

INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, DEFENDANTS-APPELLANTS.

G.R. No. L-23124. October 11, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

The plaintiff, as insurer-subrogee, brought this action to recover the sum of P4,305.55, representing the value of partially damaged shipment of 351 cartons of medicine consigned to the Philex Mining Corporation, against the Manila Port Service and the Manila Railroad Company.

After a trial, the Court of First Instance of Manila sentenced the defendants, jointly and severally, to pay to the plaintiff the sum of P4,305.55, plus attorney's fees of P500.00, and the costs.

The defendants interposed this appeal.

Upon the facts set forth in the stipulation of facts submitted by the parties, it appears that the Philex Mining Corporation of Manila was the consignee of 351 cartons of medicine shipped on board the SS "Japan Bear". The merchandise were contained in four cargo vans owned by the carrier. The shipment, which was insured with the Insurance Company of North America against all risks of loss and damage, arrived at Manila on June 23, 1961, and the cargo vans containing the merchandise were discharged in good order unto the custody of the Manila Port Service on June 28, 1961.[1] The padlock and key to the cargo vans containing the shipment were left with the operators of the vessel.[2]

On July 19, 1961, the consignee requested the agent of the shipping company to open the cargo vans, and it was found that 50 cartons of the shipment of medicine were wet. Upon request of the consignee, the 50 cartons were examined and findings of said examination are contained in "Bad Order Examination Report No. 2023" dated July 19, 1961. With the exception of the damaged cartons adverted to, the whole shipment was delivered in good order and acknowledged as such by the consignee thereof.

Provisional claim for damage and/or loss was filed by the consignee against the defendants on June 27, 1961, one day before the discharge of the goods from the carrying vessel. Formal claim was, however, filed on July 31, 1961, specifically for the value of the 50 cartons which were damaged, in the amount of P4,305.55. The arrastre contractor denied the claim. The Insurance Company of North America, as insurer, paid the consignee the amount of P4,700.86.

Upon the facts agreed upon by the parties, the lower court rendered decision against the defendants holding that at the time the goods were damaged, they were no longer on board the carrier but inside the premises of the Manila Port Service, under the care and custody of the latter.

In this appeal, the defendants-appellants first contend that the mere receipt by the arrastre contractor of the four cargo vans in question did not make it responsible and liable for the damages to the contents thereof, arguing that

the arrastre contractor, although charged with the duty and function of receiving, handling, caring for, and delivering the merchandise, does not warrant, insure, or guarantee the contents of packages, cases or boxes of cargo received by it from the carrying vessel.

The defendants-appellants' theory cannot be sustained. It is not denied that the arrastre contractor had received and had taken custody of the cargo vans containing the goods in question upon their discharge from the carrier on June 23, 1967 in good order. The lower court has found as a fact, that on the delivery of the cargo vans to the piers, the exterior portion of the vans were not even wet, otherwise, a notation would have been made on the tally sheet of such defect. Having taken custody of the cargo vans from the time of their discharge from the carrier until their delivery to the consignee, the defendants-appellants, in disclaiming responsibility for any damage to the goods contained therein, is bound to establish by evidence that either the 50 cartons of the shipment were already damaged when they were unloaded from the vessel, or that the damage was not in any way imputable to it.[3] Without proof to support either alternative, the conclusion is inevitable that the damaged condition of the goods was due to a cause for which the arrastre contractor is answerable. Untenable is the proposition that the vessel owner should be held liable because the operators thereof had the keys to the cargo vans containing the shipment before it was examined. There is no showing, and neither is it claimed, that the cause of the damage was the nondelivery of the keys or that the damage could have been avoided were the keys entrusted to the arrastre contractor. The decisive factor in the determination of who should be responsible for the damage is not possession of the keys but custody of the goods at the time the damage was incurred.

The second question posed is whether or not the claim for the value of the damaged goods was filed within the fifteen-day period required in the management contract. We are in accord with the defendants-appellants that the lower court committed error in holding that the provisional claim filed by the consignee on June 27, 1961, one day before the discharge of the goods from the carrying vessel, complies with the provisions of the contract. In a number of cases,[4] this Court has nullified such claims as being premature and speculative, for they do not serve the purpose for which they are intended - to afford the arrastre operator a "reasonable opportunity to check the validity of the claim, while the facts are still fresh in the minds of the person who took part in the transaction and while the pertinent documents are still available." [5]

Appellants contend further that the claim for loss or damage was filed beyond the 15-day, period provided in the management contract, because from June 28, 1961, when the four vans were discharged from the vassal, until July 31, of the same year, when a formal claim for loss was filed, more than fifteen days had elapsed.

