

**INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF-APPELLEE,
VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS.***G.R. No. L-26268. March 25, 1970*

Ponente: MAKALINTAL, J.

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This case is before us on appeal by the defendants Manila Port Service and Manila Railroad Company from the decision of the Court of First Instance of Manila (Branch XIV) affirming that of the City Court, and holding the appellants liable to the plaintiff-appellee in the sum of P500.00 with legal interest from October 22, 1964 until fully paid, plus the sum of P110.00 by way of attorney's fees, and costs.

On or about May 10, 1960 the vessel "SS BAYERSTEIN" took on board at Hamburg, Germany, for shipment to Manila eight (8) cases of auto parts, consigned to Leelin & Co., Manila. The "SS BAYERSTEIN" arrived in Manila on June 23, 1960 and on the same date completely discharged the aforesaid cargo into the custody of the Manila Port Service, an agent of the Manila Railroad Company, the arrastre operator. Of the eight cases, the defendant delivered to the consignee's broker five (5) cases on August 17, 1960 and two (2) cases on August 22, 1960, or a total of seven (7) cases.

On October 19, 1960 the consignee sent a formal claim to the Manila Port Service for the value of the undelivered shipment. Similarly worded claim letters were likewise sent to C.F. Sharp & Co., the Agent of the carrying vessel, and to the insurance department of Ed. A. Keller & Co., Ltd., the agent here of the cargo's insurer. In said formal claim the consignee invited the arrastre operator's attention to a provisional claim (No. 9-4334) filed by the former against the latter as early as July 22, 1960. In view of the refusal of the Manila Port Service to pay the value of the undelivered goods, the Insurance Company of North America, as insurer, paid the consignee the sum of P774.08.

On June 23, 1961 the Insurance Company of North America, as consignee's, subrogee, commenced the present action in the City Court of Manila against the Manila Port Service and the Manila Railroad Company. As one of their defenses, the defendants alleged the plaintiff's action was already barred since no claim for the value of the missing goods had been filed with them within the period fixed in paragraph 15 of the Management Contract.[1] Judgment was rendered for the plaintiff, and the defendants appealed to the Court of First Instance of Manila, where the parties submitted the case for decision on the sole legal issue of "whether or not the provisional claim was filed within the fifteen (15) day period prescribed in the Management Contract."

In its decision of March 8, 1966, the Court of First Instance found that the filing of the provisional claim on July 22, 1960 was in full compliance with the terms of the Management Contract. Thus:

"x x x. This Management Contract provides that a claim must be filed with-in 15 days from the date of last discharge, and there is no doubt that this claim was filed beyond the 15-day period. However, our Supreme Court has modified the severity of this Contract by counting the 15-day period, not from date of last discharge, but from date of actual delivery to the consignee (Chiok Ho v. Cia Maritima G. R. No. L-20553; April 30,

1965). The very exhibits of Defendant particularly Exhibit 4 (permit to deliver goods) and the Gate Passes (Exhibits 5 and 6) show that the broker of the Importer first had knowledge of the short delivery on the date of the permit to deliver goods (Exhibit 4) - this Exhibit is dated July 22, 1960 and on that same date the broker filed the Provisional claim. This is full compliance with the terms of the Management Contract. x x x."

Consequently, judgment was rendered in favor of the plaintiff as set forth in the first part of this decision. Unable to obtain a reconsideration, the defendants appealed directly to this Court.

The appellants insist that no cause of action accrued against them since the requirement that a claim must be filed within the 15-day period prescribed in Section 15 of the Management Contract had not been complied with. They contend that the filing of the provisional claim on July 22, 1960 was beyond the 15-day period counted from the discharge of the goods from the carrying vessel on June 23, 1960, and prior to the time the consignee first had knowledge of the short delivery, which was on August 22, 1960, when the last delivery to the consignee's broker was effected. As to the date July 22, 1960 appearing at the upper and left portions of the Delivery Permit (Exhibit 4), the appellants explain that it refers to the date when the Import Entry was filed with the Bureau of Customs pursuant to Section 1301 of Republic Act No. 1937 and not to the time when the consignee's broker first had knowledge of the short delivery, no part of the goods having yet been delivered as of that date.

