

INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF AND APPELLANT, VS. PHILIPPINE PORTS TERMINALS, INC., DEFENDANT AND APPELLEE.

G.R. No. L-6420. July 18, 1955

Ponente: JUGO, J.

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JUGO, J.:

This is an appeal by the plaintiff, Insurance Company of North America from the order of dismissal entered by the Court of First Instance of Manila, dated June 30, 1952.

The facts of the case are as follows:

On May 28, 1952, the Insurance Company of North America filed a complaint against the Philippine Ports Terminals, Inc., alleging, among other things, that: the defendant Philippine Ports Trminals, Inc., was the contractor and operator of the arrastre service in the Port of Manila, and as such, was charged with the custody and care of all cargoes discharged at the government piers at Manila with the duty to deliver same to their respective owners upon presentation by the latter of release papers from the agents or owners of vessels and the Bureau of Custom;; that the plaintiff had been informed and therefore alleged that in the month of September, 1949, the steamship "PRESIDENT VAN BUREN" discharged into the custody of the Philippine Ports Terminals, Inc., one case of machine knives consigned to the Central Saw Mill, valued at least P3,796.00 but said merchandise was never delivered by the defendant to said consignee; that the defendant admits the non-delivery of the said merchandise to the consignee, Central Saw Mill, Inc., and offered to pay P500.00 for said merchandise instead of its value P3,796.00 which offer was refused; that the plaintiff Insurance Company of North America was subrogated to the rights of the Central Saw Mill, Inc., by virtue of a receipt dated October 21, 1949; and that the defendant corporation refused to pay said sum of P3,796.00. There is a claim by the plaintiff of P1,000.00 as attorney's fees.

The defendant-appellee filed a motion for dismissal on the ground that the complaint was filed after one year from the time that the cause of action accrued. The court below dismissed the complaint. The motion of dismissal was based on the provisions of Public Act No. 521 of the 74th U. S. Congress more commonly known as "Carriage of Goods by Sea Act". This Act was expressly made applicable to the Philippines by Commonwealth Act No. 65 which was approved and took effect on October 22, 1936. The pertinent provision of said "Carriage of Goods by Sea Act" regarding the time for bringing action reads as follows:

"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".

It is evident, however, that the defendant Philippine Ports Terminals, Inc., is not a carrier. Section 1 (a) and (d) of

"Carriage of Goods by Sea Act" defines the terms "carrier" and "ship" as follows:

"The term 'carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.

"The term 'ship' means any vessel used for the carriage of goods by sea."

The defendant-appellee, Philippine Ports Terminals, Inc., is neither a charterer nor a ship. Consequently the "Carriage of Goods by Sea Act" does not apply to it. However, the ordinary period of four years fixed by the Code of Civil Procedure will apply. The action in this case has been brought within that time.

In view of the foregoing, the order of the lower court dismissing the complaint is hereby reversed and the case is remanded to the court of origin for further proceedings, with costs against the appellee. It is so ordered.

Bengzon, Acting C. J., Padilla,, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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