

SWITZERLAND GENERAL INSURANCE CO., LTD., PLAINTIFF AND APPELLEE, VS. JAVA PACIFIC & HOEGH LINES, ET AL., DEFENDANTS, MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.

G.R. No. L-21760. April 30, 1966

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On August 30, 1961, 1,000 bags of American wheat flour were shipped on board the vessel SS "Friesland" belonging to Java Pacific and Hoegh Lines for transportation to the Philippines, the shipment being consigned to Climaco Trading of Manila and insured by the Switzerland General Insurance Company against all risks of loss and damage.

The vessel arrived in Manila on October 6, 1961 and subsequently discharged its cargo into the custody of the Manila Port Service, a subsidiary of the Manila Railroad Company. Before taking actual delivery of the shipment the consignee, through its broker, was allowed to examine the shipment in the presence of a representative of the Manila Port Service with the result that certain deficiencies and shortages were found for which the insurer was compelled to pay the consignee the amount of P1,117.07.

The steamship company offered to pay the insurer the sum of P16.32 representing its liability for the shipment in question while the Manila Port Service offered to pay the amount of P175.68 in full settlement of the entire claim, and these offers not having been accepted, the insurance company commenced the instant action before the Court of First Instance of Manila for the recovery of said amount of P1,117.07 making as alternative defendants both the steamship company as well as the Manila Railroad Company because at the time of the filing of the complaint it was not known whether the loss occurred while the goods were in transit or while they were already in the custody of the Manila Port Service.

After hearing, the court a quo rendered judgment sentencing defendant Manila Railroad Company to pay the plaintiff the amount claimed in the complaint, with costs against said defendant. Defendant steamship company was absolved from the complaint.

The Manila Railroad Company interposed the present appeal.

Considering that the action against Java Pacific and Hoegh Lines is one of admiralty and belongs to the jurisdiction of the court of first instance while the action against the Manila Railroad Company is based on the arrastre contract which, because of the amount involved, comes under the exclusive jurisdiction of the municipal court, can the instant case be taken cognizance of by the former upon the theory that both defendants are sued in the alternative?

The answer must be in the affirmative bearing in mind that the cause of action against the alternative defendants arose out of the same transaction which is the recovery of the value of the lost merchandise and the nature of the

loss could not be determined at the moment. This view finds support in Section 5, Rule 2, of the Rules of Court which provides:

"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 said causes of action arise out of the same contract, or 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."

As may be seen, the instant case comes within the purview of the rule abovequoted for therein it is postulated that a party may in one pleading state in the alternative as many causes of action as he may have against an opposing party if they arise from the same transaction with the particularity that the case may be filed in the court of first instance if any of said causes of action falls exclusively within its jurisdiction. This is precisely what was done in this particular case. Because of the uncertainty of the place where the disappearance of the shipment occurred, plaintiff brought the case in the alternative before the court of first instance upon the theory that it may have occurred while the shipment was in transit or while in the custody of the arrastre operator.

This case also finds support in *International Harvester Company of the Philippines vs. Aragon, et al.*, 84 Phil., 363. In said case, the complaint was filed in the municipal court against both the shipping company as agent of the vessel on which the shipment was loaded and the Manila Railroad Company, Inc. as alternative defendants, seeking to recover the sum of P200.00 as value of the undelivered goods, it being uncertain whether said cargo was lost at sea or while in storage at the Port of Manila. In affirming the dismissal of the case this Court stated that the municipal court had no jurisdiction over the same because it is predicated on the contract of carriage by sea which falls within the exclusive jurisdiction of the court of first instance. And reasoning by analogy, we may say that the instant case also falls exclusively within the jurisdiction of the Court of First Instance of Manila upon the theory that the loss or disappearance of a portion of the shipment may have taken place during the voyage and hence it involves a maritime case which falls within the original jurisdiction of said court. The fact that the amount sought to be collected is less than its jurisdictional limit is of no moment, because the cause of action being indivisible, covering as it does laws on ordinary as well as maritime contract, such jurisdictional limitation as to amount must yield to the greater jurisdiction of the court as to subject matter for reasons of expediency and convenience.

"Constitutional and statutory provisions conferring jurisdiction on the inferior courts of demands below certain amounts do not forbid determination of said demands in the superior court where they are connected with larger claims or with a type of demand solely within the jurisdiction of the superior court." (21 C.J.S., p. 81, *italics supplied*)

The contention that the provisional claim filed by appellee infringes Section 15 of the Management Contract simply because it was filed one day before the date of the last discharge of the shipment is untenable because such filing may be considered as a substantial compliance with said section which provides that it should be filed within 15 days from the date of discharge of the last package from the carrying vessel. If upon the examination of the shipment certain shortages were found and that examination took place in the presence of the representatives of both parties, the notice given to appellant regarding a claim for certain loss or damage, even if premature,

should be deemed to controvert the shortcoming that has been actually discovered. Since the purpose of the claim is merely to put the party affected on guard so that it may take whatever steps may be necessary to protect its interest, we find no error on the part of the court a quo to consider said provisional claim as a substantial compliance with the requirement above referred to.

Nor do we find tenable the contention that appellee's acceptance of the offer of settlement of appellant should be deemed a waiver of the present action because the acceptance was conditional and the condition was not accepted. The doctrine of estoppel cannot, therefore, be slapped against appellee.

Wherefore, the decision appealed from is affirmed. No costs.

Bengzon, C.J., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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