

M.S. GALUTERA, PLAINTIFF AND APPELLANT, VS. MAERSK LINE, CIA. GRAL. DE TABACOS DE FILIPINAS AND/OR DELGADO BROS., INC., DEFENDANT AND APPELLEES.*G.R. No. L-15056. May 30, 1964*

Ponente: MAKALINTAL, J.

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This case has come directly to us on appeal from the Court of First Instance of Manila (Civil Case No. 30235).

In June 1955 a consignment of 12 bales of cotton prints was shipped in New York, for Manila, aboard the SS "Johannes Maersk," operated by the Maersk Line, one of herein defendants-appellees. The shipment was consigned to the order of the Bank of the Philippine Islands, with arrival notice to plaintiff-appellant M. S. Gaultera. The shipment arrived in Manila in July 1955, was transferred in due course to the ownership of plaintiff-appellant, and then cleared by her customs broker through the Tabacalera (Cia.Gral. de Tabacos de Filipinas), as local agent of the Maersk Line, and through defendant-appellee Delgado Brothers, Inc., as operator of the arrastre service. When the shipment was delivered to plaintiff-appellant by the said arrastre operator, one bale of cotton prints was missing.

In the action filed for the recovery of the sum of P1,459.56 representing the value of the missing merchandise, the Court a quo found from the evidence and declared that the loss was attributable to defendant-appellee, Delgado Brothers Inc. The Court, however, denied recovery to plaintiff-appellant on the ground that she had already been paid the value of the missing bale by the American Insurance Company, with which the shipment had been insured through its Philippine representative, E.E. Elser, Inc.

It is not denied that plaintiff-appellant received from the insurer the sum now in dispute, but she maintains that she received it not as payment but merely as a loan "repayable to the extent of any recovery she could make from the party or parties responsible for the loss of the missing bale of cotton prints." Plaintiff-appellant's position on this point is supported by Exhibit F, which provides as follows:

"Received from the AMERICAN INSURANCE COMPANY One Thousand Four Hundred Fifty Nine and 56/100 (P1,459.56)Pesos as a loan repayable only to the extent of any net recovery the undersigned may make from any vessel, carrier, bailee or others, upon or by reason of any claim or loss of or damage to the property described below, or from any insurance effected by us or by any carrier, bailee or others on said property and as security for such payment we hereby pledge to the said AMERICAN INSURANCE COMPANY all such claims and any recovery thereon. We hereby appoint the said AMERICAN INSURANCE COMPANY our agents and Attorneys in Fact, with irrevocable power to collect any such claim and to begin, prosecute, compromise or draw, in our name but at the expense of the said AMERICAN INSURANCE COMPANY, any legal proceeding which they may deem necessary to en-force such claim or claims, and to execute in our name any documents which may be necessary to carry into effect the purposes of this agreement. In further consideration of the said advance, we hereby guarantee that we are the persons entitled to enforce the terms of the contract of transportation set forth in the bills of lading covering the said property."

On the other hand, defendant-appellee Delgado Brothers, Inc., refers to plaintiff-appellant's admission in her testimony at the trial to the effect that she had been "paid" by the insurer, and to said defendant's documentary evidence, particularly Exhibit 3, which is a letter of E. E. Elser, Inc. to Delgado Brothers, Inc., advising the latter that the former had paid the corresponding amount to M. S. Galutera and was therefore subrogated in her place, for which reason any payment to be made by the Delgado Brothers, Inc. should be to E. E. Elser, Inc.

The trial court, as already noted, upheld the position of defendant Delgado Brothers, Inc., and while finding that the loss was attributable to it declined to give judgment in favor of plaintiff. After the decision was rendered the latter filed a motion for reconsideration and, in the alternative, for the inclusion of the American Insurance Company as co-plaintiff pursuant to Section 3 of Rule 3, or for an amendment of the pleadings so as to implead the said company in order to make them conform to the evidence presented. The motion was denied.

The overriding fact in this case - which is not at all controverted in this appeal - is that Delgado Brothers, Inc., is liable for the loss. Whether payment thereof should be made to plaintiff-appellant or to the American Insurance Company is a technicality that should be overlooked. In the written agreement between them, Exhibit F, the amount representing the loss, if recovered by plaintiff-appellant, should be repaid to the said company. That agreement is binding upon them, such that a judgment rendered in favor of plaintiff-appellant, as the only claimant in this case, would relieve defendant-appellee Delgado Brothers, Inc., of any further liability by reason of such loss. Indeed the terms of Exhibit F do not make for subrogation of the insurer to the rights of the insured, and hence have not divested the latter of her right to file this suit.

The following citations are pertinent:

"For many years it has been customary for insurers, in order to save right of their assureds and to promptly place them in funds, so that their business might be continued without embarrassment, to lend to their assureds the amount of the loss repayable only out of moneys collected on account of the loss. There is a line of cases approving such arrangements and holding that such loans are not a payment of insurance." (First National Bank of Ottawa vs. Lloyd's of London 116 F. 2d, 221, 226.)

"The right of the libelant to prosecute the libel under this state of facts is challenged. The transaction with the insurance company did not divest the libelant of his title to and interest in the property, and was not a satisfaction of his claim either against the insurance company or the libelee. If it were, in terms, a satisfaction of the claim for insurance, it would not avail the libelee.x x x." (The Guiding Star, 53 F. 936, 940).

"And in Lee vs. Barrett (1913) 82 Misc. 475, 144 N. Y. Supp. 941, where, after a loss to a shipper had occurred because of a carrier's default, an insurer which had issued a policy to the shipper advanced money to the latter, and took an instrument acknowledging the receipt of the sum advanced 'as a loan, and re-payable only to the extent of any net recovery we may make from any carrier, bailee, or others, on account of loss of our property,' and pledging to the insurer any recovery from the carrier, or from an insurer of the carrier, and agreeing to deliver the bills of lading and to prosecute suit against the carrier on the claim, at the expense, and under the exclusive direction and control of the insurer, it was held that the advancement did not constitute a payment of the loss, and that the insurer was not, therefore, subrogated to insured's rights against the carrier, and an action was, therefore, held properly brought by an assignor of the insured." (1 A.L.R. 1529)

The insistence of defendant-appellee on the question of who should properly have filed this suit is based on a technicality that should be brushed aside. To permit plaintiff-appellant to recover, subject of course to her obligation to the American Insurance Company under Exhibit F, would avoid unnecessary delay and multiplicity of suits in the attainment of the same result, namely, the enforcement of an undisputed liability on the part of one of the parties.

The judgment appealed from is reversed and defendant-appellee Delgado Brothers Inc., is ordered to pay

plaintiff-appellant the sum of P1,459.56, as stated in the complaint, with legal interest thereon from the date of its filing, and costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Regala, JJ., concur.

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