

**AMERICAN MACHINERY & PARTS MANUFACTURING, INC.,
PLAINTIFF-APPELLEE, VS. HAMBURG-AMERIKA LINIE, ET AL.,
DEFENDANTS, MANILA RAILROAD CO. AND/OR MANILA PORT
SERVICE, DEFENDANTS-APP...**

G.R. No. L-21497. April 16, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

On June 22, 1961, there were loaded on board the vessel SS "Frankfurt" at the Port of Bremen, West Germany, 96 lifts of hot rolled round bars and 36 lifts of seamless steel tubes, consigned to plaintiff American Machinery & Parts Manufacturing, Inc., in Manila. The SS "Frankfurt" is owned by the Hamburg Amerika Linie, whose agent in the Philippines is the C. F. Sharp & Company, Inc. The SS "Frankfurt" arrived in Manila on August 3, 1961. On August 4, 1961, the shipment of 132 lifts were unloaded from the carrying vessel and delivered into the custody of the Manila Port Service, the arrastre contractor in the Port of Manila. On August 15, 1961, the Luzon Brokerage Co., as the broker of the plaintiff, filed a provisional claim with the Manila Port Service for short delivery, shortlanding and/or landed in bad order, of the goods constituting the shipment. The C. F. Sharp & Co., Inc., agent of the carrying vessel, was also given notice of the provisional claim.

When the plaintiff took delivery of the shipment through its broker from the Manila Port Service, only 129 out of the 132 lifts were delivered. The Manila Port Service, in fact, issued a short-landed certificate stating therein that the shipment delivered to it by the C. F. Sharp & Co., Inc. was short of 3 lifts. On February 20, 1962, plaintiff filed a formal claim with the Manila Port Service and/or the C. F. Sharp & Co., Inc. for the payment of the sum of P4,264.95 re-presenting the value of the missing 3 lifts. In view of the refusal of the Manila Port Service and the C. F. Sharp & Co., Inc. to pay, the plaintiff filed, on June 2, 1962, a complaint in the Court of First Instance of Manila for the recovery of the said sum of P4,264.95 plus attorney's fees and the costs. Named defendants in the case, which is docketed as Civil Case No. 50711, are the Hamburg-Amerika Linie and its Philippine agent C. F. Sharp & Co., Inc. and the Manila Railroad Co. and the Manila Port Service, the latter being the subsidiary of the Manila Railroad Co.

In their answer, the defendants Hamburg-Amerika Linie & C. F. Sharp & Co., Inc. alleged, among others, that the 132 lifts, constituting the full shipment were delivered complete to the defendant Manila Port Service. These defendants disclaim any liability to the plaintiff. At the same time these defendants filed a cross-claim against the Manila Port Service and the Manila Railroad Co.

Defendants Manila Railroad Co. and Manila Port Service, in their answer to the complaint, implead the provisions of the management contract entered into by and between the Bureau of Customs and the Manila Port Service governing the operation of the arrastre service in the Port of Manila, and especially allege that if they have any liability at all for the alleged shortage of the shipment in question, their liability is limited to the invoice value of the shortage but in no case shall it be more than P500.00 per package in accordance with section 15 of the said

management contract.

After trial, the Court of First Instance of Manila rendered a decision, dated April 29, 1963, ordering defendants Manila Port Service and Manila Railroad Co. to pay plaintiff the sum of P4,264.95 with interest at the legal rate from the date of demand on February 20, 1962 until said amount is fully paid and to pay the costs. The lower court dismissed the cross-claim of defendants Hamburg-Amerika Linie and C. F. Sharp & Co., Inc. against defendants Manila Port Service and Manila Railroad Co.

Not satisfied with the decision of the lower court, defendants Manila Port Service and Manila Railroad Co. have appealed directly to this Court on questions of law.

The main contention of appellants Manila Port Service and Manila Railroad Co. in their present appeal which is the question to be settled - is that the Court of First Instance of Manila erred in not declaring that the liability of the said appellants should be limited to P500.00 per lift, or in the total sum of P1,500.00, pursuant to the pertinent provision of section 15 of the management contract entered into by and between the Bureau of Customs and the Manila Port Service, which reads as follows:

"Sec. 15. x x x and the CONTRACTOR shall be solely responsible as an independent contractor, for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred pesos (P500.00) for each package unless the value is otherwise specified or manifested, and the corresponding arrastre charges had been paid, x x x."

