

**DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLEE, VS. MANILA RAILROAD COMPANY, AND ITS
SUBSIDIARY MANILA PORT SERVICE, DEFENDANTS-APPELLANTS.**

G.R. No. L-24066. August 30, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

This is an appeal from the decision of the Court of First Instance of Manila in Civil Case No. 45839, entitled Domestic Insurance Company of the Philippines, versus Manila Railroad Company and its subsidiary Manila Port Service, condemning the defendants to pay the plaintiff the total sum of P2,490.00.

On December 16, 1960, the plaintiff, as successor-in-interest and subrogee to the rights of three con-signees, filed a complaint with three causes of action to recover an aggregate amount of P4,910.24, representing the value of portions of goods allegedly short-delivered and/or damaged in shipments discharged by the carrying vessels to the custody of the defendants as operator of the arrastre service at the port of Manila. In due time, the defendants answered the complaint. Thereafter, the parties submitted a stipulation of facts. Submitting a supplementary stipulation later, the parties rested their respective sides of the case after submitting documentary evidence.

On October 27, 1964, the trial court rendered the decision appealed from.

As appears from the stipulation of facts of the parties and the brief filed by their respective counsels, the facts of the case which are not disputed, are as follows:

Under the First Cause of Action -

On February 6, 1960, the vessel S/S "President Pierce" docked at the port of Manila carrying a shipment of 400 bags of synthetic resins ("UNION CARBIDE" Polyethylene DND-0400, Natural) consigned to Mahogany Products Philippines, Inc. It discharged the cargo unto the custody of the Manila Port Service, operator (under contract with the Manila Railroad Company) of the arrastre service at the port of Manila, on February 8, 1960. The customs broker for the consignee filed a provisional claim on February 19, 1960, advising the American President Lines and/or the Manila Port Service, that its shipment has been shortlanded and/or landed in bad order, and that it will file a formal claim for the loss or damage sustained. The provisional claim was received by the Manila Port Service on February 22, 1960. Of the 400 bag-shipment, only 356 bags were delivered by the Manila Port Service on April 29, 1960 to the consignee which subsequently filed a formal claim for its loss or damage on June 20, 1960, against said arrastre operator. The appellee, as insurer of the cargo, paid the loss of the consignee, and was thereby subrogated to its rights against the appellants Manila Port Service and Manila Railroad Company.

Under the Second Cause of Action -

On May 6, 1960, the vessel S/S "Doña Aurora" arrived at the port of Manila carrying a shipment of three (3) boxes containing a Cooking Range, an Oven, and a Refrigerator Freezer consigned to Nancy Brown Turla. The

cargo was discharged unto the custody of the Manila Port Service on May 11, 1960. Only two (2) of the three (3) boxes aforementioned were delivered by the Manila Port Service to the consignee under "per-mit to deliver imported goods" dated May 12, 1960. Seven days after, or on May 19, 1960, consignee's attorney-in-fact filed a provisional claim with the Manila Port Service for whatever loss or damage that may be sustained by the consignee, followed by a formal claim for loss on May 28, 1960. Again, appellee, as insurer of the goods, paid the loss to Nancy Brown Turla on July 5, 1960, and thereby became subrogated to the rights of the consignee.

Under the Third Cause of Action -

On February 24, 1960, the vessel S/S "Pioneer Mill" arrived at the port of Manila carrying a shipment of 34 cartons of Dry Batteries consigned to Associated Trading Corporation, Manila. On February 25, 1960, the Manila Port Service received from the consignee a provisional claim dated February 22, 1960. The entire shipment of 34 cartons of Dry Batteries appears to have been discharged by the carrying vessel unto the custody of the Manila Port Service on February 26, 1960. Only 19 cartons of the 34-carton shipment, however, was delivered to the consignee on the 24th of that month, and thereafter the consignee filed a formal claim for loss on July 12, 1960. Like in the two previous instances aforementioned, the appellee, as insurer of the shipment, paid the loss to the consignee, and was thereby subrogated to its rights against herein appellants.

In their supplementary stipulation of facts, the parties agreed that should the appellants finally be held answerable for the loss of or damage to the goods in question, their liability should be limited to P1,140.00, P500.00, and P850.00 under the First, Second and Third Causes of Action, respectively, pursuant to the provisions of Section 15 of the Management Contract between the Manila Railroad Company and the Manila Port Service; and for its part, plaintiff admitted that it had knowledge of, and is bound by the terms and conditions set forth under said Section 15 of the agreement adverted to above, particularly the time limit within which a claim for loss or damage against the defendants as operator of the arrastre service at the port of Manila, should be filed or prosecuted.

