

**UNIVERSAL INSURANCE INDEMNITY COMPANY,
PLAINTIFF?APPELLANT, VS. MANILA RAILROAD COMPANY AND ITS
SUBSIDIARY MANILA PORT SERVICE, DEFENDANTS?APPELLEES.**

G.R. No. L-24600. April 27, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a direct appeal from the portion of the decision of the Court of First Instance of Manila dis-missing the plaintiff's first cause of action for the recovery of the sum of P3,935.00.

From the stipulation of facts on the first cause of action, it appears that on August 30, 1960 the vessel "SS FERNSTATE" arrived at the Port of Ma-nila carrying a shipment of twenty-one (21) bales of cotton piece-goods consigned to Cinderella Dresses of Caloocan, Rizal. On September 2, 1960 the said shipment was completely discharged in good order from the carry-ing vessel and into the custody of the Manila Port Ser-vice, the arrastre operator acting as a subsidiary of the Manila Railroad Company (now Philippine National Railways). When the consignee's customs broker withdrew the shipment from the Manila Port Service on September 9, 1960, eight (8) bales were found to be in bad order and the contents thereof short by eight hundred thirty-two pounds (832 lbs.). On October 31, 1960 the consignee filed with the Manila Port Service a formal claim for the value of the shortage. However, the said formal claim was preceded by a provisional Claim dated August 26, 1960, which was received by the arrastre operator from the consignee's customs broker on September 1, 1960, a day prior to the discharge of the aforementioned shipment from the carrying vessel.

The Universal Insurance and Indemnity Company, as insurer of the goods, upon demand made by the consignee, paid the value of the shortage in the sum of P3,935.00 and was thereby subrogated to the consignee's rights. Having been refused payment of its claim, the insurer, on August 30, 1961, filed a complaint with the Court of First Instance of Manila against the Manila Railroad Com-pany and the Manila Port Service.

On April 15, 1965 the lower court rendered the decision appealed from. After its motion for reconsidera-tion was denied for lack of merit, the plaintiff insti-tuted this appeal alleging that the lower court commit-ted the following errors, among others, namely: (1) in failing to hold that its provisional claim under the first cause of action was sufficient compliance with Paragraph 15 of the Management Contract; and (2) in de-claring that its claim under said cause of action was time-barred.

The pertinent portion of Paragraph 15 of the Ma-nagement Contract reads as follows:

"x x x; in any event, the Con-tractor shall be relieved and re-leased of any and all responsibility or liability for loss, dam-age, misdelivery and non-delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year 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." (Underscoring supplied)

Under the above-quoted provision of the Management Contract, it is clear that the claim must be filed "within fifteen (15) days from the date of discharge of the last package from the carrying vessel." In the instant case, considering that the provisional claim was filed one (1) day before the discharge of the shipment; and considering further that there is no showing that at the time of the filing of said claim the consignee or its customs broker had knowledge of any shortage in the shipment, as in fact there was none because said shipment was admittedly discharged in good order on the following day, the appellant's provisional claim was undoubtedly premature and speculative and cannot be legally considered as a substantial compliance with the requirement of paragraph 15 of the Management Contract.[1]

The appellant now contends that even granting that it failed to file a claim within the 15-day period prescribed in paragraph 15 of the Management Contract, it is not barred from filing the claim in court since the same was commenced within one (1) year from the date of discharge of the cargo. In disposing of a similar contention, this Court in the case of *Insurance Company of North America vs. Manila Port Service, et al.*, [2] said:

"It is true that the present action was instituted by appellee within the period of one year from the date of the arrival of the shipment in view of the failure of appellant to pay the value of the missing article, but such step is not sufficient it appearing that appellee has failed to file a claim therefor with appellant within the 15-day period from the carrying vessel as provided in section 15 of the management contract; and it is preposterous to contend, as appellee now claims, that such provisional claim is not necessary because the appellee has already filed an action in court within the one-year period not only because the provisions of the management contract on the point seem to be clear but also because of the interpretation already placed thereon by this Court in another similar case involving a similar issue. We refer to the case of *David Consunji, et al. v. The Manila Port Service, et al.*, G. R. No. L-15551, November 29, 1960, wherein this Court made the following comment:

'We do not think this interpretation may be sustained. Carriers or depositaries sometimes require presentation of claims within a short time after delivery as a condition precedent to their liability for losses. Such requirement is not empty formalism. It has a definite purpose i. e. to afford the carrier or depositary a reasonable opportunity and facilities to check the validity of the claims while the facts are still fresh in the minds of the persons who took part in the transaction and documents are still available. x x x.'

In view of the foregoing, and considering that the other errors assigned depend upon those herein resolved, we hold that the lower court ruled correctly in dismissing the first cause of action.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the appellant.

Reyes, Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Concepcion, C.J., did not take part.

[1] *Shell Co. of the Phil. Ltd. vs. Compañia General de Tabacos de Filipinas*, L-20230, July 30, 1965; *New Hampshire Fire Ins. Co. vs. Manila Port Service, et al*, L-20938, Aug. 9, 1966; *Rizal Surety & Ins. Co., Inc. vs. Manila Railroad & Manila Port Service*, L-22409, April 27, 1967; *Domestic Ins. Co. of the Phil. vs. Manila Railroad Co.*, L-24066, Aug. 30, 1967.

[2] G. R. No. L-17331, Nov. 29, 1961.

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