

**THE AMERICAN INSURANCE COMPANY OF NEWARK,
PLAINTIFF-APPELLANT, VS. MANILA PORT SERVICE AND/OR
MANILA RAILROAD COMPANY, DEFENDANTS-APPELLEES.**

G.R. No. L-27472. July 06, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Ansor Corporations shipped on the SS Pioneer Mart from New York to San Miguel Brewery, Inc., 1112 Aviles Street, Manila, three drums of formaldehyde and one drum of cutting agent G-672 with a total invoice value of \$446.50.

The shipment was insured by the American Insurance Company of Newark. The vessel arrived at the port of Manila on May 13, 1960. The cargo was discharged and delivered in good order on May 19, 1960 to the arrastre operator, Manila Port Service, a subsidiary of the Manila Railroad Company, now the Philippine National Railways.

On May 31, 1960 the arrastre operator delivered to the consignee's customs broker the three drums of formaldehyde. The drum containing the cutting agent with an invoice value of \$306.26 and an insured value of P691.06 was not delivered. The insurer paid to the consignee the insured value.

On May 3, 1960 or ten days before the arrival of the carrying vessel the consignee's customs broker filed with the Manila Port Service a provisional claim for shortage or damage. The arrastre operator rejected the claim for being premature since' the Pioneer Mart had not yet arrived at the port of Manila.

On May 13, 1960, when the carrying vessel arrived, consignee's customs broker re-filed the provisional claim. It was accepted by the Manila Port Service. It was not specified in the provisional claim that the drum of cutting agent was missing. Aside from the names of the carrying vessel and the consignee, the provisional claim contained only the following cryptic details: "136 SMB Manila, Made in USA 4 drms. formaldehyde agent, Bad Order Short Landed."

On June 17, 1960 the customs broker sent a tracer to the Manila Port Service complaining that the drum of cutting agent was missing and that it would hold the arrastre operator liable for the full value thereof. The consignee filed its formal claim with the arrastre operator on September 28, 1960.

As the arrastre operator did not pay the claim, the insurer, as the consignee's subrogee, sued the arrastre operator and the Manila Railroad Company in the municipal court of Manila for the recovery of the sum P691.06 plus interest and attorney's fees.

The municipal court dismissed the complaint. The insurer appealed to the Court of First Instance of Manila. After hearing, that court likewise dismissed the complaint on the ground that the consignee did not comply with the requirement that a claim for shortage or damage should be filed within fifteen days from the date of discharge of the last package from the carrying vessel, as stipulated in paragraph 15 of the management contract executed

between the Manila Port Service and the Bureau of Customs.

The insurer appealed to the Court of Appeals. That Court in its resolution of February 28, 1967 found that the case involves the legal issue of whether the consignee's provisional claim was a sufficient compliance with paragraph 15 of the management contract (CA-G.R. No. 31269-R).

Appellant insurance company contends that the customs broker's provisional claim filed on May 13, 1960, the date of the carrying vessel's arrival and six days before the delivery of the cargo to the arrastre operator, was a substantial compliance with paragraph 15.

That contention cannot be sustained. A provisional claim filed before the delivery of the cargo, in anticipation of any possible loss or damage while the cargo is in the arrastre operator's custody, was held to be premature and speculative (*Manila Port Service vs. Fortune Insurance & Surety Co., Inc.*, L-29862, May 24, 1972, 45 SCRA 65 and cases cited therein).

The fifteen-day requirement was designed to give the arrastre operator a reasonable opportunity to check the validity of the claim while the facts are fresh in the minds of the persons who took part in the transaction and while pertinent documents are still available (*Manila Port Service vs. Fortune Insurance & Surety Co., Inc.*, supra). That purpose would not be served if a premature provisional claim were to be entertained.

The general rule prescribed in paragraph 15, that the claim for loss, damage, misdelivery or nondelivery should be presented to the arrastre contractor within fifteen days from the date of discharge of the last package from the carrying vessel, applies where before the expiration of the fifteen-day period the consignee or claimant has knowledge of such loss, damage, misdelivery or nondelivery.

There is an exception to that rule based on pragmatic and equitable considerations. The rule does not apply if the consignee or claimant learns of the loss, damage, misdelivery or nondelivery after the expiration of the fifteen-day period from the discharge of the last package from the carrying vessel. In such a case the fifteen-day period should be reckoned from the date the consignee or claimant learns of the loss or damage or from the date when with the exercise of due diligence information regarding the loss or damage could have been obtained (*New Zealand Insurance Co., Ltd. vs. Manila Port Service*, L-22500, April 24, 1967, 19 SCRA 801; *Manila Port Service vs. Fortune Insurance & Surety Co., Inc.*, supra).

The reason for that exception is that before the claimant or consignee learns of the shortage or damage he is in no position to make a claim since the goods are in the arrastre contractor's custody. If paragraph 15 is applied literally to all situations, then the contractor may escape liability by simply withholding knowledge as to the loss or damage, until after the expiration of the fifteen-day period from the discharge of the last package from the carrying vessel (*Yu Kimteng Construction Corporation vs. Manila Railroad Company*, L-17027, November 29, 1965, 15 SCRA 292; *New Zealand Insurance Co., Ltd. vs. Manila Port Service*, supra).

In this case appellant insurance company adduces the alternative contention that the "Notice of Missing or Unlocated Cargo" which its broker filed actually with the Manila Port Service on June 17, 1960 should be regarded as a substantial compliance with paragraph 15.

That contention is not meritorious because it can be assumed that the consignee, through its customs broker, became aware of the nondelivery of the drum containing the cutting agent on May 31, 1960 when the three drums of formaldehyde were delivered to the broker by the arrastre operator. The consignee or its broker should have filed the claim for nondelivery within fifteen days from May 31, 1960 or on or before June 15, 1960. The filing of its claim on June 17, 1960 was obviously out of time.

The filing of a claim within the fifteen-day period is a condition precedent to the filing of the court action (Villanueva vs. Barber Wilhelmsen Line, 110 Phil. 34).

Failure to file the claim within the fifteen-day period relieves the arrastre operator of any liability for nondelivery of the cargo (Insurance Company of North America vs. Manila Port Service, L-26268, March 25, 1970, 32 SCRA 39).

The consignee was bound by paragraph 15 of the management contract because the dorsal side of the delivery permit used by its broker in obtaining delivery of the cargo (Exh. C) contains the following:

"Important Notice

"This permit is presented subject to all the terms and conditions of the Management Contract between the Bureau of Customs and Manila Port Service and amendments thereto or alterations thereof, particularly but not limited to Paragraph 15 thereof limiting the Company liability to P500.00 per package, unless the value of the goods is otherwise specified, declared or manifested and the corresponding arrastre charges have been paid, providing exemptions of restrictions from liability; and releasing the Company from liability unless suit is brought within one (1) year from the date of discharge of the goods, or from date when the claim for the value of the goods has been rejected, provided, such claim shall have been filed with the Company within 15 days from date of discharge of the last package from carrying vessel."

Hence, the consignee and its subrogee, appellant insurance company, through the customs broker, is deemed to have notice of the said management contract (Domestic Insurance Co. of the Phils, vs. Manila Port Service and M.R.R. Co., 114 Phil. 131, 134.)

WHEREFORE, the lower court's judgment dismissing the complaint is affirmed. No costs.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, and Martin, JJ., concur.

Concepcion, Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

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