

ATLANTIC MUTUAL INSURANCE COMPANY, PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, DEFENDANTS AND APPELLANTS.

G. R. No. L-16789. October 31, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

On 14 February 1958 in New York, United States of America, the Pfizer Corporation shipped on board the SS "Pioneer Mist" of the United States Lines Company on consignment to Pfizer Laboratories (Phil.) Inc., Manila, Philippines, two cartons of bonamine tablets and five cartons of combiotic potassium, for which bills of lading Nos. 76 and 77, respectively, were issued. The seven cartons were insured with the Atlantic Mutual Insurance Company, a foreign company existing under the laws of the United States of America with principal place of business at 49 Wall street, New York 5, U.S.A. On 19 March 1958 the SS "Pioneer Mist" arrived in Manila and on the next day, 20 March, the shipment was unloaded from the vessel and delivered to the Manila Port Service, a subsidiary of the Manila Railroad Company, that kept the cargo until 10 April 1958 when it was delivered to the consignee Pfizer Laboratories (Phil.), Inc. However, the cargo was not delivered as when it was shipped: one carton of the bonamine tablets worth \$283.18 was missing and five cartons of combiotic 1/4 gram (potassium) were damaged in the sum of \$48.80; the total loss and damage amounting to \$331.98 or, at the rate of \$201.50 per \$100, to P688.93. The Pfizer Corporation and/or its consignee, the Pfizer Laboratories (Phil.), Inc., claimed recovery of the said loss and damage and the Atlantic Mutual Insurance Company paid to the consignee the sum of P668.93.

On 3 March 1959, the Atlantic Mutual Insurance Company brought an action in the Court of First Instance of Manila to recover from the defendants Manila Port Service and/or Manila Railroad Company, jointly and severally, the sum of P668.93 which it had paid the shipper and/or consignee, lawful interest from the date of the filing of the complaint, and costs. On 16 March 1959 the defendants answered alleging that as no claim was made by the consignee, its representative or broker, within fifteen days from the date of discharge of the shipment from the vessel, the defendants were relieved or released from any liability for loss, damage or shortage of the cargo as provided for in the management contract entered into by and between the Bureau of Customs and the defendants Manila Port Service as arrastre operator in the port of Manila, and praying that the complaint be dismissed. On 30 September 1959 the parties entered into a stipulation of facts, as follows:

A. On its part, plaintiff—

(1) Admits the existence of a Management Contract by and between defendant Manila Port Service and the Bureau of Customs, Republic of the Philippines, on February 29, 1956 for the operation of the arrastre service in the Manila South Harbor; also, that neither plaintiff nor its predecessors in interest are signatory parties to said Management Contract;

(2) Admits that Paragraph 15 of said Management Contract, among other things, provides:

* * * 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 (500.00) pesos for each package unless the value is otherwise specified or manifested, and the corresponding arrastre charges had been paid * * *

* * * 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 arrival of the goods; or from the date when the claim for the value of such 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 * * *.

(3) Admits that no claim was filed with defendant Manila Port Service, as arrastre operator for the Port of Manila, for the missing shipment and damages in question within the 15-day period from the date of discharge of the last package from the carrying vessel as provided in Paragraph 15 of the Management Contract, hereto attached as Exhibit "A", but maintains, as appears from the records, that a suit was filed in court within the period of one year from the date of arrival of the goods;

(4) Admits that the pertinent portion of Paragraph 15 of the Management Contract is, in substance, reproduced in the gate passes, Exhibits B, B-1 and B-2, by means of annotations appearing therein, in which the signatures of the consignee's broker, the representative of the Manila Port Service and the representative of the Bureau of Customs, showing actual delivery of the shipment covered by the said gate passes, that without the said gate passes, the cargo of plaintiff's predecessors in interest would not have been allowed to be withdrawn from defendant Manila Port Service's premises; that likewise, the pertinent portion of Paragraph 15 of the Management Contract appears at the dorsal part of the delivery permit, Exhibit "C" covering the shipment in question.

