, February 29, 1952; Freixas & Co. vs. Pacific Mail Steamship Co., 42 Phil. 199; GSIS vs. MRR, et al., L-13276, February 25, 1961.

[2] "In its broad sense, 'implied contract' has been defined as a contract which arises by legal inference and upon principles of reason and justice from certain facts, x x x [A]n implied contract must depend on substance for its existence, and it cannot arise from nothing, such as a conjecture or a possibility; in other words, there must be some act or conduct of the party sought to be bound, from which an implied contract arises, the implication arising only from something which the party sought to be bound says or does. They are created by circumstances. An implied contract, in the proper sense, arises where the intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, or, as it has been otherwise stated, where there are circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intent to contract." (17 C.J.S. pp. 556-557) Cf. Aquino vs. Deala, 63 Phil. 582; Pomar vs. Perez, 2 Phil. 682.

[3] Marshall Wells Co. vs. Elser, 46 Phil. 70; Central Republic Bank, et al. vs. Bustamante, 71 Phil. 359.

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