

**MANILA PORT SERVICE AND MANILA RAILROAD COMPANY,
PETITIONERS, VS. COURT OF APPEALS AND MARCELO LAPEÑA,
DOING BUSINESS UNDER THE NAME AND STYLE "LAPEÑA
ENTERPRISES", RESPONDENTS.**

G.R. No. L-21890. March 29, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

On December 5, 1959, there were discharged into the custody of the Manila Port Service, a subsidiary of the Manila Railroad Company, from the SS "Juno", five cases of baby soothers (500 gross) and ten cases of essential oil (510 lbs.), in good order and condition. This shipment was consigned to Marcelo Lapeña. About four or five days after the discharge of the goods from the carrier, and while they were in the custody of the Manila Port Service, Dalmacio Villanueva, the head checker of the J. de Vera Brokerage, the broker re-presenting Marcelo Lapeña, examined the packages or cases containing the goods and found the same in good condition. However, two or three days after Christmas of 1959, Dalmacio Villanueva noticed that the cartons or cases containing the goods were damaged, and so he brought the matter to the attention of their claim clerk, Augurio de Vera. On December 29, 1959, De Vera prepared a provisional claim for any damage or shortage to the cargo, and had said claim filed with the Manila Port Service on January 4, 1960. Upon actual delivery of the goods on February 3, 1960, to Marcelo Lapeña, it was noted that there was a shortage of 30 gross of baby soothers and 123 pounds of essential oil all valued at P1,370.00.

The provisional claim, which was filed on January 4, 1960 by the broker of Marcelo Lapeña, was followed by a formal claim on February 29, 1960. Both the provisional claim and the formal claim were rejected by the Manila Port Service on April 22, 1960. The ground of the Manila Port Service in rejecting the claim was that the claim was presented after the lapse of the 15-day period from the day that the last package containing the goods was discharged from the carrying vessel as required in section 15 of the management contract entered into between the Bureau of Customs and the Manila Port Service as the arrastre operator in the port of Manila. Because of the denial of the claim, Marcelo Lapeña filed an action in the Municipal Court of Manila against the Manila Port Service and the Manila Railroad Company to recover the value of the goods that were missing, plus attorney's fees.

In their answer to the complaint, defendants Manila Port Service and Manila Railroad Company set up the defense that since no provisional claim was filed by the plaintiff with defendant Manila Port Service within the 15-day period from the date of the discharge from the carrying vessel, the defendants were completely relieved and released of any and all liability for loss, shortage in contents of, or damage to, the cargo in accordance with the pertinent provisions of the management contract entered into by and between the Bureau of Customs and the Manila Port Service. The Municipal Court of Manila rendered judgment in favor of plaintiff Marcelo Lapeña, and defendants Manila Port Service and Manila Railroad Company appealed to the Court of First Instance. After trial, the Court of First Instance of Manila, on January 4, 1961, in its Civil Case No. 44498, rendered judgment in favor

of plaintiff Marcelo Lapeña ordering the de-fendants Manila Port Service and the Manila Railroad Company to pay said plaintiff the sum of P1,370.00 re-presenting the value of the goods lost, with legal interest from the date of the filing of the complaint, the sum of P200.00 as attorney's fees, and the costs.

The defendants, Manila Port Service and Manila Railroad Company, appealed from the decision of the Court of First Instance to the Court of Appeals. The Court of Appeals, in a decision rendered on July 19, 1963, affirmed the decision of the Court of First Instance. Not satisfied with the decision of the Court of Appeals, and of its order denying the motion for re-consideration of the decision, the Manila Port Service and Manila Railroad Company appealed to this Court on a petition for certiorari.