Confronted with the above explanation, the appellee has abandoned its original stand in the lower court.⁺ Instead, it now claims that the consignee first learned of the loss only on October 7, 1960, when the appellant Manila Port Service issued a certification to the effect that out of the eight (8) cases consigned to Leelin & Co., "only seven (7) cases appear (s) in our record to have been delivered as of this date," and contends that since the formal claim was filed on October 19, 1960, which was within the 15-day period from October 7, 1960, there was compliance with the terms of the Management Contract.

The appeal should be sustained. There is no question that the filing of the provisional claim on July 22, 1960 was not within the 15-day period from June 23, 1960, when the goods were discharged from the carrying vessel. Even under the ruling of this Court in several cases,^[2] namely, that the 15-day period may be counted not from the discharge of the last package from the carrying vessel but from the date the consignee learned or could have learned of the loss, damage, misdelivery and/or non-delivery, the provisional claim here cannot be considered as filed on time. It is admitted that the consignee's broker took delivery of five (5) cases on August 17, 1960 and two (2) cases on August 22, 1960, or a total of seven (7) out of the manifested quantity of eight (8) cases. Inasmuch as there had yet been no delivery on July 22, 1960, the provisional claim filed on that date was premature and speculative. It is difficult to see how the consignee could have knowledge of the short-delivery of one case even before the delivery was actually effected. Moreover, the appellee itself now claims that the consignee first learned of the loss not on July 22, 1960 but on October 7, 1960, when the appellant Manila Port Service issued the Certificate of Delivery.

This new stand of the appellee, however, is equally untenable. In the first place, the consignee must have had prior knowledge of the short-delivery even before the Certificate of Delivery was issued on October 7, 1960. It cannot be denied that when the last delivery of two (2) cases was effected on August 22, 1960, the consignee was already aware that there was a short-delivery of one case, since eight (8) cases appeared on the face of the delivery permit while a total of only seven (7) cases were delivered. If anything, the Certificate of Delivery merely confirmed a fact already known to the consignee at the time of taking the last delivery - that out of the eight cases only seven were delivered. Secondly, while the formal claim is dated October 19, 1960, there is no evidence to show when it was actually received by the appellant Manila Port Service so as to have a basis in computing the 15-day period. Worse, the appellants deny having received said formal claim at all. Finally, the new stand of the appellee involves a change of its theory pursued in the lower court.

The provisional claim not having been filed within the 15-day period prescribed in paragraph 15 of the Management Contract, the appellants are relieved of any liability for the non-delivery of the goods in question.

Wherefore, the appealed decision is hereby reversed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] The pertinent portion of paragraph 15 of the management Contract reads:

“x x x; in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, mis-delivery, 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 the discharge of the last package from the carrying vessel.x x x.” (Emphasis supplied)

+ In its opposition to the defendant's motion for reconsideration of the lower court's decision, the plaintiff even manifested, Among other things, that:

"2. There is no reason to disturb the Courts ruling as to the sufficiency of compliance with the defendant's requirement to file a claim within fifteen days in relation to Supreme Court dicta in the case of Chiok Ho vs. Cia Maritima (G. R. No. L-20553, April 30, 1965). Exhibit 4 is dated July 22, 1960 and the provisional claim is dated July 22, 1960."

[2] New Zealand Co., Ltd., vs. Manila Port Service, G. R. No. L-22500, April 24, 1967; Yu Kimteng Construction Corp. vs. Manila Railroad Company, G. R. No. L-17027, Nov. 29, 1965; Government Service Insurance System vs. Manila Railroad Company, G. R. No. L-20342, Nov. 29, 1965.

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