

PHILIPPINE EDUCATION CO., INC., PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE, DEFENDANTS-APPELLANTS.

G.R. No. L-26524. April 25, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the judgment dated February 15, 1966 in civil case 48964 of the Court of First Instance of Manila.

On or about October 25, 1960, the Philippine Education Co. shipped on board the "SS PRESIDENT TAFT," in New York, 726 packages of books, magazines; globes and other merchandise, consigned to itself for discharge at Manila. The vessel arrived in Manila on December 9, 1960 and discharged the shipment to the then arrastre operator, the Manila Port Service, with 9 packages short-landed and 40 packages in bad-order condition. An examination of the bad-order cargo revealed that only 28 packages suffered loss of 9 copies of magazines. Of the total number of 717 packages received by the arrastre operator from the carrying vessel, only 603 packages were delivered to the consignee, resulting in short-delivery of 114 packages. A package of "Playboy" magazines discharged under a good-order tally sheet was found short of 47 copies upon delivery to the consignee.

Claims filed by the consignee with the arrastre operator having been denied, suit for damages was filed by the Philippine Education Co. against the Manila Port Service and the Manila Railroad Co.

In lieu of trial, the parties submitted a stipulation of facts, and on February 15, 1966 the court rendered judgment "in favor of the plaintiff and ordering the defendants jointly and severally to pay the plaintiff the sum of P3,989.19 [representing the CIF value of the 114 short-delivered packages and the 47 copies of "Playboy" magazines] with interest thereon at the legal rate from the date of the filing of the Complaint until fully paid plus the sum of P500.00 as attorney 's fees, and to pay the costs."

On appeal to this Court, the defendants-appellants pray for the reversal of the judgment a quo, contending that the lower court (1) had no jurisdiction over the subject-matter of the action; (2) erred in not holding that the claim in regard to bill of lading no. 84 was time barred; (3) erred in not limiting the liability of the appellants to the invoice value of the claim pursuant to par. 15 of the management contract between the Bureau of Customs and the Manila Port Service; and (4) erred in awarding attorney's fees.

We shall take up the arguments of the appellants in seriatim.

1. The appellants contend that his ordinary civil action being for the collection of a sum of money in the amount of P4,451.90 exclusive of interests and costs, jurisdiction properly pertains to the municipal court.

We agree that this is an ordinary action for the collection of a sum of money. The total amount of the claim is, however, not merely P4,451.90. A perusal of the complaint reveals that the claim of the plaintiff-appellee is for the total sum of P5,451.90, consisting of P4,451.90 representing the principal and P1,000 representing attorney's fees. Under the then existing law[1] courts of first instance had original jurisdiction in all cases in which the

demand, exclusive of interests, amounted to more than five thousand pesos. In the determination of the jurisdictional amount, only interests and costs are excluded. The amount of attorney's fees claimed is included in the determination of the jurisdiction of the court.[2] In the case at bar, the total amount of the claim inclusive of attorney's fees is P5,451.90. The court of first instance clearly had jurisdiction over the case when the complaint was filed on December 7, 1961.

2. In the stipulation of facts submitted by the parties, two dates appear with reference to the provisional claim under bill of lading no. 84, namely, the original typewritten date "September 4, 1961," and the uninitialled handwritten date "December 15, 1960." The appellants assign as error the finding of the court a quo that the provisional claim was filed on December 15, 1960.

A stipulation of facts is a judicial admission of all the facts stated therein. When counsel for the appellants affixed his signature thereto, he admitted, in behalf of his clients, all the facts therein stated, including all changes made thereon, unless the admission was made through palpable mistake. Counsel for the appellants knew of the alterations made in the stipulation of facts before its submission to the court. If he had any objection to the alterations, he should have insisted that only the initialled alterations be considered, and should have objected to the submission of the case on the basis of the stipulation of facts as altered. This was not done, and the appellants cannot pose this objection for the first time on appeal.

Parenthetically, it must be noted that in the ordinary course of events, a provisional claim precedes the formal claim. The appellants admit that the formal claim in respect to bill of lading no. 84 was made on May 27, 1961, yet they maintain that the provisional claim was filed only on September 4, 1961. In effect they would have this Court believe that the reverse had happened here, which is, that the formal claim was made by the consignee a little less than four months prior to the filing of the provisional claim. This is the import of the appellants' argument; this we cannot accept because it is patently absurd. Furthermore, a perusal of the admitted facts reveals that the 726 packages were loaded on board the same vessel, discharged therefrom on the same date, and presumably received by the consignee at almost the same time. Such being the case, it would be more in consonance with reason for the consignee to file its provisional claim under bill of lading no. 84 on December 15, 1960, together with the other provisional claims arising from the shipment which were all filed in the same month of December, 1960.

3. It is next contended by the appellants that their liability should be limited to P2,516.69 which is the invoice value of the claim as admitted by the parties and not P3,989.19 representing the CIF value of the short-delivery for which they were adjudged liable to the appellee. They invoke par. 15 of the Management contract which pertinently recites:

"x x x 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 and manifested, and the corresponding arrastre charges had been paid, including all damages that may be suffered on account of loss, destruction or damage of any merchandise while in the custody or under the control of the contractor x x x." [3]

Indeed it may be that the consignee cannot demand the full value of the lost cargo for failure to declare the same, and arrastre charges were admittedly paid not on the basis thereof but on the basis of the weight and measurement of the shipment.[4] It would be unjust to require the arrastre operator to pay the full undeclared value of the lost or damaged cargo, where, as in the instant case, the appellee, instead of declaring the full value of the goods and paying the corresponding charges thereon, chose to pay charges based on a lesser value. The preceding principles notwithstanding, the provision of par. 15 of the management contract whereby the arrastre

operator bound itself to answer not only for the invoice value of the claim - subject to the limitation of P500 per package - but also for "all damages that may be suffered on account of loss, destruction or damage of any merchandise" while in its custody and control, stands out in bold relief and its import cannot be ignored. In a number of cases we have interpreted this provision in the management contract as embracing not only the actual amount of costs, insurance and freight[5] but even marginal fees[6] which had been paid in connection with the shipment. Freight and insurance charges were paid in addition to costs of the shipment, and the shortages suffered by the shipment resulted in their loss. These are actual damages suffered on account of the short-delivery, and, in accordance with par. 15 of the management contract, the arrastre operator must answer for them.

4. The award of attorney's fees in the sum of P500 is, to our mind, justified by the environmental circumstances and under the authority of par. 11 of article 2208 of the new Civil Code.

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

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Section 44, par. c, RA 296, as amended by RA 2613.

[2] Gregorio Carlos v. P.J. Kiener Constructions, Ltd., 52 O.G. 6554.

[3] Exh. "1".

[4] Liverpool Insurance Co., Inc. v. Manila Port Service, L-23338, November 18, 1967.

[5] Jose Bernabe & Co., Inc. v. Delgado Brothers, L-14360, February 20, 1960; Phil. Education Co. v. Manila Port Service, L-23811, October 30, 1967.

[6] Caltex (Phil.) Inc. v. Manila Port Service, L-21055, August 31, 1966.

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