

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MANILA POST SERVICE, DEFENDANT AND APPELLANT.

G.R. No. L-19115. March 31, 1964

Ponente: REGALA, J.

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REGALA, J.:

Appeal from the decision of the Court of First Instance of Manila in Civil Case No. 44406 of that court.

The pertinent facts as may be gathered from the record are as follows:

On October 20, 1956, the J.P. Heilbronn Co., Inc. was awarded contract P10 92-11-029-9-60221 to supply the Bureau of Agricultural Extension, through the procurement of the National Economic Council, a government agency, a paper-cutter table. On May 9, 1957, the said item contained in two cases arrived in Manila via the SS Pioneer Mist, as per Bill of Lading No. 101 under Customs registry and Entry Nos. 618 and 64820. The U.S. Lines Co., representing the carrier, certified that the shipment was discharged from the said vessel and received by the Manila Port Service.

After notification of the arrival of the shipment, the Bureau of Agricultural Extension, thru the National Economic Council, engaged the services of one Mariano Almeida, a broker, to take charge of its discharge. It appears, however, that on July 22, 1957, only one case was released from the Manila Port Service and turned over to the Bureau of Agricultural Extension. It is shown in the receipt that one of the cases was not received.

In view of the shortage, the Manila Port Service, on August 20, 1957, issued a shortlanded certificate stating: "This is to certify that the merchandise noted below S/S "PIONEER MIST" Reg. No. 618, B/L No. 101, arrived Manila on May 9, 1957 has been shortlanded."

Claim for the missing cargo was then made by the Bureau of Agricultural Extension. On August 29, 1957, the Manila Port Service sent a letter to the claimant as follows:

"With reference to your claim on the above-noted shipment, we are glad to advise that one case is presently remaining inside the bulkhead of Pier No. 7, which case bears the shipping mark 'Project: Agricultural Extension.'

"We believe that this case corresponds to the shortage in question. We request therefore that you send over your representative to us to verify as to whether this case is the missing one."

Pursuant to the aforementioned advice, the Bureau of Agricultural Extension sent its representative and broker to Pier 7, but they were unable to find the missing case, whereupon defendant asked for more time to locate the same.

On March 12, 1959, the Manila Port Service wrote another letter to the Bureau of Agricultural Extension, pertinent portion of which reads :

"Referring to your letter of February 12, 1959, concerning your shortage of one (1) case of Paper Cutter, we have actually verified that this case is presently stored inside the bulkhead of Pier 7, the same having been

mistransferred thereto under Reg. 722. Please request your representative or your broker to see us personally on this case so that we could pinpoint the exact location, of the package in question." (Underscoring ours)

The representative of the Bureau of Agricultural Extension and the broker once more went to look for the missing cargo, but failed again to locate the same.

Other subsequent demands were made by the Bureau of Agricultural Extension.

On September 30, 1959, the Manila Port Service finally wrote the Bureau of Agricultural Extension a letter pertinently reading:

"We refer to your letter of September 25, 1959 in connection with your claim on the above shipment.

"The shortlanded certificate was issued in error by us for the reason that the two (2) cases compromising the shipment were landed in accordance with tally receipts. No trace, however, could be found of the missing case in the piers or anywhere around the Customs premises, so that as a last resort, we have rejected your claim on the ground that the same was filed beyond the 15-day limitation period for filing claims pursuant to the pertinent provisions of our Management Contract."

"We regret, therefore, that we cannot reconsider our stand on this case."

Feeling aggrieved, the Bureau of Agricultural Extension, represented by the Solicitor General, filed a complaint with the Court of First Instance of Manila, praying that defendant Manila Port Service be ordered to pay the amount of P7,979.00, the value of the missing merchandise, with costs.

