

**DOMINGO ANG, PLAINTIFF-APPELLANT, VS. COMPAÑIA MARITIMA,  
MARITIME COMPANY OF THE PHILIPPINES AND C. L. DIOKNO,  
DEFENDANTS-APPELLEES.**

*G.R. No. L-30805. December 26, 1984*

Ponente: AQUINO, J.

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**AQUINO, J.:**

This case involves the recovery of damages by the consignee from the carrier in case of misdelivery of the cargo which action was dismissed by the trial court on the grounds of lack of cause of action and prescription.

It should be noted that that legal point is already *res judicata*. In 1967 it was decided in favor of plaintiff-appellant Domingo Ang in *Ang vs. American Steamship Agencies, Inc.*, 125 Phil. 543 and 125 Phil. 1040, three cases. As observed by Ang's counsel, the facts of those cases and the instant case are the same *mutatis mutandis*. It was held that Ang has a cause of action against the carrier which has not prescribed.

In the instant case, Ang on September 26, 1963, as the assignee of a bill of lading held by Yau Yue Commercial Bank, Ltd. of Hongkong, sued Compañia Maritima, Maritime Company of the Philippines and C. L. Diokno. He prayed that the defendants be ordered to pay him solidarily the sum of US\$130,539.68 with interest from February 9, 1963 plus attorney's fees and damages.

Ang alleged that Yau Yue Commercial Bank agreed to sell to Herminio G. Teves under certain conditions 559 packages of galvanized steel, Durzinc sheets. The merchandise was loaded on May 25, 1961 at Yawata, Japan in the M/S Luzon, a vessel owned and operated by the defendants, to be transported to Manila and consigned "to order" of the shipper, Tokyo Boeki, Ltd., which indorsed the bill of lading issued by Compañia Maritima to the order of Yau Yue Commercial Bank.

Ang further alleged that the defendants, by means of a permit to deliver imported articles, authorized the delivery of the cargo to Teves who obtained delivery from the Bureau of Customs without the surrender of the bill of lading and in violation of the terms thereof. Teves dishonored the draft drawn by Yau Yue against him.

The Hongkong and Shanghai Banking Corporation made the corresponding protest for the draft's dishonor and returned the bill of lading to Yau Yue. The bill of lading was indorsed to Ang.

The defendants filed a motion to dismiss Ang's complaint on the ground of lack of cause of action. Ang opposed the motion. As already stated, the trial court on May 22, 1964 dismissed the complaint on the grounds of lack of cause of action and prescription since the action was filed beyond the one-year period provided in the Carriage of Goods by Sea Act.

In the *American Steamship Agencies* cases, it was held that the action of Ang is based on misdelivery of the cargo which should be distinguished from loss thereof. The one-year period provided for in section 3(6) of the Carriage of Goods by Sea Act refers to loss of the cargo. What is applicable is the four-year period of prescription for quasi-delicts prescribed in article 1146(2) of the Civil Code or ten years for violation of a written contract as

provided for in article 1144(1) of the same Code.

As Ang filed the action less than three years from the date of the alleged misdelivery of the cargo, it has not yet prescribed. Ang, as indorsee of the bill of lading, is a real party in interest with a cause of action for damages.

WHEREFORE, the order of dismissal is reversed and set aside. The case is remanded to the trial court for further proceedings. Costs against the defendants.

**SO ORDERED.**

Makasiar (Chairman), Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Abad Santos, J., no part.

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