In their appeal before this Court petitioners Manila Port Service and Manila Railroad Company contend: (1) that the Court of Appeals erred in affirming the finding of the Court of First Instance of Manila that the requirement, regarding the filing of the claim with-in the 15-day period as provided in section 15 of the management contract between the Bureau of Customs and the Manila Port Service, had been complied with; (2) that the Court of Appeals erred in holding that the limited liability clause of section 15 of the management contract - limiting the liability of the arrastre operator to not more than P500.00 per package - was not pleaded nor put in issue before the trial court; and (3) that the Court of Appeals erred in affirming the decision of the trial court which ordered the petitioners to pay respondent Marcelo Lapeña the sum of P1,370.00 with legal interest and the costs.

In support of their first contention, petitioners maintain that the action of respondent Lapeña is barred because he did not file a claim with the petitioner Manila Port Service within the period of 15 days from the date of the discharge of the last package from the carrying vessel as required under section 15 of the management contract between the Bureau of Customs and the Manila Port Service. The pertinent provision of section 15 of the management contract, invoked by petitioners, reads as follows:

"x x x in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery, 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 the discharge of the goods, or from the date when the claim for the value of such 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."

The petitioners point out that the last package of the shipment consigned to respondent Marcelo Lapeña was discharged from the carrying vessel on December 5, 1959, while the provisional claim for damage or loss was filed with the Manila Port Service only on January 4, 1960, or thirty days after the discharge of the last package. It is the position of the petitioners that because the provisional claim was filed after fifteen days had elapsed from the date of the discharge of the last package, the action filed by respondent Marcelo Lapeña against petitioners was barred under the above-quoted provision of section 15 of the management contract.

It is not denied that respondent, Marcelo Lapeña filed his provisional claim with petitioner Manila Port Service only on January 4, 1960, or thirty days after the discharge of the last package. But the evidence shows, and the Court of Appeals so found, that four or five days after the discharge of the packages or cases containing the goods, and while those packages or cases were already in the possession and custody of petitioner Manila Port Service, they were actually examined and found by the broker of respondent Marcelo Lapeña to be in good condition. The evidence also shows, and the Court of Appeals so found, that about two or three days after Christmas (or about December 27, 1959), the broker of respondent Marcelo Lapeña found that the cartons or cases containing the goods were damaged, so that on December, 29, 1959 the claim clerk of the broker prepared a provisional claim which was actually filed with petitioner Manila Port Service on January 4, 1960. It will thus be noted that from the day when the broker of respondent Marcelo Lapeña found that the cartons and packages

containing the goods were damaged (on December 27, 1959) and the day when the provisional claim was filed with petitioner Manila Port Service, (on January 4, 1960) only eight days had elapsed.

We believe that the circumstances obtaining in this case warrant a liberal and realistic application of the requirement regarding the presentation of the claim within the 15-day period as a condition precedent to the bringing of a suit under section 15 of the management contract. In the case of David Consunji, et al., vs. Manila Port Service, et al., G.R. No.L-15551, November 29, 1960, this Court had occasion to point out the inequity of applying literally the proviso regarding the filing of the claim with the arrastre contractor within fifteen days from the date of the discharge of the last package where the consignee comes to know about the damage or loss only after the lapse of the 15-day period. This Court said:

"In this connection, we realize the seeming inequity of applying this 15-day proviso where the consignee comes to know the damage or loss only after the lapse of such 15-day period, for instance, where delivery by the contractor takes place 16 days after discharge of the last package from the vessel. And it might be unfair to apply the limitation where the claimant comes to know of such condition precedent (the filing of claim for damage or loss) only after the 15-day period x x x." [1]

And, in the case of Rizal Surety & Insurance Co., vs. Manila Railroad Co., et al., G. R. No. L-19485, February 17, 1967, this Court also pointed out the in-correctness, and the oppressiveness, of applying literal-ly the provision of section 15 of the management con-tract to the case of a consignee, who had not filed a claim within fifteen days from the discharge of the goods consigned to him, but who had shown diligence in protecting his rights by filing his claim soon after he became aware of the loss or damage of the goods. In this Rizal Surety case, the cargo consisting of 454 cases of corned beef was discharged into the custody of the Manila Port Service in good condition, except one case which was damaged. When delivery was made on January 20, 1960, it was found that the shipment was short of 96 cases. On January 21, 1960, or the day following delivery, the consignee filed a claim with the Manila Port Service for short delivery. The claim was reject-ed by the Manila Port Service, and so suit was commenced by the consignee on October 14, 1960. The defense of Manila Port Service was that the claim was filed beyond the period of fifteen days from the date of the discharge of the last package from the carrying vessel, as required by section 15 of the management contract. In disregarding this defense of the arrastre operator, this Court dec-lared:

"Furthermore, the stipulation of facts shows that the shipment was com-pletely discharged into the custody of appellant, all the 454 cases being in good order except one, which had suf-fered some damage. The loss, therefore, happened while the merchandize was in appellant's hands. There is no evidence as to the exact date the loss occurred and the consignee had no reason to file a claim until she was in a position to know about the loss; and the earliest date she could possibly have discovered it was January 18, 1960, as it was only then that the Bureau of Customs issued the delivery permit, assuming that she could have obtained the necessary gate pass and actually taken delivery of the shipment on the same date. Under the circumstances, a literal compliance with the disputed provision of the management contract would be illogical and oppres-sive x x x."

It will thus be seen that in applying the require-ment regarding the filing of a claim within the 15-day period as provided in section 15 of the management con-tract, this Court has chosen to interpret that proviso liberally, in an endeavor to promote fairness, equity and justness. This Court has chosen to take into consider-ation the circumstances obtaining in a given situation in applying the provisions of section 15 of the manage-ment contract.

In the case now at bar, while it is true that res-pondent Marcelo Lapeña had not filed his claim within the 15-day period from the date of the discharge of the last package, it is nevertheless shown that said res-pondent had no reason to file a claim within the 15-day period from December 5, 1959 - the day of the discharge - because he had no knowledge of, or reason to believe that he suffered, a loss during that period. The facts as found by the Court

of Appeals is that the shipment was discharged into the custody of the Manila Port Service on December 5, 1959, in good order and condition; that four or five days after the discharge of the shipment the packages and cases containing the goods were found to be in good condition; that it was not until December 27, 1959 (two days after Christmas) when it was found that the packages and cases containing the goods were damaged, and on January 4, 1960 the claim for loss was filed with the petitioner Manila Port Service. Under the circumstances We believe that respondent Marcelo Lapeña had complied with the requirement contemplated in section 15 of the management contract; and since he brought suit against the petitioners herein on July 10, 1960, or within one year from the time the petitioners had rejected his claim - the rejection took place on April 22, 1960 - the action of respondent Marcelo Lapeña against the petitioners had been filed in accordance with section 15 of the management contract, and is not barred.[2]

We fully agree with the observations of the Court of Appeals, quoted from the decision appealed from, as follows:[3]

"Indeed it would be unjust and iniquitous to require, as a condition sine qua non to the bringing of suit in the courts of justice, the presentation of a claim with the Manila Port Service within 15 days from the date of discharge of the cargo where, as in this case, the failure to do so was due to the fact that delivery was effected only after the lapse of said period and where there was then no reason to justify the filing of such claim as the goods were received by the Manila Port Service from the carrying vessel complete and in good order and condition. Besides, since it is not denied that the possibility of loss or shortage was only discovered two or three days after Christmas, when the cartons containing the goods were found to be in a damaged condition, we believe that the presentation of the provisional claim by or in behalf of the plaintiff on January 4, 1960 constitutes a substantial compliance with the requirement of Section 15 of the management contract relative to the filing of a claim."

As regards the second contention of the petitioners, We find the same without merit. We agree with the finding of the Court of Appeals that the question regarding the limited liability of herein petitioners, pursuant to section 15 of the management contract, had not been pleaded or put in issue before the trial court.