It is the settled ruling of this Court that the aforequoted provision of section 15 of the management contract between the Bureau of Customs and the arrastre contractor is binding to the consignee, who, though not a party in said contract, has taken delivery of the goods upon presentation of a pass and delivery permit making reference to the said section 15 and reproducing substantially the provisions thereof, as one of the conditions of said pass and delivery permit.[1]

In the case now before Us the lower court made a finding in its decision that "the copy of the delivery permit, Exh. I, which was furnished the plaintiff does not contain any reference to paragraph 15 of the management contract Exh. 5-MPS." On the basis of this finding the lower court ruled that the appellee was not given sufficient notice of the pertinent provision of section 15 of the management contract, and so it was not bound by said management contract, and the defense of limited liability is, therefore, not available to the appellants.

We have noted, however, that on the gate passes, marked as Exhibits N, N-1 and N-2 for the appellee - which are also marked as Exhibits 3, 3-A and 3-B for the appellants - there appears printed a paragraph which reads as follows:

"The undersigned, duly authorized to respectively represent the Bureau of Customs, the above named CONSIGNEE, and the Arrastre Service Operator, hereby certify to the correctness of the above description of the goods covered by this Gate Pass. Issuance of this Gate Pass constitutes delivery to, and receipt by CONSIGNEE of the goods as described herein. The presentation of the permit to deliver the shipment consisting, wholly or partly of the above goods, is subject to all the terms and conditions contained in the Management Contract between the Bureau of Customs and Manila Port Service and all amendments thereto or alterations thereof, particularly but not limited to Paragraph 15 thereof limiting the Company liability to P500.00 per package, unless the value of the goods is otherwise specified or manifested, providing exemptions from liability and releasing the Company from liability unless suit is brought within one (1) year from the date of discharge of the goods, or from date when the claim for the value of the goods has been rejected, provided such claim shall have been filed with the Company within 15 days from the date of discharge of the last package from the carrying vessel."

The gate passes, above-mentioned, are signed by the representative of the consignee, as well as by the representatives of the Bureau of Customs and the Manila Port Service. In order to secure delivery of the goods, and bring those goods out of the customs area or from the warehouses under the control of the Bureau of Customs, the appellee had to use both the delivery permit as well as the gate passes. We consider that when the appellee used the gate passes on which is printed a reference to the provision of section 15 of the management contract, it was thereby given notice of the provision of the management contract which refers to the limited liability of the arrastre contractor, and it is bound by that provision of the management contract. We accept the finding of the lower court that the copy of the delivery permit which was given to the appellee does not contain any reference to section 15 of the management contract. The lower court, however, did not make any mention about the gate passes that were submitted as evidence in the present case by both the appellee and the appellants. There is nothing in the decision of the lower court which explains why these gate passes were not taken into consideration in determining whether or not the consignee - appellee herein - had notice of the provision of section 15 of the management contract, since there is printed on the gate passes a paragraph which makes reference to said section 15 of the management contract.

In their brief, the appellants call attention to this printed paragraph on the gate passes, which precisely refers to the limited liability clause. It is our considered view that because both the delivery permit and the gate passes had to be used by the appellee in obtaining delivery of the goods, the paragraph printed on the passes which makes reference to section 15 of the management contract is sufficient to give notice to the appellee about the pertinent provision of section 15 of the management contract, thereby rendering him bound by the management contract, notwithstanding the fact that on the delivery permit there is no reference to said section 15 of the management contract. We declare that the lower court erred when it did not consider what appears on the gate passes as sufficient notice to the appellee regarding the particular provision of section 15 of the management contract. We, therefore, find merit in the defense of the appellants that if they are liable at all to the appellee for the loss of the three missing lifts in question, their liability should be limited to P500.00 per lift, or to a total liability of P1,500.00. This is, as it should be, because in the bill of lading of the shipment in question (Exhibit A-1) the value is not declared, and it does not appear in the record that the appellee had declared the invoice value of the shipment to serve as the basis for determining the arrastre charges.

WHEREFORE, the decision appealed from is modified, and appellants Manila Port Service and Manila Railroad Co. are hereby ordered to pay appellee American Machinery & Parts Manufacturing, Inc. the sum of One Thousand Five Hundred (P1,500.00) Pesos, with legal interest from the date of the filing of the complaint until paid sum is fully paid. No pronouncement as to costs.

IT IS SO ORDERED.

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

[1] Villanueva v. Barber-Wilhelmsen Lines, et al., L-14764, November 23, 1960. See also Tomas Grocery v. Delgado Brothers, L-11154, April 29, 1959; Bernabe v. Delgado Brothers, L-14360, February 29, 1960; Bernabe v. Delgado Brothers, L-12058, April 27, 1960; Delgado Brothers v. Li Yao & Co., L-12872, April 29, 1960; Sun Brothers v. Manila Port Service, L-13500, April 29, 1960; and Juan Ysmael & Co., Inc. v. United States Lines Co., L-14384, April 30, 1960.

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