The clause in the management contract providing that the claim shall be filed within fifteen days from the date of discharge of the last package from the carrying vessel, is in the nature of a period of limitation for bringing an action. It is a defense within the privilege of the defendant to avail of, or to waive it, such a defense being personal to the defendant. To serve as a legal ground to bar or defeat an action, it must be pleaded and proved. Hence, the burden of proof rests on the defendant.

Generally, the claim of the consignee or its subrogee for loss, damage, misdelivery and/or nondelivery of goods, must be presented to the arrastre contractor within fifteen days from the date of discharge of the last package from the carrying vessel, as provided in the management contract. This rule applies where, ordinarily, the consignee or claimant has knowledge of the loss, damage, misdelivery and/or nondelivery of the goods before the expiration of the said 15-day period. However, when the consignee or claimant comes to learn of the loss, damage, etc. after the 15-day period from the discharge of the goods, the period to file a claim should commence not from the said date of discharge but from such date when the consignee or claimant is informed of the loss, damage, etc. of the merchandise, or from the date on which, with the exercise of reasonable diligence, such information could have been secured. For the purpose of determining whether the consignee incurred in laches or unreasonable delay in

filing the claim, the fact to be considered is: when did the consignee acquire knowledge of the discharge of the goods from the vessel, or with the exercise of reasonable diligence, such knowledge could have been secured?

In the case at bar, the stipulation of facts show that while the goods were discharged from the vessel on June 26, 1961, there is no showing that the consignee had knowledge of the discharge of the merchandise on that date or soon thereafter. What the record shows is that on July 19, 1961, the consignee requested the agent of the shipping company to open the cargo vans because the keys of the vans were still in the possession of the agent of the carrier; and although the stipulation of facts further show that the goods were discharged from the vessel on June 28, 1961, and the arrastre contractor received them and had kept them into its custody; however, there is no showing that before July 19, 1961, the consignee had knowledge that the merchandise were already in the possession of the arrastre contractor. It was incumbent upon the defendants to show that the consignee had knowledge of the discharge of the merchandise on or before July 19, 1961. As a matter of fact, in the brief of the appellants, We find no specific reference to any bit of evidence showing that the consignee had knowledge of the discharge of the goods immediately or a short time after June 28, 1961. Accordingly, therefore, We hold that the formal claim for the value of the goods lost or damaged filed on July 31, 1961, was filed within the 15-day provided in the management contract.

The next error assigned, which relates to the amount for which defendants-appellants should be held liable, needs no discussion as the plaintiff-appellee, in its brief, concedes that only the invoice value of the damaged goods, as stipulated, may be recovered from the defendants-appellants.

As to the award of attorney's fees in the amount of P500.00, which defendants-appellants claim to be improper for the reason that it was not stipulated by the parties, Article 2208 of the New Civil Code enumerates some exceptions to the rule prohibiting the award of attorney's fees in the absence of stipulation, and one such exception is -

"(11) In any other case when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered."

We are not in a position to re-examine the basis for the lower court's award of attorney's fees for this would involve a review of the facts, inappropriate at this instance, and it would also be in disregard of the tradition that discretion, when well exercised, should not be disturbed. At any rate, in cases of similar nature^[6] the award of attorney's fees was considered to be proper and reasonable.

PREMISES CONSIDERED, with the only modification that the sum of P4,305.55 is reduced to P3,989.70, the invoice value of the damaged goods, the judgment holding the defendants-appellants liable to plaintiff-appellee is affirmed. On equitable considerations, no costs.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.
Concepcion, C.J., and Bengzon, J., on official leave.

[1] Par. 4, Stipulation of Facts.

[2] Par. 5, Idem.

[3] See Jose Bernabe & Company, Inc. vs. Delgado Bros. Inc., G.R. No. L-12058, April 27, 1960.

[4] Shell Company of the Philippines, Ltd. vs. Cia General de Tabacos de Filipinas, L-20230, July 30, 1965; Fireman's Fund Insurance Co. vs. Manila Port Service, et al., L-22454, April 29, 1966; New Hampshire Fire Insurance Co. vs. Manila Port Service, et al., L-20938, August 9, 1966; Rizal Surety & Insurance Company, Inc.

vs. MRC, L-22409, April 27, 1967; Philippine Education Company, Inc. vs. MPS, et al., L-24091, September 20, 1967

[5] Philippine Education Co. Inc. vs. Manila Port Service, supra, citing Consunji vs. Manila Port Service, L-15551, November 29, 1960.

[6] Yu Kimteng Construction Corp. vs. Manila Railroad Company, et al. L-17027, Nov. 29, 1965; State Bonding Ins. Co., Inc. vs. Manila Port Service, L-22395, Dec, 17, 1966; Phil. Education Co. vs. Manila Port Service, et al., L-24091, September 20, 1967.

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