

INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE, ET AL, DEFENDANTS AND APPELLANTS.

G.R. No. L-17331. November 29, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 21, 1957, the C. Itch & Co., Ltd., Tokyo, Japan, shipped at Yokohama, Japan for Manila, Philippines, on board the steamer "CANADA MAIL" of the American Mail Line, Ltd., and consigned to the Roxas-Kalaw Textile Mills, Inc., Manila, "two cases containing one set welding machine, various parts and accessories for textile machineries" for which the Everett Steamship Corporation, the Yokohama agent of the steamer "CANADA MAIL" issued Bill of Lading No. X-13-M. This shipment was insured by the shipper with the Insurance Company of North America. Upon arrival of said shipment at the Port of Manila on May 28, 1957, the shipment was unloaded and placed in the custody of the Manila Port Service which, in turn, delivered the same to the consignee Roxas-Kalaw Textile Mills, Inc. "short of 1 case containing 1 set of welding machine, various parts and accessories of captioned shipment valued in the amount of P1,608.05."

When the consignee filed its claim for the loss with the insurance firm, the latter paid the same thereby subrogating itself into the rights of the consignee with regard to said loss. As the Manila Port Service failed and refused to indemnify it for the loss in spite of repeated demands, the insurance firm commenced the present action before the Court of First Instance of Manila to recover the loss suffered by it in the amount of P1,608.05, with interests thereon from the filing of the complaint, plus the sum of P536.02 as attorney's fees and costs.

Defendant in its answer admitted the material allegations of the complaint respecting the latter's functions as operator of the arrastre service of the Port of Manila and that it is "charged with the custody and care of all cargoes discharged in the government piers in the Port of Manila and was authorized and required to deliver all said cargoes to their respective owners upon presentation of the corresponding release papers from the vessels, its agents and/or owners and from the Bureau of Customs." Defendant, however, averred that its functions are subject to the terms, conditions and restrictions imposed by the management contract entered into between said defendant and the Bureau of Customs and justified its refusal to pay plaintiff's claim with defendant within the 15-day period therein mentioned from the date of the arrival of the goods on May 28, 1957. Defendant further averred that since no such claim was filed by plaintiff, defendant is relieved of all liability for any such loss or shortage pursuant to the aforesaid management contract and, in any event, defendant's liability for the cargo's loss or damage is limited to the invoice value of the cargo which in no case shall exceed P500.00 for each package.

On September 24, 1958, without holding any trial, the parties submitted a stipulation of facts, and on the strength thereof, the court a quo rendered judgment in favor of the plaintiff ordering the Manila Port Service and the Manila Railroad Co. Inc., jointly and severally, to pay plaintiff the sum of P1,608.05 with legal interest from May 10, 1958 and costs.

Defendant has appealed, but because the errors assigned only raised questions of law, the case was certified to us by the Court of Appeals.

It is admitted that a management contract was entered into by and between the Bureau of Customs and the Manila Port Service, a subsidiary of the Manila Railroad Company, on February 29, 1956 for the operation of the arrastre service in the Port of Manila, to which neither the plaintiff nor its predecessor-interest is a party. And among the important terms and conditions therein stipulated are that the Manila Port Service shall be responsible to the steamship company, consignee, consignor, or other interested parties for the invoice value of each package in case of loss but which in no case shall be more than P500.00 for each package unless the value is otherwise specified or manifested therein, and that in any event the Manila Port Service shall be relieved of its liability for loss unless suit in the proper court is brought "within a period of one (1) year from the date of the arrival 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 the arrival of the goods." Other facts admitted by the parties are: that no claim was filed with the Manila Port Service for the missing shipment or its loss within the 15-day period from the date of the discharge of the last package from the carrying vessel, even if it appears that the present suit was filed in court within the period of one year from the date of the arrival of the shipment; and that the pertinent portion of the management contract is reproduced in the gate pass used for the withdrawal of the shipment on which the signature of both the consignee's broker and the representative of the Manila Port Service appeared showing actual delivery of the shipment without which plaintiff could not have been able to withdraw the shipment, and that, likewise, the same pertinent portion also appears at the back of the delivery permit used in withdrawing the shipment.

The main question to be determined is whether the provisions of the management contract entered into by and between the Manila Port Service and the Bureau of Customs relative to the limitation of the liability of the Manila Port Service for the transportation of cargo and its delivery from the vessel to the owner or consignee can be considered binding upon said owner or consignee or their successor-in-interest notwithstanding the fact that the latter is not a party thereto nor has had any participation in its execution. The trial court answered the question in the negative invoking Article 1311 of the new Civil Code which provides, among others, that a contract as a rule takes effect only between the parties, their assigns, and heirs, except where it contains a stipulation in favor of a third person who may demand its fulfillment if he communicates his acceptance to the obligor before its revocation. This is now assigned as error.