We have examined the answer of the petitioners to the complaint, and while it is true that in paragraph 1 thereof, they admit that the Manila Port Service is an arrastre operator for the Port of Manila and its operation is subject to the terms, conditions, restrictions, and subjections imposed by the management contract entered into by and between the Bureau of Customs and the Manila Port Service, yet there is no specific allegation in the answer about the defense of limited liability as provided in section 15 of the management contract. On the other hand, the answer alleges that if the petitioners - as defendants in the court below - failed to pay plaintiff's claim as alleged in paragraph 9 and 10 the complaint the reason is, as stated in their special defenses, "that since no provisional claim was filed by the consignee against the defendant Manila Port Service within the 15-day period from the date of discharge from the carrying vessel at the Port of Manila, the defendants are completely relieved or released of any and all liability for loss, shortage in contents of, or damage to, the cargo in accordance with the pertinent provisions of the management contract"[4] Nowhere is there in the answer any mention of any defense based on the limited liability of the arrastre contractor as provided in the management contract. We have also noted that in the "partial stipulation of facts" there is copied the particular provision of section 15 of the management contract in connection with the special defense regarding the failure of the consignee to file a claim within the 15-day period from the date of the discharge of the last package. True it is, that in the "additional stipulation of facts" there is a statement "that the defendants' main defense in this case is section 15 of their management contract marked as Annex 1-A in Exh. 1", but this statement is too general that it can not be construed as referring to the particular clause in section 15 of the management contract regarding the arrastre contractor's limited liability. Rather, that statement can be construed as referring only to the clause in section 15 of the management

contract regarding the requirement of the filing of the claim within the 15-day period because that matter is pleaded as a special defense in the answer.

Counsel for the petitioners quote in their brief a portion of the transcript of stenographic notes taken during the trial to support petitioners' claim that they had raised the issue of limited liability before the trial court. We have read that quoted portion of the transcript, but we can not conclude that the defense of limited liability under the management contract was put in issue before the trial court. Issues before the trial court must be embodied in the pleadings. We have also noted that in the decision of the Court of First Instance of Manila the matter regarding the limited liability of the defendants was not touched at all - and to Us this is an indication that the issue of limited liability was not raised before the trial court. If that issue was raised before the trial court, as claimed by petitioners, and the trial court did not pass upon the issue, petitioners should have filed a motion for re-consideration of the decision of the trial court and ask for the resolution of the issue. This, the petitioners did not do.

Indeed the Court of Appeals was right in not passing on the issue of limited liability on the part of the petitioners because that issue was not properly raised before the trial court. Settled is the rule that a special defense must be specifically pleaded in order to afford the trial court an opportunity to pass upon the issue raised by the special defense, and the defense that was not properly pleaded before the trial court can not be raised for the first time on appeal.

Having found that the action of respondent Marcelo Lapeña is not barred, and that the defense of limited liability under section 15 of the management contract is not available to the petitioners on appeal because that defense was not pleaded before the trial court, it follows that the Court of Appeals did not err when it affirmed the decision of the trial court which ordered herein petitioners to pay respondent Marcelo Lapeña the sum of P1,370.00 representing the value of the goods that were lost, plus P200.00 for attorney's fees, and the costs. We, therefore, find the third contention of the petitioners as also without merit.

IN VIEW OF THE FOREGOING, the decision of the Court of Appeals, appealed from, is affirmed, with costs against the petitioners.

IT IS SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Sanchez, Angeles, and Fernando, JJ., concur.

Castro, J., did not take part.

Concepcion, C.J., is on official leave of absence.

Bengson, J., did not take part.

[1] Words in parenthesis supplied.

[2] See *Republic of the Philippines v. Manila Port Service*, G.R. No. L-19115, March 31, 1964; *Chiok Ho v. Campaña Maritima, et al.*, G.R. No. L-20553, April 30, 1965; *Yu Kimteng Construction Corporation v. Manila Railroad Company, et al.*, G.R. No. L-17027, November 29, 1965; *Firemen's Insurance Co. v. Manila Port Service, et al.*, August 31, 1967.

[3] Appellants' brief, p. 40 (CA decision is appended to appellants' brief).

[4] Record on Appeal, pp. 7-8.

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