

**ALLIANCE SALES CO., INC., PETITIONER, VS. COURT OF APPEALS,
RAFAEL SUMADCHAT, REPRESENTING R. SUMADCHAT BONDED
WAREHOUSE AND THE COLLECTOR OF CUSTOMS, PORT OF
MANILA, RESPONDENTS.**

G.R. No. L-47694. October 23, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the six-working-day free storage period for cargoes discharged from vessels docking at the Port of Manila and the "flexible transfer" system of handling, storage and disposal of imported goods in the said port.

The record shows that in October, 1963 Alliance Sales Co., Inc. ordered three hundred drums (each drum weighing 735 pounds) of solid caustic soda from the Dow Chemical International, Inc. of San Francisco, California. That cargo was unloaded in the Port of Manila from the SS Philippine Jose Abad Santos on November 28, 1963.

The discharge of the cargoes from the said vessel was completed on December 10, 1963 (p. 10, Brief of Collector of Customs; pp. 3 and 66, Record on Appeal; Annex B of complaint; 8 tsn August 31, 1967, p. 13, Appellant's Brief and Exh. D-1).

On November 30, that cargo of caustic soda was transferred from the sheds of the Bureau of Customs to a bonded warehouse located at Eulogio Rodriguez, Jr. Avenue, Pasig, Rizal, owned by Rafael Sumadchat.

Army trucks were used in hauling the cargo from the pier area to that bonded warehouse. For that service, the company paid without protest to the Bureau of Customs the amount of P918.03 (p. 7, Sol. Gen.'s Brief).

On December 14, 1963, after the company had paid the duties and taxes levied on those imported goods, the Bureau of Customs issued the corresponding delivery permit.

Two days later or on December 16, a representative of the company demanded delivery of the cargo from Sumadchat (Decision of trial court, pp. 364 and 367, Record on Appeal). He did not want to make delivery unless the company paid the sum of P2,516.16 as alleged storage fees at the rate of P51.56 daily and other charges.

The company refused to pay that amount. It suggested that the matter be threshed out and clarified but Sumadchat was not amenable to any negotiation or conciliatory settlement of the controversy.

Because of Sumadchat's refusal to deliver the cargo, the company filed on January 8, 1964 an action for replevin and damages (P11,400 as actual damages and P5,000 as exemplary damages) against R. Sumadchat Bonded Warehouse in the Court of First Instance of Rizal, Caloocan City Branch XII (Civil Case No. C-107).

On January 9, 1964 the lower court granted the writ of replevin. The deputy sheriff of Caloocan City was able to take custody of the cargo only on May 11-12, 1964. He turned it over to the company on May 18, 1964 (p. 231,

Record on Appeal). It was eventually disposed of by the company.

Sumadchat in his answer filed a counterclaim for storage fees and other charges amounting to P8,475.76 as of April 6, 1964 and storage fees at P51.56 a day thereafter.

Sumadchat also filed a third-party complaint against the Collector of Customs for the Port of Manila. He alleged that it was pursuant to a memorandum circular and the flexible transfer system of cargoes that the drums of caustic soda were transferred to his bonded warehouse and that the Collector issued the delivery permit without first satisfying the warehouseman's lien under section 31 of the Warehouse Receipts Law.

He prayed that the Collector of Customs be ordered to pay him whatever liabilities he would incur in favor of Alliance Sales Co., Inc. plus damages and attorney's fees in the total amount of P11,805.48.

After trial, the lower court rendered a decision dated July 9, 1970, holding that it had jurisdiction over the case. It dismissed the complaint and the third-party complaint and ordered the company to pay Sumadchat P2,516.16 as of December 16, 1963 plus the sum of P51.56 a day from December 17, 1963 up to May 11, 1964 as storage and other incidental charges, with legal interest from May 12, 1964 until the total amount due to Sumadchat is fully paid and attorney's fees of P2,000 (pp. 368-369, Record on Appeal).

The company appealed to the Court of Appeals which in its amended decision modified the trial court's judgment. It ordered the company to pay Sumadchat on his counterclaim the sum of P51.56 a day from December 6, 1963 to May 11, 1964 with legal interest from May 12, 1964 until full payment (pp. 62-63, Rollo).

But the Court of Appeals held that the company was not liable to pay the alleged charges amounting to P2,516.16 as of December 16, 1963 and it eliminated the award of P2,000 as attorney's fees because the company had some basis for controverting Sumadchat's claim.

The company appealed to this Court. We gave due course to the appeal because of the novel issues regarding the free storage period for unloaded cargo and the legality of the flexible transfer system or the transfer of the cargo from the pier to a bonded warehouse.

