

UNION CARBIDE PHILIPPINES, INC. (FORMERLY NATIONAL CARBON PHILIPPINES, INC.), PLAINTIFF-APPELLANT, VS. MANILA RAILROAD CO., SUBSTITUTED BY THE PHILIPPINE NATIONAL RAILWAYS, MAN...

G.R. No. L-27798. June 15, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is an admiralty and arrastre case. On December 18, 1961 the vessel Daishin Maru arrived in Manila with a cargo of 1,000 bags of synthetic resin consigned to General Base Metals, Inc. which later sold the cargo to Union Carbide Philippines, Inc.

On the following day, December 19, that cargo was delivered to the Manila Port Service in good order and condition except for twenty-five bags which were in bad order (Par. IV and Annexes C to C-25 of Stipulation of Facts).

On January 20 and February 6 and 8, 1962 eight hundred ninety-eight (898) bags of resin (out of the 1,000 bags) were delivered by the customs broker to the consignee. One hundred two bags were missing. The contents of twenty-five bags were damaged or pilfered while they were in the custody of the arrastre operator (Par. XII and Annexes D and H of Stipulation of Facts). All in all fifty bags out of the 898 bags were damaged (Annex D-5).

The 152 bags of resin (102 missing and 50 damaged) were valued at \$12.65 a bag or a total value of \$1,992.80, which amount, at the prevailing rate of exchange of P3.85 to the American dollar, is equivalent to P7,402.78 (Annex I of Stipulation of Facts).

The consignee, through the customs broker, filed on January 3, 1962 with the Manila Port Service, as arrastre operator, and the American Steamship Agencies, Inc., as agent of the carrier, a provisional claim advising them that the shipment in question was "shortlanded, shortdelivered and/or landed in bad order" (Annexes E and F of Stipulation of Facts).

Formal claims dated June 11, 1962 were made by the consignee with the arrastre operator and the agent of the carrier (Annexes I and I-1 of Stipulation of Facts). The claims were re-iterated by the consignee's lawyer in his letters dated September 26, 1962 which were received by the carrier's agent and the arrastre operator on October 4, 1962 (Annexes J and J-1 of Stipulation of Facts).

As the claims were not paid, Union Carbide Philippines, Inc. filed a complaint on December 21, 1962 in the Court of First Instance of Manila against the Manila Railroad Company, the Manila Port Service and the American Steamship Agencies, Inc. for the recovery of damages amounting to P7,402.78 as the value of the undelivered 102 bags of resin and the damaged 50 bags plus legal rate of interest from the filing of the complaint and P1,000 as attorney's fees.

Union Carbide's complaint was a double-barrelled action or a joinder of two causes of action. One was an action in admiralty under the Carriage of Goods by Sea Act against the carrier's agent for the recovery of P1,217.56 as the value of twenty-five bags of resin which were damaged before they were landed (Annex C-25).

The other was an action under the management contract between the Bureau of Customs and the Manila Port Service, a subsidiary of the Manila Railroad Company, for the recovery of P6,185.22 as the value of the undelivered 102 bags of resin and twenty-five bags, the contents of which were damaged or pilfered while in the custody of the arrastre operator.

The case was submitted for decision on the basis of a stipulation of facts. The trial court in its decision of January 15, 1964 dismissed the case as to the carrier's agent on the ground that the action had already prescribed because it was not "brought within one year after delivery of the goods", as contemplated in section 3(6) of the Carriage of Goods by Sea Act. The one-year period was counted from December 19, 1961 when the cargo was delivered to the arrastre operator. As above-stated, the action was brought on December 21, 1962 or two days late, according to the trial court's reckoning (Civil Case No. 52562).

With respect to the consignee's claim against the arrastre operator, the trial court found that the provisional claim was filed within the fifteen-day period fixed in paragraph 15 of the arrastre contract. Yet, in spite of that finding, the trial court dismissed the action against the arrastre operator (p. 65, Record on Appeal).

Union Carbide appealed to the Court of Appeals on questions of fact and of law. That Appellate Court elevated the case to this Court because in its opinion the appeal raises only the legal issue of prescription (Resolution of May 10, 1967 in CA-G. R. No. 33743-R).

Union Carbide contends that the trial court erred (1) in finding that its action was barred by the statute of limitations and (2) in not holding that the carrier and the arrastre operator were liable for the value of the undelivered and damaged cargo.

Claim against the carrier's agent. – There is no question that, as shown in the twenty-five tally sheets, 975 bags of resin were delivered by the carrier in good order to the arrastre operator and that only twenty-five (25) bags were damaged while in the carrier's custody (Annexes C to C-25 and K-1 of Stipulation of Facts).

