

SVERIGES ANGFARTYGS ASSURANS FORENING, PLAINTIFF AND APPELLANT, VS. QUA CHEE GAN, DEFENDANT AND APPELLEE.*G.R. No. L-9757. April 16, 1959*

Ponente: PADILLA, J.

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On 16 August 1954 the plaintiff brought an action against the defendant in the Court of First Instance of Manila. In its complaint it alleges that it insured the vessels SS "Nagara" and SS "Ceylon", owned and operated by the Swedish East Asiatic Company, against loss or damage to cargo; that in August 1947, the defendant loaded copra on board the SS "Nagara" at Siain, Quezon and at Tabaco and Legaspi, Albay, for shipment to Karlshamm, Sweden, and to Gydnia, Poland; that thereafter the defendant informed the agent of the vessel in the Philippines, the International Harvester Company of the Philippines, that he had loaded 2,000 long tons or 2,032,000 gross kilos of copra on board the SS "Nagara"; that relying on the defendant's representation, the agent issued the corresponding bills of lading in favor of the consignees with the qualification that the copra loaded was "said to weigh" 2,000 long tons or 2,032,000 gross kilos; that in November, 1947, the defendant loaded copra on board the SS "Ceylon" at Siain, Quezon, Tabaco and Legaspi, Albay, and Manila for shipment to Karlshamm, Sweden, and to Gydnia, Poland; that thereafter the defendant informed the same agent that he had loaded 2,032 tons or 2,064,512 gross kilos of copra on board the SS "Ceylon"; that relying on the defendant's representation, the agent-issued the corresponding bills of lading in favor of the consignees with the qualification that the copra was "said to weigh" 2,032 tons or 2,064,512 gross kilos; that upon arrival of the vessels at the ports of destination, the cargoes were unloaded and delivered to their respective consignees; that after unloading the said cargoes a check up of their respective weights showed the following shortage in weight:

- (1) SS "NAGARA" at Karlshamm—14.3185% of quantity stated in the bill of lading;
- (2) SS "NAGARA" at Gydnia—462,751 tons or 23% of quantity stated in the bill of lading;
- (3) SS "CEYLON" at Karlshamm—13.9379% of quantity stated in the bill of lading;

that the consignees filed claims against the owner of the vessels for the value of the total shortage in the sum of \$76,829.42, U.S. currency, and reimbursement of freight charges in the sum of \$14,687, U.S. currency; that on or about 21 February 1950 the consignees brought an action in the Magistrate's Court of Stockholm, Sweden, against the owner of the vessels and the defendant herein to collect and recover the two sums of money; that the defendant herein objected to the jurisdiction of the Swedish court over his person and the action against him was dismissed; that the defendant did not load the exact weight of copra represented by him to have been loaded on the two vessels which accounts for the difference in weight of the copra unloaded at the ports of destination as compared to that appearing in the bills of lading; that by way of amicable settlement, the owner of the vessels paid to the consignees the sum of \$60,733.53, U.S. currency; that subsequently the owner of the vessels demanded from the plaintiff reimbursement of the sum it had paid to the consignees and the plaintiff paid to the owner of the vessels the sum demanded, thereby subrogating itself to all the rights of the owner of the vessels; that the plaintiff in turn demanded from the defendant in Manila reimbursement of the sum it had paid to the owner of the vessels

for his (the defendant's) failure to load the exact weight of copra represented by him to have been loaded on the" vessels; and that the defendant refused to pay the plaintiff's claim. The plaintiff prays for judgment in its favor and against the defendant for \$60,733.53, U.S. currency, or its equivalent in Philippine currency; 17% exchange tax, interest per annum on both the principal and exchange tax from the date of the filing of the complaint; P10,000 for attorney's fees; costs of the suit; and for such other and further relief as the Court may deem just and equitable.

On 30 August 1954 the defendant moved for the dismissal of the complaint on the ground that it states no cause of action, he (the defendant) not being the shipper of the copra but the buyer, Louis Dreyfus & Company, Ltd. of New York; and that if he is being sued for tortious misrepresentation, the plaintiff's cause of action is barred by the statute of limitation, for the right of action on a quasi-delict prescribes in four years. The plaintiff objected to this motion. On 2 October 1954 the Court denied the motion.