Defendant moved for the dismissal of the complaint, alleging as special defenses: (1) that since no provisional claim was filed by the consignee, its broker or representative against the defendant within the 15-day period from the date of the discharge of the last package from the carrying vessel, and/or suit brought in the court of proper jurisdiction within one year from the discharge of the last package, or from the date of rejection of the claim, said defendant is completely relieved, of any liability arising from the loss, shortage in contents of, or damage to, cargo in accordance with Section 15 of the Management Contract entered into by and between the Bureau of Customs and the Manila Port Service, as arrastre operator for the port of Manila; (2) that in the remote event that it should be held liable, its liability would not be more than P500 in accordance with the provisions of the Management Contract; and (3) that defendant in no way acts as the ship's agent for the receipt and delivery of the cargoes in the piers.

There being no dispute as to the facts, the case was submitted for decision with the documentary evidence presented.

The lower court found for the plaintiff, holding that the defendant is liable for the shortage of the cargo landed, but only for the amount of P500, since the plaintiff failed to declare the value of the missing case either in the vessel's manifesto or in the bill of lading.

Only the defendant appealed, disclaiming liability due to plaintiff's failure to file its claim within the 15-day period mentioned in the Management Contract.

The appeal is without merit.

Pertinent portions of section 15 of the Management Contract in question read:

"15. It is further understood and strictly agreed that the CONTRACTOR shall at its own expense handle all merchandise upon or over said piers, wharves and other designated places, and at its own expense perform all work undertaken by it hereunder diligently and in a skillful workmanlike and efficient manner; and the

CONTRACTOR shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred (P500.00) for each package unless the value is otherwise specified or manifested, and the corresponding arrastr charges had been paid, including all damages that may be suffered on account of loss, destruction, or damage of any merchandise while in the custody or under the control of the CONTRACTOR upon any pier, wharf or other designated place under the supervision of the BUREAU, x x x; 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, x x x." (Emphasis supplied)

On the question of whether or not the plaintiff-appellee's action has been barred by prescription, it is to be noted from the above-quoted provision of the contract that the fifteen days period is counted from the date of discharge of the last package from the carrying vessel. While it does not appear clearly when the cargo was discharged from the SS "Pioneer Mist" it must have been discharged on or shortly after the arrival of said vessel on May 9, 1957. But it certainly appears from the record that the "Permit to Deliver Imported Goods" was issued by the Bureau of Customs to the broker only as late as June 28, 1957, that is about fifty (50) days after the arrival of the vessel. And the goods were actually delivered to the consignee only on July 22, 1957. It is, therefore, difficult to see how the said consignee could have filed its claim within fifteen days after the discharge of the cargo from the vessel, when it was able to take hold of the said shipment only about two and a half months after the arrival of the vessel and its subsequent discharge therefrom.

Even if the 15-day limitation period provided for in the Management Contract should apply strictly, notwithstanding the fact that the consignee Bureau of Agricultural Extension had received the cargo beyond fifteen days after its discharge from the vessel, it is Our opinion that, in the instant case, the defendant-appellant Manila Port Service cannot anymore invoke the said provision. In connection with the purpose of filing the claim for the rest of the shortlanded cargo, this Court has held in the case of David Consunji, et al v. Manila Port Service, G.R. No. L-15551, that "such requirement is to afford the carrier a reasonable opportunity to check the validity of the claims while the facts are still fresh in the minds of the persons who took part in the transaction and documents are still available." It will be recalled that, as already stated, the defendant-appellant had issued a shortlanded certificate, which is an admission of the missing cargo. And this admission was reiterated in a letter dated October 29, 1957 and another dated March 12, 1959. In line with the purpose of the 15-day limitation, these admissions would preclude the defendant-appellant from invoking the said limitation, since the purpose for which it was provided had already been served.

Of course, the situation would be different had the defendant-appellant invoked the defense of prescription the first time the claim was filed. But the said defendant-appellant had entertained the said claim for a period of almost two years. In fact, the latest letter of the appellant admitting the existence of the cargo in its custody was as late as March 12, 1959. Hence, defendant cannot just now turn around and say that "as a last resort" the claim should be denied on the ground that it was filed beyond the 15-day period. As aptly stated by the learned trial judge, under the circumstances, it would be unfair to release the defendant-appellant from the liability on the technical ground that plaintiff did not file a provisional claim within the 15-day period stated in the Management Contract.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed in all respects. Costs against the defendant-appellant.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.
Padilla and Labrador, JJ., took no part.

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