

FILIPRO, INC., PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, DEFENDANT-APPELLANT.

G.R. No. L-25724. October 08, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal, by defendants Manila Port Service and/or Manila Railroad Company, from a decision of the Court of First Instance of Manila - on appeal from an adverse decision of the municipal court of Manila - sentencing them to pay, jointly and severally, to plaintiff, Filipro, Inc., the aggregate sum of P960.54, plus P100, as and for attorney's fees, in addition to the costs.

The pertinent facts are not disputed, the case having been submitted for decision to the Court of First Instance of Manila upon a stipulation of facts.

This is an action to recover the value of imported goods discharged, at the port of Manila, unto the custody of the defend-ants, as operators of the arrastre service in that port, and not delivered, or delivered in bad order and condition, to the plain-tiff, as consignee or owner of said goods. There is no issue as to the amount of goods lost or damaged, and the extent of defend-ants' liability, if any, therefor. The points in controversy are: (1) whether plaintiff's claims had been filed within the time pres-cribed in paragraph 15 of the management contract between the defendants, which is, admittedly, binding upon the plaintiff; and (2) whether the present action has been commenced within the periods specified in said paragraph, the pertinent part of which reads:

"x x x in any event the CONTRACTOR[1] shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery, and/or non-delivery of goods, unless suit in the court of proper jurisdiction is brought within x x x one (1) year from the date of discharge of the goods, or from the date when the claim for the value of such goods has 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. x x x."

In order to hold the arrastre operator liable for goods lost or damaged, the claimant should, pursuant to this provision, take two (2) steps, namely: 1) he must file with the operator a claim for the value of said goods "within fifteen (15) days from the date of discharge of the last package from the carrying vessel"[2]; and 2) suit should be brought, in the court of proper jurisdiction, "within x x x one (1) year from the date of discharge of the goods or from the date when the claim for the value of such goods has been rejected or denied. "

The present action involves seven (7) shipments of condensed milk and infant food.[3] The last package of the first shipment was discharged from the carrying vessel on January 15, 1962. Plaintiff filed a provisional claim on January 19, 1962 and a formal claim on March 16, 1962.

The last package of the second shipment was discharged on January 22, 1962. Plaintiff filed a provisional claim on February 2, 1962 and a formal claim on February 23, 1962.

The last packages of the third and fourth shipments were dis-charged on February 1 and 5, 1962, respectively. Plaintiff filed provisional claims on February 13, 1962 and formal claims on February 23, 1962.

The last packages of the fifth and sixth shipments were dis-charged on March 8 and 9, 1962, respectively. Plaintiff filed provisional claims on March 15, 1962 and formal claims on April 3, 1962.

The last package of the seventh and last shipment was dis-charged on March 13, 1962. Plaintiff filed a provisional claim on March 20, 1962 and a formal claim on April 10, 1962.

It thus appears that the provisional claims in connection with each one of these seven (7) shipments were filed within 15 days from the discharge of the last package. Defendants maintain, however, that inasmuch as said period had expired before the filing of the formal claims, plaintiff should be deemed barred from recovering the corresponding indemnity. This pretense is predicated upon the theory that the aforementioned provisional claims are not claims "for the value" of the goods lost, damaged or not delivered to the plaintiff.

Such theory is manifestly untenable, for: (1) it assumes that the claim must state the value of said goods, which the above-quoted paragraph 15 does not require; and (2) a provisional claim may be sufficient, even if the value of the goods involved were not stated therein, if it describes said goods sufficiently to permit its identification by the operator and the determination by the latter of the facts relevant thereto, such as the name of the carrying vessel, its date of arrival, the corresponding bill of lading or other shipping documents in which the value of the goods is set forth, etc., "while the facts are still fresh in the minds of the persons who took part in the transaction and while the pertinent documents are still available.[4]

Thus, in *Domestic Insurance Co. v. Manila Railroad Co.*,^[5] we explicitly declared that "x x x The circumstance that the provisional claim did not specify the value of the loss" does not detract from the fact that said claim "still substantially fulfills the requirements of the contract aforementioned (*State Bonding & Insurance Co. vs. Manila Port Service*, supra), and is not a defense against the claim of the consignee for recovery after it shall have ascertained later its actual loss or damage. x x x . "

