

DOMINGO ANG, PLAINTIFF AND APPELLANT, VS. AMERICAN STEAMSHIP AGENCIES, INC., DEFENDANT AND APPELLEE.*G.R. No. L-22491. January 27, 1967*

Ponente: BENGZON, J.P., J.

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Yau Yue Commercial Bank Ltd. of Hongkong, referred to hereafter as Yau Yue, agreed to sell 140 packages of galvanized steel durzinc sheets to one Herminio G. Teves (the date of said agreement is not shown in the record her for the sum of \$32,458.26(US). Said agreement subject to the following terms and arrangements: (a) the purchase price should be covered by a bank draft for the corresponding amount which should be paid by Herminio G. Teves in exchange for the delivery to him of the corresponding bill of lading to be deposited with a local bank, the Hongkong & Shanghai Bank of Manila; (b) upon arrival of the articles in Manila, Teves would be notified and he would have to pay the amount called for in the corresponding demand draft, after which the bill of lading would be delivered to him; and (c) Teves would present said bill of lading to the carrier's agent, American Steamship Agencies, Inc. which would then issue the corresponding "Permit To Deliver Imported Articles" to be presented to the Bureau of Customs to obtain the release of the articles.

Pursuant to said terms and arrangements, Yau Yue, through Tokyo Boeki, Ltd. of Tokyo, Japan, shipped the articles at Yawata, Japan, on April 30, 1961 aboard the S.S. TENSAI MARU, Manila, belonging to the Nissho Shipping Co., Ltd. of Japan, of which the American Steamship Agencies, Inc. is the agent in the Philippines, under a shipping agreement, Bill of Lading No. WM-2, dated April 30, 1961, consigned "to order of the shipper", with Herminio G. Teves as the party to be notified of the arrival of the 140 packages of galvanized steel durzinc sheets in Manila.

The bill of lading was indorsed to the order of and delivered to Yau Yue by the shipper. Upon receipt thereof, Yau Yue drew a demand draft together with the bill of lading against Herminio G. Teves, through the Hongkong & Shanghai Bank.

When the articles arrived in Manila on or about May 9, 1961, Hongkong & Shanghai Bank notified Teves, the "notify party" under the bill of lading, of the arrival of the goods and requested payment of the demand draft representing the purchase price of the articles. Teves, however, did not pay the demand draft, prompting the bank to the corresponding protest. The bank likewise re- the bill of lading and demand draft to Yau Yue indorsed the said bill of lading to Domingo Ang.

Meanwhile, despite his non-payment of the purchase price of the articles, Teves was able to obtain a bank guaranty in favor of the American Steamship Agencies, Inc., as carrier's agent, to the effect that he would surrender the original and negotiable bill of lading duly indorsed by Yau Yue. On the strength of this guaranty, Teves succeeded in securing a "Permit To Deliver Imported Articles" from the carrier's agent, which he presented to the Bureau of Customs which in turn released to him the articles covered by the bill of lading.

Subsequently, Domingo Ang claimed for the articles from American Steamship Agencies, Inc., by presenting the

indorsed bill of lading, but he was informed by the latter that it had delivered the articles to Teves.

On October 30, 1963 Domingo Ang filed a complaint in the Court of First Instance of Manila against the American Steamship Agencies, Inc., for having allegedly wrongfully delivered and/or converted the goods covered by the bill of lading belonging to plaintiff Ang, to the damage and prejudice of the latter.

On December 2, 1963, defendant filed a motion to dismiss upon the ground that plaintiff's cause of action has prescribed under the Carriage of Goods by Sea Act (Commonwealth Act No. 65), more particularly Section 3(6), paragraph 4, which provides:

"In any event, the carrier and the ship shall be discharged from all liability in respect to loss or damage unless suit is brought within one year after delivery of the goods or the date when, the goods should have been delivered."

It argued that the cargo should have been delivered to the person entitled to the delivery thereof (meaning the plaintiff) on May 9, 1961, the date of the vessel's arrival in Manila, and that even allowing a reasonable time (even one month) after such arrival within which to make delivery, still, the action commenced on October 30, 1963 was filed beyond the prescribed period of one year.

By order dated December 21, 1963, copy of which was received by plaintiff on December 26, 1963, the lower court dismissed the action on the ground of prescription. His motion for reconsideration dated December 26, 1963 having been denied by the lower court in its order dated January 13, 1964, plaintiff appealed directly to this Court on a question of law: Has plaintiff-appellant's cause of action prescribed under Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act?

The provision of law involved in this case speaks of "loss or damage". That there was no damage caused to the goods which were delivered intact to Herminio G. Teves who did not file any notice of damage, is admitted by both parties in this case. What is to be resolved—in order to determine the applicability of the prescriptive period of one year to the case at bar—is whether or not there was "loss" of the goods subject matter of the complaint.

Nowhere is "loss" defined in the Carriage of Goods by Sea Act. Therefore, recourse must be had to the Civil Code which provides in Article 18 thereof that, "In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code."

Article 1189 of the Civil Code defines the word "loss" in cases where conditions have been imposed with the intention of suspending the efficacy of an obligation to give. The contract of carriage under consideration entered into by and between American Steamship Agencies, Inc. and the Yau Yue (which later on endorsed the bill of lading covering the shipment to plaintiff herein Domingo Ang), is one involving an obligation to give or to deliver the goods 'to the order of shipper', that is, upon the presentation and surrender of the bill of lading. This being so, said article can be applied to the present controversy, more specifically 2 thereof which provides that, ". . . it is understood that a thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered."

