

**SHELL CHEMICAL COMPANY (PHILIPPINES), INC.,
PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE AND/OR MANILA
RAILROAD COMPANY, LATER SUBS-TITUTED BY PHILIPPINE
NATIONAL RAILWAYS, DEFEN...**

G.R. No. L-28145. July 07, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Shell Chemical Company (Philippines), Inc. was the consignee of fifteen drums of synthetic resin shipped by Asiatic Petroleum Corporation of New York on board the SS Fernview. That vessel arrived at the port of Manila on August 7, 1962. On the following day, August 8, the said cargo was unloaded and delivered in good order to the Manila Port Service, the arrastre operator, a subsidiary of the Manila Railroad Company, now the Philippine National Railways.

The Manila Port Service delivered to Shell Chemical Company on September 7, 1962 fourteen drums. One drum was missing. On January 25, 1963 Shell Chemical Company filed with the Manila Port Service a formal claim for the value of the undelivered cargo in the sum of P1,152.28. The arrastre operator refused to pay the claim.

On August 8, 1963 Shell Chemical Company sued the Manila Port Service and its principal, the Manila Railroad Company, in the municipal court of Manila for the re-covery of the said sum of P1,152.28. The municipal court rendered judgment in favor of Shell Chemical Company. On appeal, the Court of First Instance of Manila affirmed the municipal court's judgment. It ordered the Manila Port Service and the Manila Railroad Company to pay solidarily to Shell Chemical Company the sum of P1,152.28 with legal rate of interest from August 8, 1963 up to the date of payment, plus P200 as attorney's fees (Civil Case No. 55871).

The defendants appealed to this Court on pure ques-tions of law. (The appeal was made prior to Republic Act No. 5440 which took effect on September 9, 1968).

Paragraph 15 of the management contract between the Manila Port Service and the Bureau of Customs provides that the Manila Port Service "shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery, and/or nondelivery 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" (Exh. I and I-A).

It should be stressed that the management contract, including the conditions, in paragraph 15 thereof, was incorporated by reference in the gate passes and delivery permits which were used by the customs broker of Shell Chemical Company to obtain delivery of the cargo from the Manila Port Service (Exh. I and I-A, page 16 Record on Appeal).

Appellants Manila Port Service and Manila Railroad Company contend that Shell Chemical Company cannot recover the value of the missing cargo because it failed to comply with the condition precedent in paragraph 15 that the consignee should file a claim for loss or damage within fifteen days from the date of the discharge of the last package from the carrying vessel.

Shell Chemical Company, instead of filing its claim within the fifteen-day period from August 8, 1962, anticipated the shortage or damage by filing a provisional claim with the Manila Port service on July 23, 1962 or fifteen (15) days before the arrival of the carrying vessel (Exh. F, page 15, Record on Appeal).

The trial court ruled that the management contract was not binding on Shell Chemical Company because it was not a party or signatory thereof. That ruling is erroneous. It was overturned by this Court in several cases.

The management contract is enforceable against the consignee because, as already noted, it was incorporated in the gate pass and delivery permit. The consignee obtained delivery of the cargo by means of those documents. The consignee availed itself of the arrastre operator's services. Moreover, the consignee's action for damages is based on the provisions of the management contract. Paragraph 15 contains a stipulation for the liability of the arrastre service contractor to the consignee. It is a sort of stipulation pour arrui within the meaning of article 1311 of the Civil Code. The consignee cannot be permitted to take advantage of the favorable provisions of paragraph 15 and reject those that are disadvantageous to it (*Manila Port Service vs. Fortune Insurance Co., Inc.*, L-29812, May 24, 1972, 45 SCRA 65; *Domestic Insurance Co. of the Phils. vs. Manila Port Service and M.R.R. Co.*, 114 Phil. 131; *Insurance Co. of North America vs. Manila Port Service*, 113 Phil. 553; *Atlantic Mutual Insurance Co. vs. Manila Port Service*, 113 Phil. 395; *Commercial Union Assurance Co., Ltd. vs. Manila Port Service* 113 Phil. 358; *GSIS vs. Manila Railroad Co. and Manila Port Service*, 111 Phil. 154; *Smith, Bell & Co., Ltd. vs. Manila Port Service*, 111 Phil. 628; *Villanueva vs. Barber Wilhelmsen Line*, 110 Phil. 34; *Jose Bernabe & Co., Inc. vs. Delgado Brothers, Inc.*, 107 Phil. 287 and 107 Phil. 679; *Northern Motors, Inc. vs. Prince Line*, 107 Phil. 253; *Tomas Grocery vs. Delgado Brothers*, 105 Phil. 549; *Delgado Brothers vs. Li Yao & Co.*, 107 Phil. 939; *Sun Brothers vs. Manila Port Service*, 107 Phil. 988; *Juan Ysmael & Co. vs. United States Lines Co.*, 107 Phil. 1178; *Lo Kiong vs. United States Lines Co.*, L-18673, November 29, 1965, 15 SCRA 339; *Lexal Pure Drug Laboratories vs. Manila Rail-road Company*, L-20155, April 30, 1966, 16 SCRA 866; *Manila Port Service vs. Court of Appeals*, L-22618, August 31, 1967, 20 SCRA 1214; *Republic Manufacturing Co., Inc. vs. Manila Railroad Company*, L-22382, April 30, 1969, 27 SCRA 1237; *Fearnley & Eger and Macondray & Co., Inc. vs. M.R.R. and/or Manila Port Service*, 112 Phil. 370; *Atlantic Mutual Ins. Co. vs. Manila Port Service and MRR Co.* 116 Phil. 786; *American Machinery & Parts. Mfg., Inc. vs. Hamburg-Amerika Line*, L-21497, April 16, 1968, 23 SCRA 47; *Yu Kimteng Construction Corporation vs. Manila Railroad Company*, L-17027, March 3, 1967, 19 SCRA 587; *South Sea Surety & Insurance Company vs. Manila Port Service*, L-26901, May 29, 1970, 33 SCRA 238).