The issue now brought before Us is, whether under the foregoing antecedents of the case, there was substantial compliance with the requirement of filing claims against the arrastre operator (defendants) within fifteen (15) days from the date of discharge of the last package from the carrying vessel as provided for in the management contract aforementioned, when the appellee or its predecessors-in-interest filed the so-called "provisional claims" in the instances narrated under the three (3) separate causes of action in appellee's complaint.

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

"15. It is further understood and strictly agreed that the CONTRACTOR shall x x x 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 arrastre charges had been paid, 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." (Underscoring Ours.)

This is not the first time that this question has been brought before Us. In a long line of cases, We have invariably held that filing of a "provisional claim" within fifteen (15) days from the date of discharge of the last package from the carrying vessel is a sufficient compliance with the requirement of Section 15 of the aforesaid management contract (United Insurance Company, Inc. vs. Royal Interocean Lines, et al., L-22688, April 27,

1967; Atlantic Mutual Insurance Co., et al. vs. Manila Port Service, L-21907, April 29, 1966; State Bonding & Insurance Co., Inc. vs. Manila Port Service, L-21833, February 28, 1966; Yu Kimteng Construction Corp. vs. MRR, L-17027, November 29, 1965; G.S.I.S. vs. MRR, L-20342, November 29, 1965). The circumstance that the provisional claim did not specify the value of the loss still substantially fulfills the requirements of the contract aforementioned (State Bonding & Insurance Co. vs. Manila Port Service, *supra*), and is not a defense against the claim of the consignee for recovery after it shall have ascertained later its actual loss or damage. With respect to the amounts awarded to herein appellee under its First and Second Causes of Action, therefore, the lower court did not commit error in ordering the herein appellants to pay the Domestic Insurance Company the amounts of P1,140.00 and P500.00, respectively.

With respect to the award of P850.00 to the appellee under the Third Cause of Action, however, the same is not warranted under the circumstances of the case. The legal relation of the parties should be governed by a different rule. A claim for loss or damage under the provisional claim filed before the date of discharge of the last package from the carrying vessel, is not a substantial compliance with the requirement of Section 15 of the Management Contract under consideration, because it is "premature and speculative" (Shell Co. of the Philippines, Ltd. vs. Compania General de Tabacos de Filipinas, L-20230, July 30, 1965; Fireman's Fund Insurance Co. vs. Manila Port Service, et al., L-22454, April 29, 1966; Rizal Surety & Insurance Co., Inc. vs. Manila Railroad and Manila Port Service, L-22409, April 27, 1967). The rule, however, was qualified in New Hampshire Fire Insurance Co. vs. Manila Port Service, et al. (L-20938, August 9, 1966), where this Tribunal made a distinction between two instances, namely: (1) where the provisional claim is filed ahead of the date of the discharge of the last package from the carrying vessel but the consignee has not yet examined or was not yet informed of the condition of the shipment, the provisional claim is held to be speculative and premature; and (2) where the claim is filed also before the date of the discharge of the last package from the carrying vessel and the consignee has in fact discovered or was informed of a shortage or damage to the goods before the discharge of the last package, or during the unloading, then the provisional claim is deemed to have been properly presented. But even applying this latter principle to the case at bar, We find no showing that would sustain, much less, justify the award of P850.00 to the appellee under its Third Cause of Action.

The record shows that appellee filed its provisional claim one (1) day before the cargo treated thereunder was actually discharged from the carrying vessel on February 26, 1960. Worse still, the said provisional claim bears the earmarks of a "stereo-type" one, because it is dated and appears to have been made or prepared on February 22, 1960, showing the impossibility of appellee or its predecessor-in-interest's having known or been informed at the time about the alleged loss or damage to its shipment, for the S/S "Pioneer Mill" which carried the cargo in question docked at the port of Manila only on February 24, 1960. This leaves no room for doubt that the claim was premature and speculative, and cannot be legally considered as a substantial compliance with the requirement of the management contract that the claim should be filed within fifteen days from the date of discharge of the last package from the carrying vessel. Neither would the formal claim for the missing articles filed on July 12, 1960, cure the defect as the date is clearly beyond the 15-day period aforementioned.

For all the foregoing considerations, the decision appealed from is hereby modified, in the sense that the P850.00 awarded to the appellee under its Third Cause of Action is eliminated, but affirmed with respect to the amounts of P1,140.00 and P500.00 granted under the First and Second Causes of Action. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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