

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

G.R. No. L-22409. April 27, 1967

Ponente: REGALA, J.

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REGALA, J.:

The Manila Port Service and the Manila Railroad Company appeal from the decision of the Court of First Instance of Manila adjudging them liable to the Rizal Surety and Insurance Co., Inc. in the amount of P870.05.

The suit, which was originally filed with the Municipal Court (now City Court) of Manila is an action for the recovery of a sum of money filed by the Rizal Surety and Insurance Co., Inc., as subrogee of one Natividad Lim, consignee of 250 cases of Hereford Brand Corned Beef. As appearing from the stipulation of facts submitted by the parties before the Court of First Instance, the vessel that carried the said shipment, the S/S BOISSEVAIR, arrived at Manila on January 9, 1961. Upon said arrival, unloading of the shipment started and on that very day, January 9, 1961, the consignee filed a "Provisional Claim" advising the arrastre contractor, the Manila Port Service, that the 250 cases of Hereford Brand Corned Beef had been shortlanded and/or landed in bad order. It was, however, only on the following day, January 10, 1961, that the last package of the said cargo was discharged from the carrying vessel and it was found out that the shipment was short of 24 cases and 17 tins, valued at P870.05. As a result of such shortage, the plaintiff, as insurer of the shipment against all risks, paid to the consignee the sum representing its liability under their insurance contract. As subrogee of the consignee, the plaintiff in its complaint demanded reimbursement for the value of the short-delivered shipment. The defendants were held liable in the municipal court and, as hereinbefore stated, they were also held liable in the Court of First Instance.

In this appeal, the first of the two assigned errors poses the question as to whether or not the so-called provisional claim filed by the plaintiff with the Manila Port Service one day before the date of discharge of the last package from the carrying vessel constitute a substantial compliance with section 15 of the arrastre contract, which reads:

"x x x In any event, the CONTRACTOR shall be relieved and released of any and all res-ponsibility or liability for loss, damage, mis-delivery and/or nondelivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year from the date of the discharge of the goods, or from the date when the claim for the value of the goods have 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. x x x" (Emphasis ours)

In the case of *Shell Co. of the Phil. Ltd. v. Compania General de Tabacos de Filipinas*, G. R. No. L-20230, July 30, 1965, this Court, resolving the same issue thru Mr. Justice Jose P. Bengzon, ruled:

"Paragraph 15 of the management contract clearly and specifically requires the claim to be filed 'within fifteen (15) days from date of discharge of the last package from the carrying vessel.' Quite obviously, therefore, such

claim should be filed after discharge of the goods from the vessel. A claim filed before such discharge is premature and speculative."

This ruling was restated in *Fireman's Fund Insurance Co. v. Manila Port Service, et al.*, G. R. No. L-22454, April 29, 1966. And again in *New Hampshire Fire Insurance Co. v. Manila Port Service, et al.*, G. R. No. L-20938, August 9, 1966, the same ruling was repeated, and this Court, analyzing the circumstances of that particular case, said:

"The trouble with the whole situation appears to be that the consignee or his agent-broker relies on what seems to be a stereo-type form of claim presented immediately upon arrival of the vessel in port, without apparently any effort being exerted to verify the condition of the shipment and even before the cargo is unloaded. As paragraph 15 of the Management Contract provides, the claim is supposed to be made after the discharge of the last package from the carrying vessel in order to afford the consignee or his broker, opportunity to examine his shipment. Of course, if the consignee or his broker discovers or is informed of a shortage or damage to the goods before said discharge of the last package, or even during the unloading, then a provisional claim may properly be presented without awaiting a final determination of the extent of the loss or damage. It is for this reason that we held in the case of *Switzerland General Insurance Company, Ltd. v. Java Pacific and Hoegh Lines, et al.*, (G. R. L-21760, April 30, 1966), that a provisional claim filed one (1) day before the date of the last discharge of the shipment was a substantial compliance with the requirement of Section 15 of the Management Contract, because upon examination of the shipment even before they were discharged from the vessel in the presence of the representatives of both parties, certain shortages were already actually found. In the case at bar, the parties admit in their stipulation of facts that, contrary to the provisional claim, the goods were landed complete and in good order and condition and that the loss occurred while the goods were in the possession and custody of the defendant Manila Port Service, after the discharge and after the filing of the provisional claim."

Note that in this case of *Hampshire Fire Insurance Co.* this Court, thru Justice Barrera, went further by making a distinction between two instances, to wit: (1) where the provisional claim is filed ahead of the date of the discharge of the last package from the carrying vessel but the consignee has not yet examined or was not yet informed of the condition of the shipment, the provisional claim is held to be speculative and premature; and (2) where the claim is filed also before the date of the discharge of the last package from the carrying vessel and the consignee has in fact discovered or was informed of a shortage or damage to the goods before the discharge of the last package, or even during the unloading, then the provisional claim is deemed to have been properly presented.

Applying the same principle to the case at bar, it is important to point out here that there is no showing from the evidence, particularly the Stipulation of Facts, that the consignee or her agent had actual knowledge of the missing cargo at the time she filed the provisional claim. As a matter of fact, there appears to be an admission by plaintiff in paragraph 6 of the Stipulation of Facts that the 250 cases of corned beef were all unloaded from the carrying vessel. The very provisional claim filed on January 9, 1961, quoted hereunder, supports the conclusion that the consignee was not sure of any shortage on that day.

"We beg to advise you that the following shipments of 250 cases Hereford Brand Corned Beef 48/12 ozs. Ex: Steamer have been SHORTLANDED in bad order and provisional claim is hereby made for any loss or shortage that may after examination be found to exist." (Emphasis ours)

Having no definite information then of any shortage or damage of the shipment consigned to her, the consignee filed its provisional claim merely in speculation of any loss or damage to be later on discovered. Within the contemplation of the previous cases cited above, such a speculative claim can not be considered as a substantial compliance with the requirement of Section 15 of the management contract. Neither may the formal claim for the missing cargo, filed on March 3, 1961, be considered compliance with said requirement as that date is clear-ly

beyond the fifteen-day period.

Arriving at this conclusion, it is needless to pass upon the second assigned error which concerns the amount that would be recovered.

WHEREFORE, the judgment of the lower court holding the defendants liable to the plaintiff is hereby reversed. Costs against the plaintiff-appellee.

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

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