

DOMINGO ANG, PLAINTIFF-APPELLANT, VS. AMERICAN STEAMSHIP AGENCIES, INC., DEFENDANT-APPELLEE. DOMINGO ANG, PLAINTIFF-APPELLANT, VS. AMERICAN STEAMSHIP AGENCIES, INC., DEFENDANT-A...

G.R. No. L-25047 and L-25050. March 18, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

These are two cases separately appealed to the Court of Appeals and certified to Us by said Court. Since both appeals involve the same parties and issue, they are decided together herein.

Yau Yue Commercial Bank Ltd. of Hongkong, also referred to hereafter as Yau Yue, agreed to sell one boat (50 feet, 30 tons) containing used U.S. Military Surplus to one Davao Merchandising Corp. for the sum of \$8,820.27 (US), and 42 cases (62 sets and 494 pieces) of Hiranos Automatic Cop Change for Cotton Loom for Calico to one Herminio Teves for the sum of \$18,246.65 (US), respectively.

Said agreements were both subject to the following terms and arrangements: (a) the purchase price should be covered by a bank draft for the corresponding amount which should be paid by the purchaser in exchange for the delivery of the corresponding bill of lading to be deposited with a local bank, the Hongkong & Shanghai Bank of Manila; (b) upon arrival of the articles in Manila the purchaser would be notified and would have to pay the amount called for in the corresponding demand draft, after which the bill of lading would be delivered to said purchaser; and (c) the purchaser would present said bill of lading to the carrier's agent, American Steamship Agencies, Inc., which would then issue the corresponding "Permit To Deliver Imported Articles" to be presented to the Bureau of Customs to obtain the release of the articles.

Pursuant thereto, on February 17, 1961, Hirahira & Co., Ltd. shipped the 42 cases (62 sets and 494 pieces) of Hiranos Automatic Cop. Change for Cotton Loom for Calico at Nagoya, aboard the "S.S. CELEBES MARU", for Manila, with the Kansai Steamship Co., Ltd. of Osaka, Japan, as carrier, of which the American Steamship Agencies, Inc. is the agent in the Philippines, under a shipping agreement, Bill of Lading No. NM-1, dated February 17, 1961, consigned "to order of the shipper", with Herminio G. Teves as the party to be notified of the arrival of said articles.

Similarly, on June 3, 1961, the United States Contracting Officer, on behalf of Nippon Trading Shokai for Nishiman Kaihatsu Co., Ltd. shipped the boat containing U.S. Military Surplus at Yokohama, Japan, aboard the "KYOJU MARU", with Sankyo Kiun Kabushiki Kaisha of Japan as carrier, of which the American Steamship Agencies, Inc. is the agent in the Philippines, under a shipping agreement, Bill of Lading No. YM-3, dated June 3, 1961, consigned "to the order of Yau Yue Commercial Bank, Ltd. of Hongkong", with Davao Merchandising Corporation as the party to be notified of the arrival of said boat.

The bills of lading were indorsed to the order of Yau Yue and delivered to it by the respective shippers. Upon

receipt thereof, Yau Yue drew demand drafts together with the bills of lading against Teves and Davao Merchandising Corp., through the Hongkong & Shanghai Bank.

The shipment for Teves arrived in Manila on March 2, 1961; that of Davao Merchandising Corp., arrived on June 10, 1961. Accordingly, Hongkong & Shanghai Bank notified Teves and the Davao Merchandising Corporation, the "noti-fy parties" under the bills of lading, of the arrival of the goods and requested payment of the demand drafts re-presenting the purchase prices of the articles. The Davao Merchandising Corp. and Teves, however, did not pay the respective drafts, prompting the bank in both cases to make the corresponding protests. The bank likewise returned the bills of lading and demand drafts to Yau Yue which indorsed both bills of lading to Domingo Ang.

Teves and Davao Merchandising Corporation, however, were able to obtain bank guaranties in favor of the American Steamship Agencies, Inc., as carriers' agent, to the effect that they would surrender the original and negotiable bills of lading duly indorsed by Yau Yue. And on the strength of said guaranties, Davao Merchandising Corp. and Teves each succeeded in securing a "Permit To Deliver Imported Articles" from the carriers' agent, which they presented to the Bureau of Customs. In turn the latter released to them the articles covered by the bills of lading.

After being informed by the American Steamship Agencies that the articles covered by the respective bills of lading were already delivered by them to the Davao Merchandising Corp. and to Teves, Domingo Ang filed claims with the carriers' agent for the cost of said articles, interests and damages. The American Steamship Agencies, Inc., however, refused payment.

Domingo Ang thereafter filed separate complaints in the Court of First Instance of Manila against the American Steamship Agencies, Inc., for having allegedly wrongfully delivered and/or converted the goods covered by the bills of lading belonging to plaintiff Ang, to the damage and prejudice of the latter. The suit as to the Teves shipment was filed on October 30, 1963; that referring to the Davao Merchandising Corp.'s shipment was filed on November 14, 1963.

Subsequently, defendant filed motions to dismiss upon the ground that plaintiff's causes of action have prescribed under the Carriage of Goods by Sea Act (Commonwealth Act No. 65), more particularly section 3(6), paragraph 4, which provides:

"In any event, the carrier and the ship shall be discharged from all liability in respect to 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."