As defined in the Civil Code and as applied to Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act "loss" contemplates merely a situation where no delivery at all was made by the shipper of the goods because the same had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or they cannot be recovered. It does not include a situation where there was indeed delivery—but delivery to the wrong person, or a misdelivery, as alleged in the complaint in this case.

The distinction between nondelivery and misdelivery has already been clearly made in reference to bills of lading. As this Court said in *Tan Pho vs. Hassamal Dalamal*, 67 Phil. 555, 557-558:

"Considering that the bill of lading covering the goods in question has been made to order, which means that said goods cannot be delivered without previous payment of the value thereof, it is evident that, the said goods having been delivered to Aldeguer without paying the price of the same, these facts constitute misdelivery and not nondelivery, because there was in fact delivery of merchandise. We do not believe it can be seriously and reasonably argued that what took place, as contended by the petitioner, is a case of misdelivery with respect to Aldeguer and at the same time nondelivery with respect to the PNB who had the bill of lading, because the only thing to consider in this question is whether Enrique Aldeguer was entitled to get the merchandise or whether, on the contrary, the PNB is the one entitled thereto. Under the facts, the defendant petitioner should not have delivered the goods to Aldeguer but to the Philippine National Bank. Having made the delivery to Aldeguer, the delivery is a case of misdelivery. If the goods have been delivered, it cannot at the same time be said that they have not been delivered.

"According to the bill of lading which was issued in the case at bar to the order of the shipper, the carrier was under a duty to deliver the merchandise mentioned in the bill of lading except upon presentation of the bill of lading duly endorsed by the shipper (10 C.J., 259) Hence, the defendant-petitioner Tan Pho having delivered the goods to Enrique Aldeguer without the presentation of the bill of lading duly endorsed to him by the shipper the said defendant made a misdelivery and violated the bill of lading, because his duty was not only to transport the goods entrusted to him safely, but to deliver them to the person indicated in the bill of lading." (Italics supplied)

Now, it is well settled in this jurisdiction that when a defendant files a motion to dismiss, he thereby hypothetically admits the truth of the allegations of fact contained in the complaint (*Philippine National Bank vs. Hipolito, et al.*, L-16463, Jan. 30, 1965; *Republic vs. Ramos*, L-15484, Jan. 31, 1963; *Pascual vs. Secretary of Public Works & Communications*, 110 Phil. 331; *Pangan vs. Evening News Publishing Co., Inc.*, 110 Phil. 409). Thus, defendant-appellant having filed a motion to dismiss, it is deemed to have admitted, hypothetically, paragraphs 6, 7 and 8 of the complaint, and these allege:

"6.—That, when the said articles arrived in Manila, the defendant authorized the delivery thereof to Herminio G. Teves, through the issuance of the corresponding Permit to Deliver Imported Articles, without the knowledge and consent of the plaintiff, who is the holder in due course of said bill of lading, notwithstanding the fact that the said Herminio G. Teves could not surrender the corresponding bill of lading;

"7.—That, without any evidence of the fact that Herminio G. Teves is the holder of the corresponding bill of lading in due course; without the surrender of the bill of lading; without the knowledge and consent of the plaintiff, as holder thereof in due course, and in violation of the provision on the bill of lading which requires that the articles are only to be delivered to the person who is the holder in due course of the said bill of lading, or his order, the defendant issued the corresponding 'Permit To Deliver Imported Articles' in favor of the defendant, without the knowledge and consent of the Plaintiff as holder in due course of said bill of lading, which, originally was Yau Yue, subsequently, the plaintiff Domingo Ang;

"8.—That, as a result of the issuance by the defendant of said permit Herminio G. Teves was able to secure the release of the articles from the Bureau of Customs, which is not legally possible without the presentation of said permit to the said Bureau; * * *"

From the allegations of the complaint, therefore, the goods cannot be deemed "lost". They were delivered to Herminio G. Teves, so that there can only be either delivery, if Teves really was entitled to receive them or misdelivery, if he was not so entitled. It is not for us now to resolve whether or not delivery of the goods to Teves was proper, that is, whether or not there was rightful delivery or misdelivery.

The point that matters here is that the situation is either delivery or misdelivery, but not nondelivery. Thus the goods were either rightly delivered or misdelivered but they were not lost. There being no loss or damage to the

goods, the afore-quoted provision of the Carriage of Goods by Sea Act stating that "In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered," does not apply. The reason is not difficult to see. Said one-year period of limitation is designed to meet the exigencies of maritime hazards. In a case where the goods shipped were neither lost nor damaged in transit but were, on the contrary, delivered in port to someone who claimed to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain.

It follows that for suits predicated not upon loss or damage but on alleged misdelivery (or conversion) of the goods, the applicable rule on prescription is that found in the Civil Code, namely, either ten years for breach of a written contract or four years for quasi-delict. (Arts. 1144(1), 1146, Civil Code) In either case, plaintiff's cause of action has not yet prescribed, since his right of action would have accrued at the earliest on May 9, 1961 when the ship arrived in Manila and he filed suit on October -1963.

Wherefore, the dismissal order appealed from is hereby reversed and set aside and this case is remanded to court a quo for further proceedings. No costs. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Order reversed and set aside; case remanded.

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