The instant action of Shell Chemical Company should be dismissed because it did not file any claim within the fifteen-day period. The filing of such a claim was a condition precedent to the institution of the suit for damages (*Consunji vs. Manila Port Service and Manila Railroad Company* 110 Phil. 231; *Ang Ching Gi vs. Delgado Brothers, Inc.*, L-22138, February 17, 1968, 22 SCRA 598; *Villaruel vs. Manila Port Service*, L-22535, March 28, 1968, 22 SCRA 1326; *Manila Port Service vs. Court of Appeals*, L-21890, March 29, 1968, 22 SCRA 1364; *Filipro, Inc. vs. Manila Port Service*, L-25724, October 8, 1968, 25 SCRA 457).

That defense that the consignee did not file a claim within the fifteen-day period was pleaded in defendant's answer. That defense was erroneously rejected by the trial court. The purpose of the requirement that a claim should be filed within the fifteen-day period is to apprise the arrastre operator of the existence of a claim and to enable it to check on the validity of the claimant's demand while the facts are still fresh in the recollection of the

persons who took part in the undertaking and the pertinent papers are still available (Manila Port Service vs. Fortune Insurance & Surety Co., Inc., supra).

The provisional claim which Shell Chemical Company filed on July 23, 1962, fifteen days before the vessel's arrival at the port of Manila in anticipation of any possible shortage or damage, was premature and speculative. It was not in compliance with paragraph 15. Even the filing of a provisional claim on the day of the vessel's arrival but one day prior to the discharge of the cargo was held to be a noncompliance with paragraph 15 (Manila Port Service vs. Fortune Insurance & Surety Co., Inc., supra; New Hampshire Fire Insurance Co. vs. Manila Port Service, L-20938, August 9, 1966, 17 SCRA 899; Rizal Surety and Insurance Co., Inc. vs. Manila Railroad Company, L-22409, April 27, 1967, 19 SCRA 870; Insurance Company of North America vs. Manila Port Service, L-23124, October 11, 1967, 21 SCRA 421; Shell Company of the Phil., Ltd. vs. Compania General de Tabacos de Filipinas, L-20230, July 30, 1965, 14 SCRA 763; State Bonding & Insurance Co., Inc. vs. Manila Port Service, L-21833, February 28, 1966, 16 SCRA 324; Domestic Insurance Company vs. Manila Railroad Company L-24066, August 30, 1967, 20 SCRA 1190; Fireman's Fund Insurance Company vs. Manila Port Service, L-22454, April 29, 1966, 16 SCRA 795; Insurance Company of North America vs. Manila Railroad Company, L-23124, October 11, 1967, 21 SCRA 421).

Failure to file the claim within the fifteen-day period prescribed in paragraph 15 relieves the arrastre contractor of any liability for nondelivery of the cargo and is a bar to the court action (Insurance Company of North America vs. Manila Port Service, L-26268, March 25, 1970, 32 SCRA 39; Universal Insurance & Indemnity Company vs. Manila Railroad Company, L-24600, April 27, 1970, 32 SCRA 364).

WHEREFORE , the trial court's judgment is reversed and set aside and plaintiff-appellee's claim is dismissed. No costs.

SO ORDERED.

Fernando, J., (Chairman), Barredo, Antonio, and Martin, JJ., concur.
Concepcion Jr., J., is on leave.

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