

MALAYAN INSURANCE CO., INC., PLAINTIFF AND APPELLANT, VS. DELGADO SHIPPING AGENCIES, INC., REPRESENTING THE BEN LINE STEAMERS, LTD., AND/OR MANILA PORT SERVICE AND MANILA RAILR...

G.R. No. L-22811. May 19, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, taken by plaintiff, Malayan Insurance Co., Inc., from an order of the Court of First Instance of Manila dismissing the case without prejudice, with respect to defendant Delgado Shipping Agencies, Inc., without special pronouncement as to costs.

On or about December 20, 1961, certain goods, insured with plaintiff corporation, were shipped in London, England, aboard "SS BENWYVIS", which is operated by defendant Ben Line Steamers Ltd., whose general agent in the Philippines is defendant Delgado Shipping Agencies, Inc.— hereinafter referred to as the Carrier—consigned to Ramie Textile Mills, Inc., in Manila. When the latter took delivery of the shipment in February, 1962, it was found to be short of goods worth P8,375.40, for which plaintiff paid, pursuant to its marine insurance policy, P4,606.47 to the consignee. Hence, as the latter's subrogee, plaintiff instituted the present action, in the Court of First Instance of Manila, against the Carrier and defendant Manila Port Service, a subsidiary of defendant Manila Railroad Co., which, as contractor and operator respectively of the services at the port of Manila, are charged with the care and custody of all cargo discharged at the Government piers and wharves in said port, to recover said sum of P4,606.47, plus damages, attorney's fees and costs.

Upon being summoned, the Carrier filed an answer admitting some allegations of the complaint, denying other allegations thereof and setting up some special affirmative defenses, one of which is prescription of action. Subsequently, on motion of the Carrier, a hearing was held on this special defense, after which the lower court issued the order appealed from, dated November 29, 1963, the dispositive part of which reads as follows:

"WHEREFORE, the motion to dismiss is well taken and the same is hereby granted. Let this case be as it is hereby DISMISSED without prejudice, with respect to defendant Delgado Shipping Agencies, Inc. No pronouncement is made as to costs.

"The case, with respect to defendants Manila Port Service and Manila Railroad Company is hereby set for a pre-trial conference on 25 February 1964 at 8:30 in the morning,"

This order is predicated upon the fact that, since the complaint alleges "that the 'SS BENWYVJ3' arrived, docked and discharged her cargo at Manila and into the custody of the Manila Port Service, on February 9, 1962" and the present action was commenced on February 11, 1963, or more than one year thereafter, plaintiff's action against the Carrier had prescribed, pursuant to Section 3, sub-paragraph 6, of the Carriage of Goods by Sea Act, which provides 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 (1) year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."

On the same date (November 29, 1963), plaintiff filed an urgent motion for reconsideration, with a request for leave to amend the complaint, upon the ground that the true date of discharge of the goods in question is February 10, 1962, as evidenced by Carrying Vessel Tally Sheets Nos. 0585, 0688, 0634, 0685 and 0683; that the allegation in the complaint to the effect that said discharge took place on February 9, 1962, was an error due to inadvertence; and that the complaint had not been amended prior to the filing of said motion, "by reason of the fact that the lawyer to whom this case had originally been assigned was stricken ill and suffered from mental derangement". Upon denial of this motion, plaintiff interposed the present appeal.

The only question we are called upon to decide is whether or not the lower court had erred in not allowing the plaintiff to amend its complaint so as to state therein that the goods aforementioned were unloaded on February 10, 1962, not February 9, 1962, as alleged in the original complaint. It is not disputed that if said amendment were effected and borne out by the evidence, the present action would not have prescribed before February 11, 1968, when it was commenced, because February 10, 1963, was Sunday, so that plaintiff had up to the next day to file its complaint.

The lower court refused to reconsider its order of dismissal upon the ground: (1) that plaintiff herein is guilty of laches; (2) that if plaintiff's motion were treated either as a motion for new trial or as a petition for relief under Rule 38, it would suffer from a defect which it characterized as fatal, in that it is not accompanied by an affidavit of merit; (3) that the proposed amendment of the complaint would affect the Carrier's substantial rights, in that it would permit the plaintiff to assert a cause of action which does not exist, because it has prescribed; and (4) that plaintiff's cause of action has prescribed on the face of the complaint.

The last ground is true, but it does not justify the denial of permission to amend the complaint, if the theory of prescription is based upon an erroneous allegation of fact, which is sought to be rectified by the amendment which plaintiff asked permission to make.

The third ground begs the issue, which is whether the goods were unloaded on February 9, 1962 as alleged in the complaint, or on February 10, 1962, as alleged in plaintiff's aforementioned motion. If the goods were actually discharged on February 10, 1962, then the action had not prescribed as yet, and, hence, no substantial rights of the Carrier would be affected. Again, since the order appealed from is "without prejudice", and, hence, plaintiff is not barred thereby from instituting another action against the Carrier, alleging that the goods were unloaded on February 10, 1962, we do not see how said order would protect such "rights" of the Carrier. By the way, prescription of action affects not its existence, but, merely its enforcement. Hence, it may properly be enforced—thus attesting to, not only its existence, but, also, its vitality—if not seasonably objected to.

As regards the second ground, appellants' motion explicitly alleges that Tally Sheets Nos. 0585, 0688, 0636, 0634, 0685 and 0683 attest to the discharge of the goods in question on February 10, 1962. We do not think that an affidavit would be more weighty than these documentary evidence.

With respect to the first ground, it should be noted that the goods were consigned and delivered to the Ramie Textiles Mills, Inc., not to the plaintiff, which, as mere insurer, had no direct knowledge of the date of discharge and delivery of said goods. Upon the other hand, the evidence thereon must be in the possession of its very opponents, the defendants herein, as the Carrier and the arrastre contractor and operator. Again, from February 28,

1963, when the Carrier's answer was filed, to September 9, 1963, when the Carrier filed its motion for a hearing on the plea of prescription, only a little over six (6) months had elapsed. Although, a diligent counsel would have taken within this period appropriate measures to meet said defense, the surrounding circumstances sufficiently justify the request for permission to amend, pursuant to Rule 1, Section 2, of the Rules of Court, and the exercise of the court's power under Rule 135, Section 5 (g), of the Rules of Court, to make its processes and orders "conformable to law and justice".

Indeed, the demands of substantive and remedial law and justice would be served by allowing the amendment prayed for, because the same would permit a determination of the rights of the parties not only on the basis of objective facts, instead of technicalities, but, also, in one single proceeding, instead of requiring an elucidation of the issue between the plaintiff and the arrastre contractor and operator in this case, and a settlement of the issue between plaintiff and the Carrier in another separate action, which the dismissal without prejudice, directed in the order appealed from, would permit.

Wherefore, said order is hereby set aside and the case remanded to the lower court for further proceedings, with costs against Delgado Shipping Agencies, Inc. It is so ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Barrera, Dizon, Regain, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Order set aside, case remanded for further proceedings.

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