

**FIREMAN'S FUND INSURANCE CO., PLAINTIFF AND APPELLEE,
VS. MANILA PORT SERVICE AND MANILA RAILROAD COMPANY,
DEFENDANTS AND APPELLANTS.**

G.R. No. L-21412. September 28, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

On June 21, 1961 the Fireman's Fund Insurance Company filed a complaint in the municipal court of Manila against the Manila Port Service and the Manila Railroad Company to recover the value of one box of telephone switchboard parts short-delivered to the consignee, the Philippine Long Distance Telephone Company. The latter's claim had previously been settled by the plaintiff, as insurer, which was thereby subrogated to the rights of the consignee.

From the decision rendered by the said court in favor of the plaintiff ordering the defendants to pay "jointly and severally, the sum of P230. 81, with legal interest therefrom from the date of the filing of the action, June 21, 1961, to pay also the sum of P50 as and for attorney's fees, plus costs", the defendants appealed to the Court of First Instance of Manila.

At the trial in the latter court, and without adducing evidence, the parties adopted the partial stipulation of facts submitted by them to the municipal court. The material portions of the stipulation read:

"3. That the carrying vessel 'SS President Grant' arrived in the Port of Manila on April 27, 1959, and made its last cargo discharge on April 28, 1959, among which were the 48 boxes of telephone parts discharged and received into the custody of the Manila Port Service. That out of the 48 boxes, Manila Port Service was able to deliver 47 boxes to the consignee by virtue of a duly authorized delivery permit and various gate passes.

"4. That provisional claim was filed by the consignee through its customs broker on May 4, 1959, or within 15 days from date of last discharge, followed by a formal claim filed on October 15, 1959, and which was acknowledged by Manila Port Service by means of a letter dated October 16, 1959 (copy attached as Exhibit A-Plaintiff).

"5. That on April 4, 1961 the Manila Port Service sent a letter to the claimant advising the latter that 'your claim has prescribed inasmuch as you did not commence suit against us within one (1) year from April 28, 1959, the date of discharge of the last package from the carrying vessel in accordance with the pertinent provisions of our Management Contract' (copy of said letter attached as Exhibit B-Plaintiff & Exhibit 2-MPS).

"6. That the only issue tendered here for resolution of this Honorable Court is whether or not under the pertinent provisions of paragraph 15 of the Management Contract, the claim of the plaintiff has prescribed, and consequently, defendants are relieved and released from any and all liability or responsibility therefor; For the convenience of this Honorable Court, we quote the applicable clauses of paragraph 15 as follows:

'15. in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for the loss, damage, misdelivery and/or non-delivery of goods, unless suit in the court of proper jurisdiction is

brought within a period of one year from the date of discharge of the goods, or from the date when the claim for the value of such goods has 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 ...”

On March 23, 1963 the lower court rendered judgment "for plaintiff Fireman's Fund Insurance Company and orders defendants to pay said plaintiff the amount of P239.81, as well as the sum of P100.00 as attorney's fees, and the costs."

The defendants have appealed to this Court, contending that the court a quo erred (1) in holding that the action was filed within the prescriptive period of one year provided under section 15 of the management contract; (2) in adjudging the defendants liable to the plaintiff in the sum of P239.81, the amount of P100 as attorney's fees, and costs; and (3) in not dismissing the complaint on the ground that the action has prescribed.

The sole issue of law tendered in this appeal for resolution is, whether under paragraph 15 of the management contract the action of the plaintiff has prescribed.

It is not disputed that the carrying vessel which arrived in Manila on April 27, 1959 discharged the last cargo on April 28, 1959 into the custody of the Manila Port Service; that the consignee filed a provisional claim, through its customs broker, on May 4, 1959, this followed by a formal claim on October 15, 1959; that this claim was acknowledged by the Manila Port Service in its letter of October 16, 1959 which stated in part that "Your claim is under careful consideration and we shall let you know of our action thereon in due time"; that on April 4, 1961 the Manila Port Service sent a letter to the plaintiff advising it that "your claim has prescribed inasmuch as you did not commence suit against us within one (1) year from April 28, 1959, the date of discharge of the last package from the carrying vessel in accordance with the pertinent provisions of our Management Contract;" and that on June 21, 1961 the present suit was filed.

The court a quo, upon cogent reasons, held that the action has not yet prescribed, because the one-year prescriptive period provided in paragraph 15 of the management contract may be counted either from the date of discharge of the goods, or from the date when the claim for the value of such goods is denied or rejected by the contractor; that the defendants' letter of April 4, 1961 advising the claimant that the latter's "claim" had prescribed "is an indirect, but nevertheless, an unequivocal rejection, at least in effect, of the claim"; and that "the period of one year from said date of rejection of denial had not yet expired when the present action was filed on June 21, 1961, which is even less than three months thereafter."

In our view, the resolution of the issue herein tendered depends on the inter-relation of the prescriptive periods provided in paragraph 15 of the management contract and the proper application thereof to the undisputed facts.

In their briefs the parties have somewhat belabored the issue of whether the defendants' letter of April 4, 1961 amounts to a rejection or denial of the claim of the plaintiff. Perhaps in a totally different setting and under more auspicious circumstances, the issue could prove to be of some consequence, and might elicit the extended attention of this Court. But in the light of the uncontroverted facts obtaining, the issue need not give us pause, because we can derive a direct and authoritative solution from a formula laid down by this Court only six months ago.

In *Continental Insurance Company vs. Manila Port Service, et al*, L-22208, promulgated March 30, 1966, this Court held that when the arrastre contractor fails to act on a claim within the period of one year from the complete discharge of the goods from the carrying vessel, the claim must be deemed rejected as of the expiry date of the said period, and the action must be filed within one year from such expiry date. This ruling was reiterated in *Delgado Brothers, et al vs. Manila Port Service, et al*, L-21781, promulgated June 30, 1966. [1]

We have, in this case before us, the requisite facts for the application of the formula. The cargo was completely discharged from the carrying vessel on April 28, 1959. One year from this date lapsed on April 28, 1960. Within this period of one year, although a claim had been duly filed by the plaintiff with the defendants, the latter took no action thereon beyond a perfunctory acknowledgment of receipt thereof. One year from April 28, 1960 would bring us to April 28, 1961, the end of the road for whatever right or rights the plaintiff could assert against the defendants. Suit was commenced only on June 21, 1961. Applying the formula, we reach this simple but stark conclusion: the action of the plaintiff has prescribed.

ACCORDINGLY, the judgment a quo is reversed, and the complaint is dismissed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

Barrera, J., no part.

[1] Obviously the learned judge a quo, Hon. Manuel Barcelona, when he rendered judgment on March 23, 1963, did not and could not have any foreknowledge of the ruling enunciated in the two decisions cited which were promulgated three years later.

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