

THE CONTINENTAL INSURANCE COMPANY, PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-22208. March 30, 1966

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

The San Miguel Brewery, Inc. imported from the United States seven shipments of various goods carried on different vessels which were discharged at the Port of Manila on different dates the last of which being January 1, 1960. When the shipments arrived portions thereof were found missing for which a claim for damages was filed by said company with the Manila Port Service which is a subsidiary of the Manila Railroad Company. As these shipments were insured by the Continental Insurance Company after the alleged losses were settled by its agents on the matter the insurer paid them in due time, thereby subrogating itself to all the rights of recovery for losses belonging to the consignee. And as the Manila Port Service took no action either denying or rejecting the claim except to send a communication stating that the claimant may act accordingly if nothing is heard from said office within one year from November 30, 1959 within which an action may be brought in accordance with the management contract, the insurer filed this action on October 6, 1961.

On the strength of the stipulation of facts submitted by both parties, the court a quo rendered on April 3, 1963 a decision dismissing the action. However, on a motion for reconsideration filed by the plaintiff, the court a quo rendered an amended decision ordering defendants to pay plaintiff \$4,389.18, or their equivalent in the amount of P8,844.20, with legal interest thereon from October 6, 1961, plus costs of action.

Defendants interposed the present appeal.

The main issue to be determined hinges on the interpretation of paragraph 15 of the management contract which by agreement of the parties governs the shipment from abroad of the goods in question particularly the portion which is hereinafter quoted:

"* * * 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 the discharge of the goods, or from the date when the claim for the value of such goods, have 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." (Italics supplied)

As may be noted, there are two periods that should be reckoned with in case an action is to be filed to enforce liability for loss or damage as a result of misdelivery or non-delivery of the goods concerned, which periods are as follows: (1) one year from the date of discharge of the goods, or (2) one year from the date when the claim for the value of the goods has been rejected or denied by the arrastre contractor, provided, however, that before such action can be taken a provisional claim shall have previously been filed with said contractor within 15 days from

the date of discharge of the last package from the carrying vessel.

In the instant case, it is admitted that such claim was filed with the contractor within 15 days from the date of discharge of the last package from the carrying vessel as required in the management contract. It is likewise admitted that the present action was filed in court after the lapse of one year from any of the dates of discharge of the seven shipments herein involved from the carrying vessels, in the same manner as the parties agreed that the Manila Port Service never denied nor rejected the claim filed by the consignee for payment of the lost goods. Yet, the court a quo decided that precisely because there was no such rejection nor denial the arrastre contractor should be deemed to have rejected the claim upon the expiration of one year from the date of discharge of the last package. And since this last discharge occurred on November 2, 1959, the action taken by the insurer or consignee on October 6, 1961 was still within the period of one year contemplated in the management contract, as may be gleaned from the following reasoning of the court a quo:

"There is logic in the position taken by the plaintiff that when the Manila Port Service failed to act at all on the written claims filed with it for cargo lost and/or non-delivered, said claims must be deemed as rejected as of the expiration of one year from the date of discharge of the last package from the carrying vessels, and action must therefore be filed within one year from said rejection. As regards the cargoes subject of the instant case, action may, therefore, be filed on or before November 2, 1961 (corresponding to the date of discharge of the shipment on board the SS 'Tocansa'), and as plaintiff's action was filed on October 6, 1961, it is obvious that said action was then not yet time-barred."

Appellants, however, do not agree with the above interpretation, for in their opinion that would give the claimant two years prescriptive period instead of one year as provided for in paragraph 15 of the management contract within which to file its action in court to enforce its claim for damages. It would moreover render the first period of filing an action nugatory for whenever there is no denial or rejection of the claim the prescriptive period would always commence from the date of discharge even if the one-year period has already elapsed. Defendants claim that paragraph 15 is explicit. If suit is not filed within a year from the date of discharge no further action should prosper. And yet, following the interpretation of the court a quo, if the claim is never rejected claimant has still two years from the date of discharge within which to file suit which obviously was never intended by the parties.

The claim of appellants is not quite correct for the two periods mentioned in the contract within which an action for damages may be filed should be synchronized in order to make both of them real and effective. Thus, the first period refers to a case when the claimant takes action without waiting for the ruling of the contractor in which case the action should be filed within one year from the date of discharge of the goods; and the second when the claimant prefers to wait for such ruling in which case the action should be filed within one year from the date of rejection. (*Consunji, et al. vs. The Manila Port Service, et al.*, G. R. No. L-15551, November 29, 1960.) However, it may happen that the arrastre contractor may not act on the claim one way or the other within the period of one year from the date of discharge in which case a remedy should be sought. In this particular case, the court a quo solved the impasse by holding that the claim must be deemed rejected as of the expiration of one year from the date of discharge, in which case the action should be filed within one year from said rejection.

We believe this interpretation to be fair and reasonable considering the fact that the arrastre contractor did not exactly deny or reject the claim but instead sent a communication stating that in the event the claimant does not hear from it prior to the expiration of the one-year period within which action may be filed the consignee may "be guided accordingly", thereby insinuating that it may take action immediately thereafter. Thus, said communication reads as follows:

"Gentlemen:

This is in connection with your claim on the above shipment -

Please be informed that your claim is under adjudication and in this connection, for your information and guidance, we are quoting the pertinent provisions of our Management Contract, which is a sufficient notice to you, with respect to claims, as follows:

'15. * * * 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 vessels. * * *'

The date of discharge of the last package from the subject vessel was on November 30, 1959. In the event that you do not hear from us again prior to the expiration of the one (1) year period from the aforementioned date within which to file suit in accordance with the above-quoted provisions of our Management Contract, please be guided accordingly."

From such communication it is obvious that until the period of one year within which the contractor is given the occasion to act on the claim of the consignee expires, the latter has the right to adopt a passive attitude until further development turns up, and when such period expired and no action was taken by the contractor the most logical attitude for the consignee was to take action within a reasonable period of time thereafter. This is what the consignee has done when it filed its action on October 6, 1961, which is still within the one year of grace allowed by the court a quo. We find this year of grace reasonable considering the circumstances of the present case. Hence, we find no reason to disturb this finding of the court a quo.

The second error assigned by appellants stands sufficiently refuted by appellee in its brief.

Wherefore, the decision appealed from is affirmed. No costs.

Bengzon, C.J., Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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