The company reiterates in this Court its assignment of error in the Court of Appeals that the flexible transfer system is a contract which could not be enforced without its consent.

On the other hand, Sumadchat contends that the flexible transfer system is a policy, as held by the Court of Appeals; that the company impliedly consented to the transfer of its cargo to the warehouse and that, in any event, the transfer could be characterized as a quasi-contract.

We agree with the Court of Appeals that the flexible transfer system is lawful because it is sanctioned by section 1901 of the Tariff and Customs Code which empowers the Collector of Customs to establish and supervise warehouses when the business of the port requires such facilities and to impose "such conditions as may be deemed necessary for the protection of the revenue and of the articles stored" in the warehouses.

In the exercise of that power, the Collector of Customs of the Port of Manila issued on May 13, 1963 Memorandum Order No. 44 which adopted the flexible transfer system to obviate congestion in the piers (pp. 32-36, Appellant's Brief).

Under that system, the harbor superintendent would designate the customs bonded warehouses to which cargoes of vessels docking at the Port of Manila "shall be transferred under guard until delivered to and receipted for by the storekeeper".

On November 7, 1963, or twenty-one days before the cargo involved in this case was unloaded, the acting harbor

superintendent apprised the Acting Collector of Customs of the instruction of the Commissioner of Customs to transfer cargoes from the pier area to various warehouses in the suburbs (Exh. 2, pp. 115-6, Record on Appeal; p. 8, Appellee's Brief).

That instruction was triggered by the heavy volume of cargoes arriving for the Christmas season and the existing congestion in the sheds. The Acting Collector of Customs approved "the transfer of cargoes to the suburban warehouses x x x subject to strict security measures" (Exh. 2-A, p. 116, Record on Appeal; pp. 8-9, Appellee's Brief). Pursuant to that directive, the 300 drums of caustic soda in question were transferred to Sumadchat's bonded warehouse in Pasig, Rizal.

Under those circumstances, there is no reason why the company's consent must first be secured before the transfer of the cargo. The flexible transfer system was an expedient for decongesting the piers.

The company in its second assignment of error, also raised in the Court of Appeals, contends that Memorandum Order No. 44 (which provided for the flexible transfer system) applied only to cargoes coming from Japan and Hongkong and did not apply to its cargo which came from San Francisco, California.

The company did not raise that point in its complaint in the lower court and did not show that the conditions prescribed in Memorandum Order No. 44 were not complied with.

Memorandum Order No. 44 itself does not categorically state that the flexible transfer system applies only to cargoes shipped from Japan and Hongkong.

The Collector of Customs, who was a third-party defendant and is now a respondent, has not sustained the company's view that there was noncompliance with the requirements of Memorandum Order No. 44. The inescapable conclusion is that the transfer of the company's goods to the Pasig warehouse was duly authorized and was not a violation of the said memorandum.

The company in its third assignment of error questions the computation of the six-working-day free storage period, made by the Court of Appeals, and in its fifth assignment of error argues that Memorandum Order No. 130 should be applied to this case.

The company contends that the six-working-day free storage period should be reckoned from the "last day of discharge" of the cargoes of the carrying vessel "irrespective of the date the goods in question were actually discharged from the said vessel" (Rollo, p. 22).

Thus, according to the company, since December 10, 1963 was the date when all the cargoes of the carrying vessel were discharged as per certificate of the Maritime Company of the Philippines (Record on Appeal, p. 3), then, the six-working-day free storage period allegedly expired on December 17, 1963 (p. 48, Appellant's Brief).

That contention is well-taken because the Tariff and Customs Code provides:

"SEC. 3002. (Storage charge) At the Port of Manila. - a. Consignments of articles or parts thereof, which remain in any of the government piers or other customs premises shall be entitled to a free storage period of six working days after the cargo of the vessel from which such articles were landed have been officially declared as discharged. x x x x x x x x x x.

"x x x x x x x x x x.

"The surveyor of the port, immediately upon receipt of advice of the wharfinger as to the time of the completion of discharge of cargo from a vessel lying alongside of the piers or bulkhead, shall cause to be posted a notice at the piers and in the customhouse announcing that fact and giving the date upon which storage charge on cargo from such vessel will begin."

It is evident from the unambiguous wording of section 3002 that the six-working-day free storage period should be reckoned from the completion of the discharge of all the cargoes of the carrying vessel which in the instant case was effected on December 10, 1963. Six days from that date (excluding December 15 which was a Sunday) would fall on December 17, 1963. The Court of Appeals erred in computing that period from November 28, 1963 when the company's cargo was actually landed.

