

**INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF-APPELLEE,
VS. C.F. SHARP & COMPANY, INC., AND/OR DELGADO
BROKERAGE CORPORATION, DEFENDANTS, DELGADO BROKERAGE
CORPORATION, DEFENDAN...**

G. R. No. L-22974. October 28, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Seventy-four cases of automotive parts were shipped from Antwerp, Belgium to Manila aboard MS "Hannover." The shipment was consigned to the Manila Trading & Supply Co., and insured by Insurance Company of North America.

All the cases were received in good order, except two: (1) Case No. 70 - in which three pieces of windshield were broken; and (2) Case No. 24 - from which one hundred four pieces of spark plugs were missing.

After paying the consignee for the afore-stated loss and damage - in the total amount of P811.07 - the insurer filed in the Court of First Instance of Manila a suit to recover the damages aforementioned as subrogee to the consignee. Alleging that the loss and/or damage occurred either in transit or after discharge of the cargo, in the custody of the broker,[[1]] plaintiff joined as alternative defendants the carrier C.F. Sharp & Co., Inc., and the broker Delgado Brokerage Corporation (DELBROCO).

Answering thereto, DELBROCO disclaimed liability, alleging that the goods were delivered in the same condition as when they were discharged from the carrier.

As to the defendant C.F. Sharp & Co., Inc., it settled part of the claim, leaving only about P328.00 unsatisfied. [[2]]

Subsequently, the trial having been completed, the case was submitted for decision. DELBROCO then filed, on March 2, 1964, a motion to dismiss for lack of jurisdiction over the subject matter. Since the suit against DELBROCO was not in admiralty, and the amount Involved was only P811.07 - later reduced to P328.00 - it was argued that it pertained to the municipal court's jurisdiction.

Resolving against said motion, the trial court rendered judgment on March 3, 1964, sentencing. DELBROCO to pay the plaintiff the sum of P328.73 - corresponding to the broken windshields - plus interest thereon at the legal rate from the date of the filing of the complaint and costs.

Appealing therefrom directly to Us upon questions of law, DELBROCO assails, first, the jurisdiction of the court a quo over the case, and, second, the finding that it is liable to plaintiff.

The present case was filed, as stated, against C.F. Sharp & Co., Inc. and DELBROCO in the alternative. The suit against C.F. Sharp & Co., Inc., being predicated upon a contract of carriage by sea, is one in admiralty, and thus falls within the Court of First Instance's jurisdiction.[3] To this, DELBROCO was properly joined, since the

causes of action against the two defendants in the alternative arise out of the same transaction, which is the basis for recovery of the value of the lost or damaged merchandise, and plaintiff was not certain whether the loss or damage was sustained when the goods were in the hands of the carrier or of the broker. And pursuant to Section 5 of Rule 2 of the Rules of Court:

"SEC. 5. Joinder of causes of action. -Subject to rules regarding jurisdiction, venue and joinder of parties, a party may in one pleading state, in the alternative or otherwise, as many causes of action as he may have against an opposing party (a) if the causes of action arise out of the same contract, transaction or relation between the parties, or (b) if the causes of action are for demands for money, or are of the same nature and character.

"In the cases falling under clause (a) of the preceding paragraph, the action shall be filed in the inferior court unless any of the causes joined falls within the jurisdiction of the Court of First Instance, in which case it shall be filed in the latter court.

"In the cases falling under clause (b) the Jurisdiction shall be determined by the aggregate amount of the demands, if for money, or by their nature and character, if otherwise." the suit herein was rightly filed in the Court of First Instance.[4]

Appellant would, however, fall back on the contention that the goods in question - the three windshields -were already damaged when DELBROCO received them. Thus, it is pointed out that even plaintiff's complaint states that Case No. 70 was discharged by the carrier "in bad order condition, containing three (3) pieces of windshield glass found to be later broken." [5] Said portion of the complaint should be read with that which alleges the loss to have occurred either "while defendant carrier had custody of the cargo... or after discharge of the cargo, while defendant Delgado Brokerage Corporation had custody of the goods." [6] And, besides, the phrase "found to be later broken" could also mean that breakage took place after the discharge.

This is what the court a quo found as a fact: that the windshields were broken while under the custody and responsibility of DELBROCO. [7] And this finding of fact will not be reviewed In an appeal like this confined to questions of law. Furthermore, it is rested upon plaintiff's evidence that DELBROCO's authorized representative - F. Saligumba - accepted the cargo "O.K. and complete" as shown in the surveyor's report countersigned by him (Exh. A). Since it was obviously Saligumba's assigned task to note defects in the cargo, said acceptance - if not binding outright upon DELBROCO - is at least evidentiary of the condition of the goods when thus received.

Finally, appellant would contend that plaintiff has no capacity to sue and is not the real party in interest. It is now too late to raise these objections here. These should have been asserted in the motion to dismiss filed by defendant below. Not having been included therein, they are now barred by the rule on omnibus motion. [8]

WHEREFORE, the judgment appealed from is hereby affirmed, with treble costs in this Instance against appellant, the appeal being frivolous.

SO ORDERED.

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

[1] Par. 8 of Complaint, R.A., p. 4.

[2] See Record on Appeal, p. 12.

[3] Sec. 44(d), RA 296; International Harvester vs. Aragon, 84 Phil. 363.

[4]Rizal Surety & Ins. Co. v. MRR, G.R. No. L-20875, April 30, 1966; Rizal Surety & Ins. Co. v. MRR, G.R. No. L-21623, April 30, 1966.

[5] par. 6, Complaint, R.A., p. 4.

[6] Par. 8, Complaint, R.A., p. 4.

[7] Decision of CFI, R.A., p. 34.

[8]Sec. 8, Rule 15: "A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived." (Rules of Court)

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