It argued that the cargoes should have been delivered to the person entitled to the delivery thereof, i.e., plaintiff, on March 2, 1961 (Teves shipment) and June 10, 1961 (Davao Merchandising Corp. shipment), the respective dates of the vessels' arrival in Manila, and that even allowing a reasonable time (even one month) after such arrivals within which to make delivery, still, the actions commenced on October 30, 1963 and November 14, 1963, respectively, were filed beyond the prescribed period of one year.

By order dated February 21, 1964, copy of which was received by plaintiff on February 28, 1964, the lower court presided over by the Hon. Judge Guillermo S. Santos, dismissed the action (in re the 42 cases [62 sets and 494 pieces] of Hiranos Automatic Cop Change for Cotton Loom for Calico) on the ground of prescription. His motion for reconsideration dated March 20, 1964 having been denied by the lower court in its order dated June 1964, plaintiff appealed to the Court of Appeals. This is now L-25050 and refers to the Teves shipment.

Upon the other hand, by order dated January 6, 1964, the lower court presided over by the Hon. Jesus P. Morfe (in

re the boat [50 feet, 30 tons] containing used U.S. Military Surplus denied the motion to dismiss on the ground that there being no allegation in the complaint as to the date of arrival of the cargo or the date on which it should have been delivered, the defendant was relying on facts which are not yet in evidence such as presuming that the cargo had arrived on a specific date and that the same had been delivered on another specific date.

Upon a motion for reconsideration filed by the defendant on January 13, 1964 and after the parties submitted their memoranda of authorities and counter-authorities, respectively, the lower court by an order dated February 20, 1964, reconsidered its prior order of January 6, 1964 and dismissed plaintiff's action also on the ground of prescription. From this order, defendant appealed to the Court of Appeals. This is now L-25047 and refers to the Davao Merchandising Corp. shipment.

At issue is a question purely of law, namely: Did plaintiff-appellant's causes of action prescribe under Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act?

The point has already been resolved by this Court in a case involving the same parties and parallel facts to those herein involved. In *Domingo Ang v. American Steamship Agencies, Inc.*, G.R. No. L-22491, Jan. 27, 1967, We held that the one-year prescriptive period under Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act does not apply to cases of misdelivery or conversion. For convenience, We quote the ruling therein:

"The provision of law involved in this case speaks of 'loss or damage'. That there was no damage caused to the goods which were delivered intact to Herminio G. Teves who did not file any notice of damage, is admitted by both parties in this case. What is to be resolved - in order to determine the applicability of the prescriptive period of one year to the case at bar - is whether or not there was 'loss' of the goods subject matter of the complaint.

"Nowhere is 'loss' defined in the Carriage of Goods by Sea Act. Therefore, recourse must be had to the Civil Code which provides in Article 18 thereof that, 'In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.'

"Article 1189 of the Civil Code defines the word 'loss' in cases where conditions have been imposed with the intention of suspending the efficacy of an obligation to give. The contract of carriage under consideration entered into by and between American Steamship Agencies, Inc. and the Yau Yue (which later on endorsed the bill of lading covering the shipment to plaintiff herein Domingo Ang), is one involving an obligation to give or to deliver the goods 'to the order of shipper', that is, upon the presentation and surrender of the bill of lading. This being so, said article can be applied to the present controversy, more specifically paragraph 2 thereof which provides that, ' . . . it is understood that a thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered.'

"As defined in the Civil Code and as applied to Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, 'loss' contemplates merely a situation where no delivery at all was made by the shipper of the goods because the same had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or they cannot be recovered. It does not include a situation where there was indeed delivery - but delivery to the wrong person, or a misdelivery, as alleged in the complaint in this case.

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"The point that matters here is that the situation is either delivery or misdelivery, but not nondelivery. Thus, the goods were either rightly delivered or misdelivered, but they were not lost. There being no loss or damage to the goods, the aforequoted provision of the Carriage of Goods by Sea Act stating that '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,' does not apply. The reason is not difficult to see. Said one-year period of limitation is designed to meet the exigencies of

maritime hazards. In a case where the goods shipped were neither lost nor damaged in transit but were, on the contrary, delivered in port to someone who claimed to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain.

"It follows that for suits predicated not upon loss or damage but on alleged misdelivery (or conversion) of the goods, the applicable rule on prescription is that found in the Civil Code, namely, either ten years for breach of a written contract or four years for quasi-delict (Arts. 1144 [1], 1146, Civil Code). x x x"

The goods covered by the two shipments subject matter of these appealed cases were also delivered to the notify parties, Davao Merchandising Corporation and Herminio Teves, despite the latter's inability to present the proper bills of lading and without the knowledge and consent of plaintiff-appellant Domingo Ang to whom were endorsed said bills of lading. There is therefore likewise misdelivery, not nondelivery. Finally, the recipients of said goods did not file any complaint with defendant regarding any damage to the same. No loss nor damage is therefore involved in these cases. And thus the prescriptive period under Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act does not apply. The applicable prescriptive period is that found in the Civil Code, namely, either ten years for breach of a written contract or four years for quasi-delict (Arts. 1144[1] and 1146). Since the complaints in these appealed cases were filed two years and five months (as to Davao Merchandising Corp. shipment) and 2 years and 8 months (as to Teves shipment), from the arrival of the two shipments, it is clear that the causes of action have not yet prescribed.

WHEREFORE, the orders appealed from dismissing plaintiff's complaints in these two cases on the ground of prescription are hereby reversed and set aside; let said cases be remanded to the respective court a quo for further proceedings.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

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