The company's contention in its fifth assignment of error (which is kilometric and involuted to the point of incoherence) that Customs Memorandum Order No. 130 should be applied to this case does not deserve serious consideration.

As correctly held by the Court of Appeals, because Memorandum Order No. 130 dated December 13, 1963 took effect on January 1, 1964, it has no application to this case.

That order deals with "uniform rates on cargoes transferred to customs public bonded warehouses under the flexible and/or selective system or for deposit under warehousing entries" (pp. 94-100, Appellant's Brief in CA). It contains certain rules intended to supplement Memorandum Order No. 44.

Rule 1 provides that warehouse operators should send written notices to consignees regarding the storage of their cargoes in warehouses on the day following the receipt of such cargoes and that "for failure to do so, the warehouse operator shall not be entitled to collect storage charges (only) on the pertinent cargoes".

Sumadchat could not have complied with that requirement on November 30, 1963, when the company's cargo was transferred to his warehouse, because that rule was not yet in force at that time.

The company in page 53 of its brief contends that it is not liable to pay storage charges. In its fourth assignment of error, it argues that it is not liable to pay legal interest on the supposed storage charges.

It is a fact that on December 14, 1963 (or within the six-working-day free storage period as shown above) the company was entitled to demand delivery of the cargo from Sumadchat because it had already secured the corresponding delivery permit.

As found by the trial court and the Court of Appeals, the company demanded delivery on December 16, 1963 but Sumadchat required the company to pay the sum of P2,516.16 to cover the following alleged charges as of December 16, 1963 (p. 61, Record on Appeal):

Minimum Storage from November 30 to December 6, 1963 - - - - -

P 360.94

Storage from December 7 to 16, 1963- - - - -

1, 031.26

Handling in and out - - - - -

412.50

Hauling - - - - -

412.50

Loading -----

206.52

Insurance -----

92.44

TOTAL -----

P2,516.16

The Court of Appeals found that only the item for storage charges can be collected by Sumadchat from the company and it should be at the rate of P51.56 daily beginning December 6, 1973. But this finding cannot be sustained because it is predicated on the erroneous assumption that the six-working-day free storage period started on November 28, 1963. We have already shown that that period should be computed from December 10, 1963.

The Appellate Court also found that the other charges, handling, etc., were not justified because they were not substantiated by any evidence. These other findings are conclusive on this Court.

The company recited in pages 42 to 48 of its brief its efforts to get delivery of the cargo judicially and extrajudicially:

“6. On December 14, 1963, the Customs Appraiser, after checking the appraisals and finding them correct, ok'd or approved the release of said goods.

“7. Also on December 14, 1963, after complying with all customs requirements and formalities and securing the approval of the Bureau of Customs for the release of the goods to it, and after being informed in the Bureau of Customs that the same had been transferred to private respondent's warehouse in Pasig, Rizal, herein petitioner went to the former and was told by Mrs. Sumadchat, wife of the warehouse operator, Rafael Sumadchat to get the necessary trucks for the hauling.

“8. The aforesaid transfer was made without prior, nay subsequent, notice to, knowledge and consent of, herein petitioner and in fact, against the will of the latter.

“9. Following and relying upon Mrs. Sumadchat's aforesaid statement, herein petitioner contracted its forwarding broker, Atty. Maximo Echeverri, Jr., who furnished it the men (50) and trucks (10) necessary to haul the goods and on December 16, 1963, within the free storage period, plaintiff-appellant's Mr. Go, forwarding broker Atty. Echeverri, together with 50 men and 10 trucks went to private respondent's warehouse in Pasig, Rizal, actually ready, willing and able to take delivery of the goods.

“10. That, contrary to her previous statement above-mentioned, Mrs. Sumadchat refused to release the goods

(to) herein petitioner on said date, December 16, 1963, unless the latter first pay the sum of P2,619.28 by way of storage and other charges to private respondent.

"11. Herein petitioner refused to pay the aforesaid charges and rightly so saying that, as abovementioned, the transfer was made without prior, nay subsequent, notice to it, without its knowledge and consent, in fact, even against its will and also that it was entitled to the free storage period of six (6) working days granted to it by Sec. 3002 and Customs Memorandum Order No. 130-63 dated December 13, 1963, supra, which free storage period had not yet expired as of said date, December 16, 1963, as the same would expire only on December 18, 1963 (or at the earliest December 17, 1963).

