

**ALPHA INSURANCE & SURETY CO., PLAINTIFF-APPELLEE, VS.
MANILA PORT SERVICE AND MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS.**

G.R. No. L-22576. October 31, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

On May 28, 1961 the defendants Manila Port Service and Manila Railroad Company received a shipment of 58 packages of "coal tar dyestuffs" from the S/S "Buenos Aires Maru", consigned to the General Textiles, Inc. in Manila. On June 5, 1961 the consignee, which failed to receive one package, filed a provisional claim with the defendants "for cargoes landed in bad order condition and short-landed" under the provisions of par. 15 of the management contract[1] which read:

" * * * 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, * * * In any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, mis-delivery, 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 discharge of the goods, or from the date when the claim for the value of such goods have been rejected or denied by the CONTRAC-TOR, 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. * * *"

This was followed on March 22, 1962 by a formal claim stating the nature of the loss and the value thereof in the amount of P600.

On June 27, 1962 the plaintiff Alpha Insurance & Surety Co., Inc., as insurer subrogated to the rights of the consignee, was advised in writing by the defendants that its claim, because of the insurer's failure to bring suit within one year from the date of discharge of the goods, has prescribed.

On June 29, 1962 the plaintiff filed the present action in the municipal court of Manila to recover the value of the missing cargo, plus legal interest thereon, P500 as attorney's fees and for expenses of litigation, and costs of suit. On the basis of a written stipulation of facts submitted by the parties, the municipal court rendered judgment in favor of the plaintiff.

On appeal, the Court of First Instance of Manila, upon the same written stipulation of facts, rendered judgment

"* * * sentencing the defendants to pay jointly and severally to the plaintiff the sum of P500.00 with interest thereon at the legal rate from the date of the filing of the complaint in the Municipal Court on June 29, 1962, until the whole amount shall have been fully paid, plus ten percent of the total amount due as and for attorney's fees, and the costs of this action."

Hence the present appeal.

1. The appellants' first contention is that the provisional claim filed on June 5, 1961 is not the claim contemplated by paragraph 15 of the management contract, which requires that the same be "one for value"; and that it is "not only vague, but purely speculative in character" and is a mere "advice" of an anticipated loss. This contention is without merit. Although the provisional claim did not indeed indicate the value of the missing cargo, it nevertheless contained a description of the importation involved, sufficient to place the defendants on notice as to the amount and character thereof, and provide them with ample basis for reasonable verification. These circumstances, we have already held, constitute substantial compliance with paragraph 15 of the management contract. Thus,

"although without statement as to amount and without accompanying documents, the provisional claims herein involved contained descriptions of the importations concerned, sufficient to allow the Manila Port Service reasonable verification. It would not have been difficult for defendant Manila Port Service to check on whether some or all of cargo therein described were in fact missing or in bad order. For it is supposed to have a complete and detailed recording or checking of said cargo. The particulars of the precise amount of indemnity claimed as well as the supporting papers for said claim were properly reserved for the formal claim thereafter filed, since the determination and preparation of the same by the consignee should be done carefully and without haste. The provisional claims in question therefore served the purpose of enabling the arrastre operator to check the goods in its possession, shortly after they had been discharged from their carrier." [2]

Whatever deficiency there was in the provisional claim was supplied by the subsequent formal claim of March 22, 1962 which stated "the nature of the loss and the value thereof in the amount of P660.00."

2. The next contention of the appellants that the provisional claim was not against them but against the carrier, is refuted by those portions of the written stipulation of facts that unequivocally state that the "shipment consisting of 58 packages of Coal Tar Dyestuffs was received by the defendants complete and all in good order condition" and that the defendants "failed to deliver to the consignee one (1) package."

3. The appellants' final contention that the court a quo erred in not holding that the period of one year within which suit may be brought against them had already expired when the complaint was filed on June 29, 1962, is likewise completely without merit.

Paragraph 15 of the management contract provides two alternative periods in reference to an action to be filed to enforce liability for loss or damage: (1) one year from the date of last discharge of the goods, or (2) one year from the date the claim is rejected or denied by the arrastre operator, provided, however, that a provisional claim shall have been previously filed with said operator within 15 days from the date of last discharge from the carrying vessel. The first period refers to a case where the claimant files an action in court without awaiting the contractor's pleasure on the claim, in which event the action should be filed within one year from the date of last discharge from the carrying vessel. The second period applies where the claimant prefers to wait for definitive action by the operator, in which event the action should be filed within one year from the date of rejection.[3] Where, however, the operator neither honors nor rejects the claim within one year from the date of last discharge, the claim is deemed rejected as of the expiry date of the said period, and the action may be filed within one year from the said expiry date.[4]

The plaintiff's claim was neither rejected nor denied orally or in writing by the defendants within one year from the date of last discharge on May 28, 1961. It was only on June 27, 1962 that the plaintiff received a letter from the defendants informing it that its claim had prescribed. Under the circumstances, the claim must be deemed to have been rejected only on March 28, 1962, in which case the acquisition should be filed within one year therefrom.[5] The complaint which was filed on June 29, 1962, or less than one year from March 28, 1962, is therefore not time-barred.

ACCORDINGLY, the judgment a quo is affirmed in toto, at defendants-appellants' cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] Entered into by and between the Manila Port Service and the Bureau of Customs on February 29, 1956.

[2] State Bonding & Insurance Co. vs. Manila Port Service, et al., L-21833, Feb. 28, 1966; American Machinery & Parts Mfg. Co., Inc. vs. Manila Railroad Co., et al., L-21460, April 30, 1966.

[3] Consunji v. Manila Port Service, L-15551, Nov. 29, 1960.

[4] Continental Insurance Co. vs. Manila Port Service, et al., L-22208, March 30, 1966; Delgado Brothers, et al. vs. Manila Port Service, et al., L-21781, June 30, 1966; Fireman's Fund Insurance Co. vs. Manila Port Service, et al., L-21412, Sept. 28, 1966.

[5] See note 4.

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