On 9 October 1954 the defendant answered the complaint setting up the following defenses: that the loading of the copra on board the SS "Nagara" was made for and in behalf of Louis Dreyfus & Co. (Overseas) Ltd., and, consequently, the right of action is against it; that it was the agent of the shipper, the General Superintendence Co. Ltd., Geneva, Switzerland, which was commissioned by the shipper to weigh the copra, who represented that 2,000 long tons or 2,032,000 gross kilos of copra had been loaded on the ship; that the loading of the copra on board the SS "Ceylon" was made for and in behalf of Karlshams Cliefabriker of Norrøeping, Sweden, the Shipper, and, consequently, the right of action is against it; that it was the agent of the shipper, the General Superintendence Co., Ltd., Geneva, Switzerland, which was commissioned by the shipper to weigh the copra, who represented that 2,032 tons or 2,064,512 gross kilos of copra had been loaded on board the vessel.; and that the defendant loaded the exact weight of copra in both instances in accordance with the instructions of the shippers and as certified to by the General Superintendence Co., Ltd. As affirmative defenses, the defendant alleges that he was not notified of the weighing of the copra at the ports of destination nor was he represented by his agents thereat; that the alleged payment made by the owner of the vessels to the consignees by way of compromise was without the authority and consent of the defendant, hence, he could not be held liable therefor; and that the shortage in weight was not due to short delivery by the defendant but to the negligence of the carrier in the care of the cargo. The defendant sets up a counterclaim of P15,000 for attorney's fees. On 25 October 1954 the plaintiff controverted the defendant's counterclaim. On 31 March 1955 the defendant amended its answer to rely on an additional ground that as the consignees did not bring their action within one year from the time the goods had been delivered pursuant to the provisions of section 3, paragraph 5 and 6, title I, of the Carriage of Goods by Sea Act, Commonwealth Act No. 65, the plaintiff's action was already barred by statute.

On 11 July 1955 the defendant filed a motion praying for preliminary hearing on the question of prescription. The plaintiff objected to this motion.

On 16 July 1955 the Court ordered the defendant to file a motion to dismiss. On 1 August 1955, in compliance with the order of the Court, the defendant filed a motion to dismiss, on the ground that the right of action, if any, is barred by the statute of limitations, and that the complaint states no cause of action, and in support thereof the defendant argues that the waiver by the carrier of the defense of prescription does not bind the defendant, and that the plaintiff, as subrogee of the carrier's right, can have no greater or better right than its predecessor.

On 4 August 1955 the plaintiff filed "a motion to strike out defendant's motion to dismiss and to quash service thereof on plaintiff" on the ground that it contained no proof of service and no notice of the date of hearing thereof. On the same day (4 August) the defendant filed an objection to the motion just referred to and a "notice of hearing" of the motion to dismiss setting it for 13 August 1955, at 8:30 o'clock a.m., or as soon as counsel could be heard.

On 6 August 1955 the Court denied the plaintiff's motion to strike out the defendant's motion to dismiss and to quash service thereof on the plaintiff, and finding the defendant's motion to dismiss well taken dismissed the case without costs.

On 22 August 1955 the plaintiff moved to set aside the order of dismissal and prayed for new trial, both petitions objected to by the defendant. On 31 August 1955, in an order dated 27 August, the Court denied the plaintiff's motion. The plaintiff has appealed.

The dismissal of the plaintiff's complaint on the ground of prescription and lack of cause of action is erroneous. Section 3, paragraph 6, title I, of the Carriage of Goods by Sea Act, Commonwealth Act No. 65, relied upon by the defendant and sustained by the Court, which partly provides—

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

refers to the action that the shipper must commence against the carrier or ship within one year from delivery of the goods or the date when the goods should have been delivered to recover loss or damage to the goods shipped. In the case at bar, the plaintiff seeks to recover from the defendant the sum it claims it had indemnified the owner of the vessels (the carrier) for the value of the copra which, it is claimed, the defendant failed to load for shipment to the consignees and "the value of which the carrier had paid to the consignees. Paragraph IX of the complaint states—

That the difference in the weight of the copra unloaded at the said ports of discharge as compared to what defendant had declared in the bills of lading is due to the fact that the shortage had never been loaded by the defendant on board the said vessels at the ports of loading, contrary to the representation made by him to the vessels' agent in Manila;

and its prayer entreats the—

* * * Court to render judgment ordering defendant to pay plaintiff the sum of \$60,733.53, U.S. currency, or its equivalent in Philippine currency, plus 17% exchange tax, with interest thereon at the rate of 6% per annum from the filing of this complaint until the date of full payment, and to pay plaintiff the further sum of P10,000 as attorney's fees..

Plaintiff also prays for the costs of suit and such other and further relief as this Honorable Court may deem just and equitable in the premises.

As alleged in the complaint, the transactions took place in August and November 1947, as evidenced by bills of lading; whereas the complaint was filed on 16 August 1954. If the averments of the complaint on this point be proved, then the plaintiffs cause of action is not yet barred by the statute of limitations.

All the other defenses set up by the defendant must be established by competent and admissible evidence.

The order appealed from is set aside, and the case remanded to the court of origin for further proceedings in accordance with law, which costs against the appellee.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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