"12. That Mrs. Sumadchat still refused to release the goods to herein petitioner, which, although it was not able to take delivery of the goods thru no fault of its own considering that when it went to private respondent's warehouse on December 16, 1963 with its forwarding broker, Atty. Echeverri, together with 50 men and 10 trucks, it was actually ready, willing and able to take delivery spending the sum of P600.00, which it paid to its forwarding broker in connection with said men and trucks and instead suggested to herein petitioner's Mr. Go to see her husband, Mr. Rafael Sumadchat in the latter's office on Rosario St., Manila. Following said advice of Mrs. Sumadchat, Mr. Go went to the office of Mr. Sumadchat not only in the morning and afternoon of December 16, 1963 but again on December 17 and again on December 18, again on December 19, again on December 23 but all these efforts to see Mr. Sumadchat, for the purpose of discussing with him the release of the good in an amicable way and thereby avert further damage to herein petitioner proved futile because the latter intentionally, nay maliciously, avoided Mr. Go.

"In fact herein petitioner's, Mr. Go and Atty. Jordan Techico's efforts to see the Commissioner of Customs, Mr. Jose Lingad, in connection with the matter, also proved futile.

"13. That still entertaining hope that private respondent would come to reason and release the goods to it, herein petitioner asked the intercession of Mr. Arcadio S. Tandez, of the Office of the Harbor Superintendent of the Bureau of Customs to arrange a meeting with Mr. Sumadchat, but again the same failed as did subsequent efforts in the form of communications.

"14. When all the abovementioned efforts exerted by herein petitioner proved of no avail, it was compelled to engage the services of a lawyer, Atty. Gerardo P. Cabochan, who on January 8, 1964, filed the verified complaint originating this case in the trial court.

"15. The trial court, in accordance with the application filed by herein petitioner for an order for the immediate delivery of the goods, to it, issued an order dated January 9, 1964 directing the Sheriff of Caloocan to take possession thereof immediately and deliver the same to herein petitioner.

"This order became the object of numerous dilatory motions filed by private respondent and was reaffirmed by the trial court in a second order of the same tenor dated Feb. 12, 1964, which again became the object of dilatory motions filed by private respondent, and which the trial court again reaffirmed in a third order dated March 20, 1964, which again became the object of dilatory motions filed by private respondent and which the trial court again reaffirmed in a fourth order dated May 4, 1964 which was finally, after so much difficulty caused by private respondent, carried out by the Sheriff of Caloocan with the help of PC soldiers on May 11 and 12, 1964.

"16. The Sheriff of Caloocan tried to enforce the Order dated January 9, 1964 on January 15, 1964, to no avail. He tried to enforce the Order dated February 12, 1964 on February 25, 1964, again to no avail. In connection with the Order of February 25, 1964, herein petitioner again incurred an expense of P600.00 which it paid to its forwarding broker, Atty. Echeverri, for the 50 men and 10 trucks supplied by the latter although the same were not actually used in hauling the goods and, of course, in connection with the Order of May, 1964, herein petitioner incurred another expense of P1,600.00, which it paid to said forwarding broker for the men (also 50) and trucks (also 10) supplied by the latter which were finally and actually used in hauling the goods on May 11

and 12, 1964."

Considering the foregoing allegations, which were not disputed by appellee Sumadchat, we hold that it is not just and equitable that the company should pay storage fees from December 18, 1963 or after the expiration of the six-working-day free storage period. It has no liability to Sumadchat.

The Court of Appeals, in exempting the company from paying attorney's fees, found that it was forced "to litigate or to institute the present action by reason of defendant-appellee's refusal to talk the matter over with appellant and failure to even answer the latter's letter (Exh. H) that they meet and discuss the charges being collected. Indeed, appellant had no other course of action left but to bring the matter to the court" (Decision, p. 42, Rollo).

The company has tenaciously insisted that it is not liable for storage fees because of the alleged dilatory tactics which were employed by Sumadchat to avoid compliance with the writ of replevin and which unduly prolonged the deposit of the cargo in his warehouse. The major portion of the storage fees pertains to the period when the case was already pending in court and a writ of replevin had already been issued.

Inasmuch as there was a replevin bond, there was no justification for Sumadchat to ignore the writ and to withhold delivery of the cargo.

The company's last assignment of error is that the Court of Appeals erred in not granting its claim against Sumadchat for damages allegedly amounting to P29,586. (The trial court did not pass upon the company's claim for damages amounting to P16,400.)

As correctly contended by Sumadchat, that assignment of error raised a factual issue which is beyond the scope of this appeal where only legal issues can be resolved.

WHEREFORE, the decisions of the trial court and the Court of Appeals are reversed and set aside. No costs.

SO ORDERED.

Barredo, (Chairman), Fernandez, [*] Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., is abroad.

[*] Fernandez, J., was designated to sit in the Second Division.

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