The one-year period within which the consignee should sue the carrier is computed from "the delivery of the goods or the date when the goods should have been delivered". The Carriage of Goods by Sea Act provides:

"RESPONSIBILITIES AND LIABILITIES

"SEC. 3. x x x x x x x x

"(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

"Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

"The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

"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 pre-judice 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.

"In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods." (Commonwealth Act No. 65, adopting U. S. Public Act No. 521 of April 16, 1936).

What is the meaning of "delivery" in section 3(6) of the Carriage of Goods by Sea Act? The trial court construed delivery as referring to the discharge or landing of the cargo.

Union Carbide contends that "delivery" does not mean the discharge of goods or the delivery thereof to the arrastre operator but the actual delivery of the goods to the consignee by the customs broker.

The carrier contends that delivery means discharge from the vessel into the custody of the customs arrastre operator because under sections 1201 and 1206 of the Tariff and Customs Code merchandise cannot be directly delivered by the carrier to the consignee but should first pass through the customhouse at a port of entry for the collection of customs duties.

The carrier cites the following provisions of the bill of lading to support its contention:

"9. Delivery. The Carrier retains the option of delivery at all times from ship's side or from craft, hulk, customhouse, warehouse, wharf or quay, at the risk of the shippers, consignees or owners of the goods, and all expenses incurred by delivery other-wise than from ship's side shall be borne by the shippers, consignees or owners of the goods.

"11. Discharge of Goods. The goods may be discharged, without notice, as soon as the ship is ready to unload, continuously day and night, Sundays and holidays included, on to wharf or quay or into warehouse, or into hulk, lazaretto or craft or on any other place and be stored there at the risk and expense of the shippers, consignees or owners of the goods, any custom of the port to the contrary notwithstanding. In any case, the Carrier's liability is to cease as soon as the goods are lifted from ship's deck or leave the ship's tackle, any custom of the port to the contrary notwithstanding. Consignees to pay charges for sorting and stacking the goods on wharf or in shed.

"If the consignees fail to take delivery of their goods immediately the ship is ready to discharge them, the Carrier shall be at liberty to land and warehouse or discharge the said goods into hulk or craft, or at any other place at the risk and expense of the shippers, consignees or owners of the goods without notice.

"15. Notice of Claim. Any claim for loss of or damage to the goods must be preferred in writing to the Carrier's Agents at the place of delivery within 3 days after the ship's discharge thereof, and before the goods are removed from the quay or ships or place of discharge, and in the event of such claim not being preferred as above specified, the claim shall be deemed as waived, and the Carrier shall be discharged therefrom.

"Suit for the recovery of loss or damage shall not in any event be maintainable against the Carrier or the ship, unless instituted within one year after the delivery of the written notice above specified. The amount of claim shall be restricted to the Cash Value of the goods at the place and time of original shipment plus all charges actually paid thereon, and all claims for either partial or total loss or damage shall be entertained and adjusted upon this basis of value." (Annex B).

In this connection, it is pertinent to state that the Tariff and Customs Code allows the delivery of imported merchandise to the arrastre operator:

"SEC. 1213. Receiving, Handling, Custody and Delivery of Articles. - The Bureau of Customs shall have exclusive supervision and control over the re-ceiving, handling, custody and delivery of articles on the wharves and piers at all ports of entry and in the exercise of its functions it is hereby authorized to acquire, take over, operate and superintend such plants and facilities as may be necessary for the receiving, handling, custody and delivery of articles, and the convenience and comfort of passengers and the handling of baggage, as well as to acquire fire protection equipment for use in the piers:

"Provided, That whenever in his judgment the receiving, handling, custody and delivery of articles can be carried on by private parties with greater efficiency, the Commissioner may, after public bidding and subject to the approval of the department head, contract with any private party for the service of receiving, handling, custody and delivery of articles, and in such event, the contract may include the sale or lease of government-owned equipment and facilities used in such service."

The sensible and practical interpretation is that delivery within the meaning of section 3(6) of the Carriage of Goods by Sea Law means delivery to the arrastre operator. That delivery is evidenced by tally sheets which show whether the goods were landed in good order or in bad order, a fact which the consignee or shipper can easily ascertain through the customs broker.

To use as basis for computing the one-year period the delivery to the consignee would be unrealistic and might generate confusion between the loss or damage sustained by the goods while in the carrier's custody and the loss or damage caused to the goods while in the arrastre operator's possession.

Apparently, section 3(6) adheres to the common-law rule that the duty imposed upon water carriers was merely to transport from wharf to wharf and that the carrier was not bound to deliver the goods at the warehouse of the consignee (*Tan Hi vs. United States*, 94 Fed. Supp. 432, 435).

