

LUA KIAN, PLAINTIFF-APPELLEE, VS. MANILA RAILROAD COMPANY AND MANILA PORT SERVICE, DEFENDANTS-APPELLANTS.

G.R. No. L-23033. January 05, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The present suit was filed by Lua Kian against the Manila Railroad, Co., and Manila Port Service for the recovery of the invoice value of imported evaporated "Carnation" milk alleged to have been undelivered. The following stipulation of facts was made:

"1. They admit each other's legal personality, and that during the time material to this action, defendant Manila Port Service as a subsidiary of defendant Manila Railroad Company operated the arrastre service at the Port of Manila under and pursuant to the Management Contract entered into by and between the Bureau of Customs and defendant Manila Port Service on February 29, 1956;

"2. On December 31, 1959, plaintiff Lua Kian imported 2,000 cases of Carnation Milk from the Carnation Company of San Francisco, California, and shipped on board SS 'GOLDEN BEAR' per Bill of Lading No. 17;

"3. Out of the aforesaid shipment of 2,000 cases of Carnation Milk per Bill of Lading No. 17, only 1,829 cases marked 'LUA KIAN 1458' were discharged from the vessel SS 'GOLDEN BEAR' and received by defendant Manila Port Service per pertinent tally sheets issued by the said carrying vessel, on January 24, 1960.

"4. Discharged from the same vessel on the same date unto the custody of defendant Manila Port Service were 3,171 cases of Carnation Milk marked 'CEBU UNITED 4860-PH-MANILA' consigned to Cebu United Enterprises, per Bill of Lading No. 18, and on this shipment, Cebu United Enterprises has a pending claim for short-delivery against defendant Manila Port Service;

"5. Defendant Manila Port Service delivered to the plaintiff thru its broker, Ildefonso Tionloc, Inc. 1,913 cases of Carnation Milk marked 'LUA KIAN 1458' per pertinent gate passes and broker's delivery receipts;

"6. A provisional claim was filed by the consignee's broker for and in behalf of the plaintiff on January 19, 1960, with defendant Manila Port Service;

"7. The invoice value of the 87 cases of Carnation Milk claimed by the plaintiff to have been short-delivered by defendant Manila Port Service is P1,183.11 while the invoice value of the 84 cases of Carnation Milk claimed by the defendant Manila Port Service to have been over delivered by it to plaintiff is P1,130.65;

"8. The 1,913 cases of Carnation mentioned in paragraph 5 hereof were taken by the broker at Pier 13, Shed 3, sometime in February, 1960, where at the time, there were stored therein, aside from the shipment involved herein, 1000 cases of Carnation Milk bearing the same marks and also consigned to plaintiff Lua Kian but had been discharged from SS 'STEEL ADVOCATE' and covered by Bill of Lading No. 11;

"9. Of the shipment of 1000 cases of Carnation Milk which also came from the Carnation Company, San Francisco, California, U.S.A., and bearing the same marks as the shipment herein but had been discharged from S/S 'STEEL ADVOCATE' and covered by Bill of Lading No. 11, Lua Kian as consignee thereof filed a

claim for short-delivery against defendant Manila Port Service, and said defendant Manila Port Service paid Lua Kian, plaintiff herein, P750.00 in settlement of its claim.

"10. They reserve the right to submit documentary evidence.

"11. They submit the matter of attorney's fees and costs to the sound discretion of the Court."

On these facts and documentary evidence subsequently presented, the Court of First Instance of Manila ruled that 1,829 cases marked "Lua Kian" (171 cases less than the 2,000 cases indicated in the bill of lading) and 3,171 cases marked "Cebu United" (171 cases over the 3,000 cases in the bill of lading) were discharged to the Manila Port Service. Considering that Lua Kian and Cebu United Enterprises were the only consignees of the shipment of 5,000 cases of "Carnation" milk, it found that of the 3,171 cases marked "Cebu United", 171 should have been delivered to Lua Kian. Inasmuch as the defendant Manila Port Service actually delivered 1,913 cases to plaintiff,[*] which is only 87 cases short of 2,000 cases as per bill of lading, the former was ordered to pay Lua Kian the sum of P1,183.11 representing such shortage of 87 cases, with legal interest from the date of the suit, plus P500 as attorney's fees.

Defendants appealed to Us and contend that they should not be made to answer for the undelivered cases of milk, insisting that Manila Port Service was bound to deliver only 1,829 cases to Lua Kian and that it had therefore in fact over-delivered to the latter.

The bill of lading in favor of Cebu United Enterprises indicated that only 3,000 cases were due to said consignee, although 3,171 cases were marked in its favor. Accordingly, the excess 171 cases marked "Cebu United" placed the defendant arrastre operator in a dilemma, for should it deliver them to Lua Kian the goods could be claimed by the consignee Cebu United Enterprises whose markings they bore, and should it deliver according to markings, to Cebu United Enterprises, it might be sued by the consignee, Lua Kian, whose bill of lading indicated that it should receive 171 cases more. The dilemma itself, however, offered the solution. The legal relationship between an arrastre operator and the consignee is akin to that of a depositor and warehouseman.[1] As custodian of the goods discharged from the vessel, it was defendant arrastre operator's duty, like that of any ordinary depositary, to take good care of the goods and to turn them over to the party entitled to their possession.[2] Under this particular set of circumstances, said defendant should have withheld delivery because of the discrepancy between the bill of lading and the markings and conducted its own investigation, not unlike that under Section 18 of the Warehouse Receipts Law, or called upon the parties to interplead, such as in a case under Section 17 of the same law, in order to determine the rightful owner of the goods.

It is true that Section 12 of the Management Contract exempts the arrastre operator from responsibility for misdelivery or non-delivery due to improper or insufficient markings. We cannot however excuse the aforesaid defendant from liability in this case before Us now because the bill of lading showed that only 3,000 cases were consigned to Cebu United Enterprises. The fact that the excess of 171 cases were marked for Cebu United Enterprises and that the consignment to Lua Kian was 171 cases less than the 2,000 in the bill of lading, should have been sufficient reason for the defendant Manila Port Service to withhold the goods pending determination of their rightful ownership.

We therefore find the defendants liable, without prejudice to their taking whatever proper legal steps they may consider worthwhile to recover the excess delivered to Cebu United Enterprises.

With respect to the attorney's fees awarded below, this Court notices that the same is about 50 per cent of the litigated amount of P1, 183.11. We therefore deem it reasonable to decrease the attorney's fees to P300.00.

Wherefore, with the aforesaid reservation, and with the modification that the attorney's fee is reduced to P300.00,

the judgment appealed from is affirmed, with costs against appellants. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[*] See Nos. 5 and 8, Stipulation of Facts.

[1] Northern Motors vs. Prince Line, et al., 107 Phil., 253.

[2] Macondary & Co., Inc. vs. Delgado Brothers, Inc., 107 Phil., 779; Delgado Brothers, Inc. vs. Home Insurance Co. & the Court of Appeals, L-16567, March 27, 1961.

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