* * * * *

Upon the above stipulation of facts, on 18 January 1960 the court rendered judgment holding that—

* * * the provision of the contract that "such claim shall have been filed with the contractor within fifteen (15) days from the date of discharge of the last package" refers only to the second part which says "from the date when the claim for the value of such goods has been rejected or denied by the contractor."

The complaint was docketed on March 3, 1959, and therefore the suit was filed within the period of one year from the date of discharge of the goods. Consequently it is not barred by the provisions of paragraph 15 of the management contract. The contractor, however, is not liable as provided in said paragraph, for a sum greater than P500.00 for each package, so that for non-delivery of a carton of bonamine tablets worth \$283.18 it is liable only in the sum of P500.00. The contractor is also liable for the damage of P48.80 to the shipment of five cartons of combiotic potassium or P97.73. P500 plus P97.73 equals P597.73, which is the total liability of the defendants to the plaintiff,

and ordering that—

* * * said defendants Manila Port Service and/or the Manila Railroad Company jointly and severally to pay the plaintiff the sum of P597.73 and to pay the costs.

On 10 February 1960 the defendants filed a motion for reconsideration of the judgment thus rendered, to which on 11 February 1960 the plaintiff objected. On 13 February 1960 the court denied the motion for reconsideration.

Hence, this appeal on pure question of law.

The appellants contend that the filing of a claim with the appellant Manila Port Service as operator of the arrastre

service in the Manila South Harbor within fifteen days from the date of discharge of the last package from the vessel is a condition precedent to the bringing of an action in court and that if such claim is not filed within the 15-day period a court action is barred. The appellee maintains otherwise.

In *Tomas Grocery vs. Delgado Brothers, Inc.*, 105 Phil., 549; 56 Off. Gaz. 4422, this Court held that—

* * * The provision, therefore, in the management contract (Exhibit 7-A) that claims for losses should be filed with the contractor within 15 days from date of arrival of the goods before an action may be brought against it in court for recovery of the value of the losses, is in consonance with the provisions of the enabling Act, intended undoubtedly to afford the contractor the opportunity to check up the claims for losses which verification would be difficult if a longer period of time be allowed to pass. (*Italics supplied*)

The argument advanced by the appellee that the management contract does not contain stipulation *pour autrui* and hence is not binding upon a consignee or anyone not a party thereto and that to hold such contract binding on non-parties would be violative of the constitutional prohibition on impairment of the obligation of contracts already has been passed upon and held untenable in the same case of *Tomas Grocery vs. Delgado Brothers, Inc.*, *supra*.

The appellant contends that it was not a party to the management contract entered into by the Bureau of Customs and the appellee and that for that reason it could not be bound by such condition. It appears that the 822 cases of milk were withdrawn from the appellee by Protacio Villafuerte, a licensed customs broker (Exhibits 3, 4, 5 & 6-Delgado). The notice of claim for loss filed with the appellee was signed by him for and in behalf of the appellant (Exhibits C & 2-Delgado). In the permit to deliver imported goods dated 4 February 1955 issued by the Collector of Customs, the name of the same customs broker appears (Exhibit B). The gate passes issued by the appellee to bring the cargo out of the pier was in the name of the said customs broker (Exhibits 3, 4, 5 & 6-Delgado). The appellant has not repudiated its privity with the broker and has accepted the benefit of delivery of the 822 cases of milk through him. Therefore, it is bound by the notice appearing on the back of the permit to deliver imported goods (Exhibit B) and on the gate passes (Exhibits 3, 4, 5 & 6-Delgado) that claims for losses must be "filed with the CONTRACTOR within fifteen (15) days from the date of arrival of the goods" before the appellant could sue the appellee in court for recovery of the value of the losses. * * *

The judgment appealed from is reversed and the complaint dismissed, with costs against the appellee.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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