

GO CHAN & CO., INC., PLAINTIFF AND APPELLEE, VS. ABOITIZ & CO., INC., DEFENDANT AND APPELLANT.*G.R. No. L-8319. December 29, 1955*

Ponente: BENGZON, J.

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As owner of 200 boxes of canned milk placed on board the S. S. Daniel R. Hill for transportation from New Orleans, U. S. A. to Cebu City, plaintiff Go Chan & Co., Inc. sued defendant as the agent of said vessel. The complaint alleged that in February, 1947 such cargo was delivered to it minus 24 cases; and that the value of the shortage was P416.68, for which judgment was accordingly requested.

The defendant answered that the loss was due to a peril of the sea, and that anyway the action was barred because more than one year had elapsed from February 1947 to May 1950 when the complaint was filed.

The court of first instance of Cebu rendered judgment for the plaintiff, upon the following facts, which it found to have been established:

"* * * that the plaintiff shipped 240 cases of milk and the corresponding freight was paid; that the cargo was transhipped on the S. S. Snug Hitch and arrived at the port of Cebu in 1947 with 24 cases short-landed; that a timely claim for the short-landed cargo of 24 cases was presented by the plaintiff to the defendant but the latter asked to defer the claim; that when, the 24 cases arrived, Go Tiong, the General Manager of the plaintiff corporation did not receive them because they were no longer in cases but in sakes, and that the cans were no longer fit for human consumption— they were damaged and rusty; that the delay in payment was due to the request of the defendant for amicable settlement which later, the defendant refused to pay. (Record on Appeal, p. 9)

Concerning the defendant's plea of prescription, founded on Commonwealth Act No. 65 adopting in toto the Act of the U. S. Congress known as Carriage of Goods by Sea Act, the Cebu court declared that both laws did not modify our statute of limitations, Act 190, under which, actions of this nature prescribed in four years.

Having failed in a motion to reconsider, defendant perfected its appeal—which we find to be meritorious.

In Chua Kuy vs. Everett Steamship Corporation, [93 Phil., 207, 50 Off. Gaz, (1), p. 159] involving a similar controversy, we ruled that the prescriptive period of one year established in the Carriage of foods by Sea Act modified pro tanto the provisions of Act No. 190 as to goods transported to and from Philippine ports in foreign trade (trade with U. S. is now foreign). Said American Act provides as follows:

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; provided, that if a notice of loss or damage, either apparent or concealed, is not given aa provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered." (Subsec. 6, sec. 3, Title I) (Italics ours.)

Thru Mr. Justice Bautista Angelo this Court explained:

"The claim that the prescriptive period to be considered in this case is that embodied in the Code of Civil Procedure is untenable for the simple reason that this is a general law which only applies to cases not covered by any special act. As we have already stated, the transaction under consideration is covered by the Carriage of Goods by Sea Act, and since this is a special act, its provisions must of necessity limit or restrict a law of general application. To hold otherwise would be to render nugatory the prescriptive provision contained in that special act."

Because this action was not filed within one year from February, 1947 when the cargo was delivered or should have been delivered, the law discharged this defendant from all liability in connection with the carriage of said goods. The judgment will therefore be reversed and the defendant absolved, with costs against appellees. So ordered.

Paras, C. J., Padilla, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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