

SWITZERLAND GENERAL INSURANCE CO., LTD., PLAINTIFF-APPELLEE, VS. MANILA RAILROAD COMPANY AND MANILA PORT SERVICE, DEFENDANTS-APPELLANTS.

G.R. No. L-22150. April 22, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The facts are stipulated by the parties. On March 11, 1961 Laguna Trading imported from Vancouver, Canada 6,758 bags of "Elefante" brand Canadian wheat flour, shipped under Bill of Lading No. 538. The shipment was insured with Switzerland General Insurance Co., Ltd., herein plain-tiff, a corporation duly organized and existing under and by virtue of the laws of Switzerland, authorized to do business in the Philippines.

On April 13, 1961 the "SS Sunnyville" arrived at the port of Manila and subsequently discharged the shipment in question into the custody of the Manila Port Service, acting as the arrastre operator, a subsidiary of the Manila Railroad Company. On the same day the consignee filed with the arrastre operator a provisional claim covering the said shipment. The last package was discharged from the carrying vessel on April 15, 1961. The last delivery to the defendants was made on April 19, 1961. Of the 6,758 bags imported, the defendant failed to deliver 248 bags to the consignee.

The plaintiff, as insurer, paid P2,802.11 to the consignee for the loss of the goods, and as its subrogee filed on June 12, 1961 a formal claim in the amount of P1,401.92, followed by a revised formal claim on July 25, 1961 for P1, 752.40 and finally by another formal claim on January 5, 1962 for P1,361.74. The defendants failed to pay and so the plain-tiff commenced this suit for collection in the City Court of Manila on September 19, 1961. Judgment was for the plaintiff, and the defendants appealed to the Court of First Instance, which, in its decision of September 30, 1963, likewise held them liable in the sum of P1,361.74, plus interest.

In the present appeal by the defendants, the only issue is whether or not the provisional claim filed by the consignee two (2) days before the date of the discharge of the last package satisfied the provisions of the management contract which 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 the goods has been rejected or denied by the CONTRACTOR, provided that such claim shall have been filed with the CONTRACTOR within fifteen (15) days from the date of discharge of the last package from the carrying vessel. x x x"

The question has already been settled in a long line of cases, where we held that as a general rule a provisional claim for loss or damage filed before the date of discharge of the last package from the carrying vessel is not a substantial compliance with the requirement of Section 15 of the management contract because it is premature and speculative, (*Shell Co. of the Phil. Ltd., vs. Compañia General de Tabacos de Filipinas*, L-20230, July 30,

1965; Firemen's Fund Insurance Co. vs. Manila Port Service, et al., L-22454, April 29, 1966; Rizal Surety & Insurance Co. vs. Manila Railroad Company and Manila Port Service, L-22409, April 27, 1967; Domestic Insurance Co. of the Phil. vs. Manila Port Service, L-24066, August 30, 1967). This rule was however qualified in the case of New Hampshire Fire Insurance Co. vs. Manila Port Service, et al., L-20938, August 9, 1966, where this Court made a distinction between two situations. Thus, where the provisional claim is filed ahead of the date of the discharge of the last pack-age from the carrying vessel and the consignee has not yet examined or has not been informed of the condition of the shipment, the provisional claim is held to be speculative and premature; but where the consignee, although it files the provisional claim before the date of the discharge of the last package from the carrying vessel, has in fact discovered or has been informed of a shortage or damage to the goods before the discharge of the last package, or during the unloading, then the provisional claim is deemed to have been properly presented.

The first alternative covers the instant case. It is not disputed, and so appears in the stipulation, that the last package was discharged from the carrying vessel on April 15, 1961 or two days after the provisional claim was presented. There is no showing, indeed it is not claimed, that the con-signee or its agents had actual knowledge then of any shortage. The provisional claim therefore was premature and purely speculative.

Wherefore, the decision appealed from is hereby reversed, and the complaint dismissed, without pronouncement as to costs.

Reyes, J.B.L., (Acting C.J.), Dizon, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

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