

ANG CHING GI, DOING BUSINESS UNDER THE FIRM NAME ANGI TRADING CO., PETITIONER, VS. DELGADO BROTHERS, INC., ET AL., RESPONDENTS.

G.R. No. L-22138. February 17, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Lawrence Export Company of New York, upon the importation order of Ang Ching Gi, shipped in 1954 thru M/S "Trafalgar" three cases of Carter's Writing Ink and one case of Gas mantle fabric, with a total of \$8,492. In July 1954, the carrier delivered the cargo to Delgado Brothers, Inc., as arrastre operator of Manila. After Ang Ching Gi's broker paid the advance sales tax and arrastre fees, said broker claimed the cargo from Delgado Brothers, Inc. but was told that all the four cases had been transferred to the possession of A.C. Esguerra & Company, the operator of a customs bonded warehouse in-side the customs zone, by virtue of a contract with the Bureau of Customs. Upon claim by the same broker against A.C. Esguerra & Co., however, the latter replied that of the four cases, only two cases of Carter's Writing Ink were transferred to it, erroneously at that, without any record or supporting papers and these were later stored in the Chinese Baggage Room.

Ang Ching Gi's broker thereupon wrote the Acting Collector of Customs on April 26, 1955 requesting for the immediate release of the two cases. The investigation conducted by the Bureau of Customs showed the two cases to have been tampered and with shortage. As per request, the goods were released after the broker filed a surety bond of P5,020.31.

On January 28, 1956 having been denied recovery of the loss by Delgado Brothers, Inc., Ang Ching Gi filed before the Court of First Instance of Manila the present, action against Delgado Brothers, Inc., for the recovery of P19,683.02 - the alleged value of the undelivered car-go plus the shortage - plus 30% unrealized profits, P50,000 damages and P3,000 attorney's fees and costs. Answering, Delgado Brothers, Inc. denied liability and alleged prescription because Ang Ching Gi did not file his claim within 15 days from the discharge of the cargo from the vessel nor file the action in court within one year from the date of arrival or the cargo at the port. Defendant Delgado Brothers, Inc., then filed a third par-ty complaint against A.C. Esguerra & Co., alleging liabi-lity on the latter because the goods had been transferred to it, as a customs warehouse to which all cargoes beyond the free, storage period are delivered. Likewise, A.C. Esguerra Co. disclaimed responsibility on the ground that the cargo was never properly or legally delivered to it, the truth being that the two cases wore erroneously delivered without the necessary supporting papers and that upon receipt thereof it merely sent the goods to the Chinese Baggage Room as required by customs regulations.

After trial on the merits, the Court of First Ins-tance absolved A.C. Esguerra & Co. and found Delgado Bro-thers, Inc. liable on the grounds that the alleged transfer of the goods to A.C. Esguerra & Co., was not proved - the transfer slip was signed by the customs guard and Del-gado's checker but not Esguerra's checker and the gate inspector, whose signatures are necessary for the trans-fer; the two cases were tampered while in Delgado

Brothers, Inc.'s possession; the prescriptive period does not apply because plaintiff was not bound by the management contract between the Bureau of Customs and Delgado Brothers, Inc. Delgado Brothers, Inc. was ordered to pay Ang Ching Gi P19,683.02 for the value of the lost cargo but the court did not grant award for unrealized profits or moral damages and attorney's fees, for lack of showing of gross bad faith on the part of Delgado Brothers, Inc. From this judgment both parties appealed to the Court of Appeals. Acting subsequently, the Appellate Court, while holding that there was gross negligence if not bad faith on the part of Delgado Brothers, Inc., dismissed the case on the ground that Ang Ching Gi, who was bound by the management contract, did not file his claim within the required period, allowing the same to prescribe.

After denial of his two motions for reconsideration, Ang Ching Gi appealed to Us by way of certiorari, setting forth as issues the prescription of the claim and his right to recover the value of the goods plus damages, unrealized profits and attorney's fees.

The management contract between the Bureau of Customs and the arrastre operator, particularly the provision limiting the liability of the operator to claims filed within 15 days from discharge of the cargo into its custody or a suit in court within one year from the date of arrival of the cargo at the port, is binding upon consignees or third persons not signatories thereto, as long as the latter is shown, by sane act or transaction, to have known and accepted that limitation of liability. To successfully invoke the provisions of the contract, the beneficiary is bound to prove such knowledge and agreement on the part of the importer.[1] So far, the issuance of delivery permits and gate passes on the back of which are stamped this provision of limitation of liability, have been considered by Us as instances where there was such knowledge and acceptance.[2] The Court of Appeals, apparently relying on this principle, enunciated as far back as the case of *Tomas Grocery v. Delgado Brothers*, L-11154, April 29, 1959, held the case at bar to be no different from the *Tomas Grocery* case. Petitioner argues that unlike in the case cited by the Court of Appeals there was never a delivery permit nor a gate pass issued by Delgado Brothers, Inc. for the withdrawal of the goods. This fact is even admitted by respondent Delgado Brothers, Inc. This, petitioner claims, makes the period of prescription in the management contract inapplicable. Instead, Article 1149 of the Civil Code providing for 5 years for actions whose period are not fixed, should apply.

At first glance, the argument of petitioner would seem tenable.

Analysis however shows otherwise. On April 26, 1955, Ang Ching Gi, thru his broker requested the Acting Collector of Customs for the release of the two cases of goods. After investigation, the goods were ordered released and Ang Ching Gi, after posting the necessary bond, took possession of the same. Barring the smuggling of goods outside of the customs zone, all cargoes ordered released whether bonded or not cannot be taken out of the customs zone without a delivery permit issued by the customs authorities and the corresponding gate pass on both of which would be stamped the terms of the management contract. Withdrawal of goods from A.C. Esguerra & Co., especially because it is inside the customs zone, would not be any exception. It would then be upon the date of issuance of either the delivery permit or the gate pass that petitioner in the instant case, would be bound by the term of the management contract and from which the 15-day period to file the claim for loss or shortage would commence to run. It is indisputable that no such claim within the aforementioned period had been filed at all. Thus, though arguably, the court action filed on January 28, 1956 was within the one-year period as provided in the management contract (even if counted from April 26, 1955, the date of request for the release of the two cases), petitioner's claim must fail for non-compliance with the 15-day period requirement. It is settled that before the one-year period to file court action may be availed of, the 15-day period must first be complied with.[3]

As regards unrealized profits as to which petitioner alleges he could have recovered at least 30% of the loss, there is no sufficient proof of the same.

Finally, there is no merit in petitioner's claim for moral damages, for the same are not recoverable in the absence of had faith in damage actions predicated on a breach of contract of carriage as in this case.[4]

WHEREFORE, the decision appealed from is hereby af-firmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Lexal Pure Drug Laboratories v. MRR, L-20155, April 30, 1966.

[2] Lexal Pure Drug Laboratories v. MRR, supra; Shell Co. v. Compañia de Tabacos de Filipinas, L-20230, July 30, 1965; Insurance Co. of North America v. U.S. Lines, L-17032, March 31, 1964.

[3] Atlantic Mutual Insurance Co. v. MPS, L-16789, Oct. 31, 1962; Insurance Co of North America v. MPS, L-17331, Nov. 29, 1961.

[4] Verzosa v. Baytan, et al., L-14092, April 29, 1960, cit-ing Fores v. Miranda, L-12163, March 4, 1959.

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