

CENON VILLANUEVA, PLAINTIFF AND APPELLEE VS. BARBER WILHELMSSEN LINE, ET AL., DEFENDANTS. MANILA PORT SERVICE AND MANILA RAILROAD COMPANY, INC., DEFENDANTS AND APPELLANTS.

G.R. No. L-14764. November 23, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

An appeal, taken by defendants Manila Port Service and Manila Railroad Co., Inc., from a decision of the Court of First Instance of Manila, the dispositive part of which reads;

"In view of all the foregoing, judgment is hereby rendered in favor of the plaintiff, Cenon Villanueva, ordering the defendants, Manila Port Service and/or Manila Railroad Company to pay, jointly and severally, to said plaintiff the sum of P1,179.96, with legal interest thereon from the date of the filing of the complaint until fully paid, plus the further sum of P300.00 as attorney's fees and the costs of the suit."

"The complaint as against the defendants, Barber-Wilhelmsen Line and Macondray & Co., Inc., is dismissed without costs."

Plaintiff Cenon Villanueva was the consignee of two (2) bales of rayon remnants marked "Milco", discharged from SS/Torreador, which arrived at the Port of Manila on June 14, 1957. The shipment was covered by a bill of lading issued in New York, by defendant Barber-Wilhelmsen Line (the true name of which is Barber Steamship Line)- hereinafter referred to as the carrier-as owner and/or operator of said vessel. Defendant Macondray & Co. Inc.-hereinafter referred to as the ship agent-is the agent in Manila of said carrier. Although placed by the carrier and the ship agent into the custody of the Manila Port Service-hereinafter referred to as the port service-a subsidiary of appellant Manila Railroad Co.- hereinafter referred to as the arrastre operator as the sole arrastre operator for the port of Manila, "complete and in good condition", the goods were delivered to Villanueva with a shortage of 262 pounds, more or less, valued at P879.96, for which he filed a provisional claim on July 8, 1957. The port service rejected the claim upon the ground that it had been filed more than fifteen (15) days after June 15, 1957, date of the discharge of the goods from the carrying vessel, or beyond the period, stipulated in paragraph 15 of the Management Contract between the Manila Port Service and the Bureau of Customs, as one of the conditions for the validity of a claim for loss, damage, misdelivery or nondelivery of goods, which was incorporated by reference and substantially reproduced in the gate pass, as well as in the permit used by the consignee to take delivery of the merchandise above referred to. The pertinent part of said paragraph 15 reads:

"* * * in any event the Contractor 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 a period of 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. * * *."

Maintaining that he was not bound by the provisions of said contract, on March 25, 1958, plaintiff instituted this action against the carrier, the ship agent, the port service and the arrastre operator, for the recovery of said sum of P879.96, plus P300.00, by way of attorney's fees, in addition to expenses of litigation.

In their answer, the carrier and the ship agent claimed full discharge from responsibility upon the aforementioned delivery of the goods to the port service, whereas the latter and the arrastre operator invoked the aforementioned paragraph 15 of the management contract. Subsequently, the case was submitted upon a stipulation of facts, incorporating those already adverted to, for determination, as the "only issue" between the parties, of the question "whether or not the 15-day period within which to file claim for shortage or damage to merchandise" as stipulated in the aforementioned contract, is binding upon the consignee and bars the present action. Although holding that the carrier and the ship agent were not responsible for plaintiff's loss, the Court of First Instance of Manila resolved the aforementioned issue in the negative, and, accordingly, rendered judgment as above stated. Hence this appeal.

The question whether the above-quoted paragraph of the management contract is binding to a consignee, who, though not a party thereto, has taken delivery of the goods upon presentation of a pass and a delivery permit making reference of said paragraph and reproducing substantially the provisions thereof, as one of the conditions of said pass and delivery permit, has already been settled in several decisions of this Court. In *Northern Motors, Inc. vs. Prince Line*, (107 Phil., 253) we said:

"Even therefore, if appellant was not a signatory to said Management Contract, it legally became a party thereto when it through its broker, the Luzon Brokerage Co., Inc. obtained the delivery permit and gate pass in the above manner prescribed by law and, making use of them, demanded from appellee the delivery of the 33 cases, pursuant to appellee's undertaking in virtue of the very same Management Contract. Again, it became bound when it brought court action against appellee, also by virtue of the latter's obligations as the arrastre contractor under the same Management Contract, for the purpose of recovering the reasonable value of the missing cargo of auto spare parts and accessories. Under the circumstances, as the trial court aptly observed; 'Plaintiff should not take advantage of the Management Contract when it suits him to do so and reject its provisions when it thinks otherwise/ The principle is the same or similar to that involved in the case of *Mendoza vs. Philippine Air Lines* (90 Phil., 836), wherein it was held that-

"* * * even if the LVN Pictures Inc. as consignor of its own initiative and acting independently of Mendoza for the time being, made nevertheless, when he, Mendoza appeared at the Pili Air Port armed with the copy of the Air Way Bill (Exh. 1) demanding the delivery of the shipment to him, he thereby made himself a party to the contract of transportation. * * *

"* * * His demand for the delivery of the can of film took him at the Pili Air Port maybe regarded as a notice of his acceptance of the stipulation of the delivery in his favor contained in the contract of carriage, such demand being one for the fulfillment of the contract of carriage and delivery. In this case he also made himself a party to the contract, or at least has come to court to enforce it. His cause of action must necessarily be founded on its breach.' (Italics supplied.)"

This view was reiterated in *Tomas Grocery vs. Delgado Brothers*, (105 Phil., 549; 56 Off. Gaz., [27] 4422), *Bernabe vs. Delgado Brothers*, (107 Phil., 287), *Bernabe vs. Delgado Brothers*, (107 Phil., 679), *Delgado Brothers vs. Li Yao & Co.*, (107 Phil., 839), *Sun Brothers vs. Manila Port Service*, (107 Phil., 988), and *Juan Ysmael & Co., Inc. vs. United States Lines Co.*, L-14384 (April 30, 1960).

Some other issues may have been raised in this case, such as, for instance, the sufficiency of the period available to the consignee for the filing of his claim, but the record before us does not show the date on which he was notified that he could take delivery of the goods. More important still, both parties submitted the case in the lower

court for determination of only one question, namely: whether the provision of paragraph 15 of the Management Contract between the Manila Port Service and the Bureau of Customs is binding upon the consignee, he not being a party to such contract and not having signed it. Inasmuch as the jurisdiction of the lower court was thus limited to such question, the authority of this Court, in the exercise of its appellate jurisdiction, cannot extend to any other issue.

Wherefore, the decision appealed from is hereby reversed and the defendants-appellants are, accordingly, absolved from the complaint, with costs against the plaintiff-appellee. It is so ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, Paredes and Dizon, JJ., concur.

Judgment reversed.

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