

**PHILIPPINE EDUCATION COMPANY, INC., PLAINTIFF-APEILEE, VS.
MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS.**

G.R. No. L-24091. September 20, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

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 the municipal court of Manila - sentencing said defendants to pay to plaintiff, Philippine Education Company, Inc., the sum of P1,089.15, with legal interest from the date of the filing of the complaint, until fully paid as well as P100.00, by way of attorney's fees, in addition to the costs.

Said sum of P1,089.15 represents the value of thirty-five (35) bundles, forming part of a shipment of 202 bundles of magazines consigned to the plaintiff and discharged unto the custody of the Manila Port Service - hereinafter referred to as the MPS - as arrastre operator for said port, pursuant to a Management Contract with the Manila Railroad Company. Paragraph 15 of said contract, which is admittedly binding upon the plaintiff, pro-vides, inter alia, that the MPS shall be relieved and released of any and all responsibility or liability for any loss, damage, misdelivery and/or non-delivery of goods, unless suit, in the court of proper jurisdiction, is brought within a specified period, and provided that a claim for the value of the goods shall have been filed "within fifteen (15) days from the date of discharge of the last package from the carrying vessel."

It is not disputed that the shipment in question arrived at the Port of Manila, on board "SS President McKinley", and was discharged therefrom, unto the custody of the MPS, on January 8, 1961; that, when plaintiff took delivery of the aforementioned shipment, 35 bundles were missing; that plaintiff filed with "Messrs. American President Lines Ltd. and/or Manila Port Service," a "provisional claim" on January 11, 1961; and that the formal claim was filed on August 26, 1961.

Defendants maintain that plaintiff cannot recover from them, because said provisional claim was insufficient to comply with the requirements of paragraph 15 of the Management Contract, and the formal claim was filed more than 15 days after the discharge of the last package from the carrying vessel.

The adequacy of the provisional claim, insofar as defendants herein are concerned, is impugned upon the ground that it referred to the whole shipment of 202 bundles, and alleged that the merchandise had been "shortlanded and/or landed in bad order, ex-abovementioned vessel" (Pres. McKinley). This meant that the loss of goods or the alleged damage thereof took place in the carrying vessel, and before the shipment was discharged unto the MPS custody. In other words, it implied that the latter and the Manila Railroad Company could not be held accountable or liable therefor; that the only party against whom the claim would eventually be pressed would be the operator of the carrying vessel; and that, accordingly, the defendants need not check the validity of such claim, thereby depriving them of the opportunity to do so, as regards the alleged loss of 35 bundles, on which the complaint herein is predicated.

As regards the formal claim, it is urged that it was too late, it having been filed on August 26, 1961, or more than fifteen (15) days after the discharge of the last package from the carrying vessel, on January 8, 1961. It has been held, however, that "the period of 15 days within which a claim should be filed with the Manila Port Service should commence, not from the date of discharge of the goods from the carrying vessel, but from the date the consignee or claimant learns of the loss, damage or misdelivery for which the claim is made," or from the date on which, with the exercise of due diligence, such information could have been secured.[1] Indeed, a consignee can not possibly file the claim contemplated in said paragraph 15 of the Management Contract before he receives the shipment or has knowledge, actual or constructive, of said loss or damage. And, accordingly, we have nullified, as "premature and speculative", provisional claims - particularly those of a general nature - filed prior thereto,[2] for such claims do not serve the purpose for which they are meant - to afford the arrastre operator a "reasonable opportunity to check the validity of the claim, 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." [3]

Thus, the provisional claim, filed in the case at bar, suggests that plaintiff then had no actual knowledge of such loss or damage, because, otherwise, it would have included in its claim, not the entire shipment of 202 bundles, but only the admittedly 35 missing bundles. The record before us shows, however, neither the date on which the 167 bundles were delivered to the plaintiff, nor that on which the latter was notified, either of the arrival of the goods or of the discharge thereof from the carrying vessel. Thus, we are not in a position to determine whether the provisional claim presented on January 11, 1961, or the formal claim submitted on August 26, 1961, had been filed within or beyond the period prescribed in said paragraph 15. In other words, the defense of late filing of the claim has not been established.

It is next urged that plaintiff's action is barred by prescription, the case having been commenced on January 19, 1962, or more than one (1) year from the date of discharge of the goods, on January 8, 1961. It should be noted, however, that, under the aforementioned paragraph 15, the consignee has, also, one (1) year from the date when the claim for the value of the goods has been denied or rejected by the MPS and that, since the latter has neither denied nor rejected plaintiff's claim, said denial or rejection must be deemed to have taken place upon the expiration of one (1) year from the date of discharge of the cargo, or on January 8, 1962.⁴ In short, plaintiff could bring his action up to January 8, 1963, and his complaint, docketed on January 19, 1962, was filed within the prescribed period.

Defendants lastly assail the award of P1,089.15, plus P500.00 as attorney's fees, and the costs, upon the ground that their "liability if any shall not exceed P500." Paragraph 15 of the Management Contract limited said liability, not to P500.00, but "to P500 for each package." As the lower court has correctly held, a "bundle" may be considered as a "package," within the purview of said contract, and the disputed award is not in contravention thereof, considering that it involves 35 bundles. Moreover, in the light of the attending circumstances, we do not feel the Court of First Instance has erred in awarding attorney's fees and costs.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against the defendants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Yu Kimteng Construction Corporation vs. Manila Port Service, et al., G.R. No. L-17027, November 29, 1965. See, also, Resolution of March 3, 1967.

[2] Shell Co. of the Philippines vs. Compania General de Tabacos de Filipinas, et al., G.R. No. L-20230, July 30,

1965; New Hampshire Fire Insurance Co. vs. Manila Port Service, et al., G.R. No. L-20938, August 9, 1966.

[3] Consunju vs. Manila Port Service, G.R. No. L-15551, November 29, 1960.

4 The Continental Insurance Co. vs. Manila Port Service, et al., G.R. No. L-22208, March 30, 1966, Delgado Brothers, Inc., et al. vs. Manila Port Service, et al., G.R. No. L-21781, June 30, 1966; Fireman's Fund Insurance Co. vs.. Manila Port Service, et al., G.R. No. L-21412, September 28, 1966; and the American Insurance Co. vs. Manila Port Service, et al., G.R. No. L-22780, February 18, 1967.

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