With respect to the question whether the present action has been seasonably filed, it should be noted that, pursuant to the aforementioned paragraph 15, the suit should be brought "within one year from the date of discharge of the goods or from the date when the claim for the value of such goods has been rejected or denied" by the arrastre operator. The complaint in this case was filed on October 7, 1963, or over one (1) year from the dates of discharge of the goods involved therein - from January 15 to March 13, 1962. The issue thus narrows down to whether the case has been commenced within one (1) year from the date when plaintiff's claims have been "rejected or denied" by the contractor.

Considering, however, that said claims have not been expressly rejected or denied by the defendants, the latter argue that the period for the filing of plaintiff's complaint should be computed solely from the date of discharge from the carrying vessel. This pretense is untenable for it conveniently overlooks the fact that plaintiff has, under the management contract, two (2) periods within which to file its action, namely: (a) one (1) year from the date of discharge of the goods; and (b) one (1) year from the rejection or denial of its claim for the value thereof.[6] Obviously, defendants cannot, by not acting on plaintiff's claims, one way or another, deprive the plaintiff of one of these alternatives. And, such would be the result, were we to accept defendants' contention.

Upon the other hand, in the absence of any act or omission clearly indicating the rejection or denial of said claims by the defendants, the right of the plaintiff to sue them might be questionable. Hence, it has been repeatedly held, that, in case of inaction on the part of the arrastre operator, he shall be deemed to have rejected or denied the importer's provisional or formal claim upon expiration of one (1) year from the date when the last package was

discharged and that the period within which to file suit shall then begin to run.[7]

Inasmuch as the shipments under consideration were discharged from January 15 to March 13, 1962, the claims therefor should not be considered denied or rejected until January 15 to March 13, 1963, so that plaintiff had one (1) year from these dates within which to file suit. The present action was instituted within said period.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against defendants-appellants, Manila Port Service and/or Manila Railroad Co.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] The arrastre operator.

[2] Atlantic Mutual Insurance v. MPS, L-16789, October 31, 1962; Insurance Co. of North America v. MPS, L-17331, November 29, 1961.

[3] Pelargon and Lactogen.

[4] Liverpool & London & Globe Insurance v. Manila Port Service, L-23338, Nov. 18, 1967; Tabacalera v. Manila Railroad, L-23636, Oct. 31, 1967; Phil. Education Co. v. Manila Port Service, L-24091, September 20, 1967; Atlantic Mutual Insurance v. Manila Port Service, L-21907, April 29, 1966; United Insurance v. Royal InterOcean Lines, L-22688, April 27, 1967; State Bonding Inc. v. Manila Port Service, L-21833, Feb. 28, 1966; Yu Kimteng Construction Corp. v. Manila Railroad, L-17027, Nov. 29, 1965; GSIS v. Manila Railroad, L-20342, Nov. 29, 1965; Bernabe v. Delgado Brothers, 58 O.G. 1104.

[5] L-24066, Aug. 30, 1967.

[6] Consunji v. Manila Port Service, L-15551, Nov. 29, 1960; Delgado Brothers v. Manila Port Service, L-21781, June 30, 1966.

[7] Villaruel v. Manila Port Service, L-22535, March 28, 1968; Ang Ching Gi v. Delgado Brothers, L-22138, Feb. 17, 1968; Genato Commercial Corp. v. Manila Port Service, L-24092, Sept. 13, 1967; Yok Tong Lin Fire Ins. Co. v. Manila Port Service, L-24836, Sept. 13, 1967; American Insurance v. Manila Port Service, L-22780, Feb. 18, 1967; Fireman's Fund Insurance Co. v. Manila Port Service, L-21412, Sept. 28, 1966; Delgado Brothers v. Manila Port Service, L-21781, June 30, 1966; Continental Insurance Co. v. Manila Port Service, L-22208, March 30, 1966; Consunji v. Manila Port Service, L-15551, Nov. 29, 1960.

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