In the *Tan Hi* case, it was held that a requirement of Philippine law that all cargo unloaded at Manila be delivered to the consignee through the arrastre operator acting as customs' agent was not unreasonable. The common-law requirements as to the proper delivery of goods by water carrier apply only when customs regulations at the port of destination do not otherwise provide. The delivery must be in accordance with the usages of the port in order that such delivery would discharge the carrier of responsibility. (Notes 50 and 51, 80 C.J.S. 922; 58 C. J. 372 note, 24. See 70 Am Jur 2nd 613, note 19).

Under the facts of this case, we hold that the one-year period was correctly reckoned by the trial court from December 19, 1961, when, as agreed upon by the parties and as shown in the tally sheets, the cargo was discharged from the carrying vessel and delivered to the Manila Port Service. That one-year period expired on December 19, 1962. Inasmuch as the action was filed on December 21, 1962, it was barred by the statute of limitations.

Defendant American Steamship Agencies, Inc., as agent of the carrier, has no more liability to the consignee's assignee, Union Carbide Philippines, Inc., in connection with the damaged twenty-five bags of resin.

Prescription was duly pleaded by the said defendant in its answer and motion to dismiss. That defense was correctly entertained by the trial court.

Claim against the arrastre operator. - The liability of the arrastre contractor has a factual and legal basis different from that of the carrier's. The management contract between the Manila Port Service and the Bureau of Customs provides:

"15. xxx xxx; 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." (Annex A of Stipulation of Facts).

Under the foregoing contractual provisions, the action against the arrastre operator to enforce liability for loss of the cargo or damage thereto should be filed within one year from the date of the discharge of the goods or from the date when the claim for the value of such goods has been rejected or denied by the arrastre operator.

However, before such action can be filed a condition precedent should be complied with and that is, that a claim (provisional or final) shall have been previously filed with the arrastre operator within fifteen days from the date of the discharge of the last package from the carrying vessel (*Continental Insurance Company vs. Manila Port Service*, L-22208, March 30, 1966, 16 SCRA 425).

In this case, the consignee's customs broker filed with the Manila Port Service a provisional claim advising the latter that the cargo was "shortlanded, shortdelivered and/or landed in bad order". That claim was filed on January 3, 1962 or on the fifteenth day following December 19, 1961, the date of the discharge of the last package from the carrying vessel. That claim was never formally rejected or denied by the Manila Port Service.

Having complied with the condition precedent for the filing of a claim within the fifteen-day period, Union Carbide could file the court action within one year, either from December 19, 1961 or from December 19, 1962. This second date is regarded as the expiration of the period within which the Manila Port Service should have acted on the claim (*Philippine Education Co., Inc. vs. Manila Port Service*, L-24091, 21 SCRA, 174, 178).

In other words, the claimant or consignee has a two-year prescriptive period, counted from the date of the discharge of the goods, within which to file the action in the event that the arrastre contractor, as in this case, has not rejected nor admitted liability (*Continental Insurance Company vs. Manila Port Service*, supra. *Philippine Education Company vs. Manila Port Service*, L-23444, October 29, 1971, 42 SCRA 31).

Since the action in this case against the arrastre operator was filed on December 21, 1962, or within the two-year period expiring on December 19, 1963, that action was filed on time. The trial court erred in dismissing the action against the Manila Port Service and its principal, the Manila Railroad Company.

As shown in the statement of facts, the arrastre operator is responsible for the value of 102 bags of resin, which were not delivered, and twenty-five bags, which were damaged, or a total, of one hundred twenty-seven bags valued at P6,185.22.

The arrastre operator should pay attorney's fees to the plaintiff for not having satisfied its plainly valid, just and demandable claim (Art. 2208, Civil Code). We fix the attorney's fees and the litigation expenses in the sum of one thousand pesos.

WHEREFORE, the trial court's judgment is affirmed insofar as it dismissed plaintiff-appellant's claim against defendant American Steamship Agencies, Inc. on the ground of prescription.

The trial court's decision is reversed insofar as it dismissed plaintiff's claim against the Manila Railroad Company, as arrastre operator. The Philippine National Railways, as the successor of the Manila Railroad Company (Sec. 22, Republic Act No. 4156), is hereby ordered to pay plaintiff Union Carbide Philippines, Inc. the sum of P6,185.22, as the value of the 127 bags of resin (102 bags missing and 25 bags damaged), with legal rate of interest from the filing of the complaint on December 21, 1962 up to the date of payment, plus P1,000 as attorney's fees and litigation expenses, and the costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.
Concepcion, Jr., J., on leave.

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