While there may be much room for argument on the question raised when this case was submitted to the trial court for decision and the briefs of both parties were submitted to us in connection with this appeal because it was then a case of first impression, the doubt, however, has now been dispelled considering the several cases of similar nature that since then had been decided by this Court wherein it was underscored the proper interpretation that should be placed on the extent and application of the pertinent provisions contained in the management contract. Thus, in the case of Villanueva vs. Barber-Wilhelmsem Line, et al., 110 Phil., 34 this Court said:

"The question whether the above-quoted paragraph of the management contract is binding to a consignee, who, though not a party thereto, has taken delivery of the goods upon presentation of a pass and a delivery permit making reference to said paragraph and reproducing substantially the provisions thereof, as one of the conditions of said pass and delivery permit, has already been settled in several decisions of this Court. In Northern Motors, Inc. vs. Prince Line, (107 Phil., 262), we said:

'Even therefore, if appellant was not a signatory to said Management Contract, it legally became a party thereto when it (through its broker, the Luzon Brokerage Co., Inc.) obtained the delivery permit and gate pass in the above manner prescribed by law and, making use of them, demanded from appellee the delivery of the SS *Seas*, pursuant to appellee's undertaking in virtue of the very same Management Contract. Again, it became

bound when it brought court action against appellee, also by virtue of the tatter's obligations as the arrastre contractor under the same Management Contract, for the purpose of recovering the reasonable value of the missing ease of auto spare parts and accessories. * * *

"This view was reiterated in Tomas Grocery vs. Delgado Brothers, 105 Phil., 549; 56 Off. Gaz., [27] 4422; Bernabe vs. Delgado Brothers, 107 Phil., 287; Bernabe vs. Delgado Brothers, 107 Phil., 679; 58 Off. Gaz., [6] 1104; Delgado Brothers vs. Li Yao & Co., 107 Phil., 939; 57 Off. Gaz., [38] 6774; Sun Brothers vs. Manila Port Service, 107 Phil., 988; 58 Off. Gaz., [9] 1722; and Juan Ysmael & Co., Inc. vs. United States Lines Co., L-14384 (April 30, 1960)."

Considering that appellee herein, or its predecessor-in-interest, even if not a signatory to the management contract, obtained thru its broker the delivery permit and gate pass in the manner prescribed by law and, making use of them, demanded from appellant the delivery of the shipment in question and obtained possession thereof pursuant to the pertinent stipulation in the management contract, we have no other alternative than to declare that said contract is applicable and binding upon appellee in the light of our ruling in the aforecited cases.

It is true that the present action was instituted by appellee within the period of one year from the date of arrival of the shipment in view of the failure of appellant to pay the value of the missing article, but such step is not sufficient it appearing that appellee has failed to file a claim therefor with appellant within the 15-day period from the date of the discharge of the last package from the carrying vessel as provided in section 15 of the management contract; and it is preposterous to contend, as appellee now claims, that such provisional claim is not necessary because appellee has already filed an action in court within the one-year period not only because the provisions of the management contract on the point seem to be clear but also because of the interpretation already placed thereon by this Court in another similar case involving a similar issue. We refer to the case of David Consunji, et al. vs. The Manila Port Service, et al., (110 Phil., 233; Off. Gaz.; [3] 256) wherein this Court made the following comment:

"We do not think this interpretation may be sustained. Carriers or depositories sometimes require presentation of claims within a short time after delivery as a condition precedent to their liability for losses. Such requirement is not empty formalism. It has a definite purpose, i.e. to afford the carrier or depositary a reasonable opportunity and facilities to check the validity of the claims while the facts are still fresh in the minds of the persons who took part in the transaction and the documents are still available. Now, we see no reason why Manila Port Service—for whose benefit the provision was evidently inserted—should require prompt presentation of claim in one instance, while waiving it in the other. Bearing this in mind, we hold that the proviso about presentation of claim was intended to apply both to the case where suit is brought within one year from the date of discharge of the goods, and to the case where suit is brot within one year from the date when such claim is rejected. It is clear that the paragraph, while imposing a condition precedent to the filing of any suit for losses, at the same time gave the demandant (who has filed the claim) the option either to bring his action (in one year) without waiting for the contractor's resolution on his claim, or to wait for such resolution and then sue if it is unfavorable (in one year)."

Wherefore, the decision appealed from is reversed, without pronouncement as to costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and De Leon, JJ., concur.

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