

**THE YEK TONG LIN FIRE & MARINE INSURANCE CO., LTD.,
PLAINTIFF-APPELLANT, VS. MANILA PORT SERVICE AND/OR
MANILA RAILROAD COMPANY, DEFENDANTS-APPELLEES.**

G.R. No. L-24836. September 13, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of First Instance of Manila, certified to the Supreme Court by the Court of Appeals, the only issue raised in the appeal being one of law, namely, whether or not the present action has been instituted within the period provided in Section 15 of the Management Contract between the Manila Port Service and the Manila Railroad Company, the applicability of which section to the case at bar is conceded for plaintiff had admittedly used a permit and gate pass issued by the Manila Port Service and bearing stamped thereon a statement to the effect that said documents are subject to the provisions of the aforementioned section. The same provides that:

"x x x in any event the CONTRACTOR shall be relieved and released of any and all responsibility and liability for loss, damage, mis-delivery, and non-delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year from date of 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."

It appears that, sometime in 1960, the Blue Bar Company – hereinafter referred to as the consignee – imported from New York, U. S. A., five (5) cases of cutlery (cook knives and butcher knives), worth \$1,950.00, which were shipped to Manila on board the "SS TROUBADOUR." The importation was, on May 18, 1960, discharged unto the custody of the Manila Port Service – herein-after referred to as the MPS – as agent of the Manila Railroad Company, the arrastre operator. When the consignee took delivery, on July 14 and 20, 1960, the shipment was short of five (5) dozens cook knives and one (1) dozen butcher knives, valued altogether at P157.46. Upon demand by the consignee, the Yek Tong Lin Fire & Marine Insurance Co., Ltd. – hereinafter referred to as plaintiff – as insurer of the goods, paid said sum of P157.46. Then, as the consignee's subrogee, plaintiff seasonably filed, with the MPS, a claim for the value of the non-delivered goods. Soon later, or on July 13, 1961, plaintiff commenced the present action, in the Municipal Court of Manila, against the MPS and the Manila Railroad Company, hereinafter referred to collectively as defendants. Said Court having rendered judgment for the plaintiff, the defendants appealed to the Court of First Instance of Manila, which, after appropriate proceedings, rendered judgment dismissing the complaint, upon the ground that the same had been filed beyond the period prescribed in above-quoted provision of the Management Contract. Hence, this appeal by the plaintiff.

Defendants maintain that said period elapsed one (1) year from May 18, 1960, when the goods were discharged from the carrying vessel, or on May 18, 1961, and, accordingly, before the filing of plaintiff's complaint on July 13, 1961. Upon the other hand, plaintiff argues that, in providing that the suit be "brought within a period of one

(1) year from the date of discharge of the goods," the contract is silent on the thing from which the discharge is made, unlike the clause referring to the claim, which explicitly states that the same shall be filed "within fifteen (15) days from the date of the discharge of the last package from the carrying vessel," and that, following the spirit of *Tomas Grocery vs. Delgado Brothers, Inc.* and *De la Rama Steamship Co.*[1] said period of one (1) year should be computed from the delivery of the last package by the arrastre operator to the consignee, which, in the case at bar, took place on July 20, 1960, so that, when the complaint therein was filed, on July 13, 1961, said period had not as yet expired.

It should be noted, however, that said Section 15 gives the consignee the option to avail of a second alternative, which is to file suit "within a period of one (1) year x x x from the date the claim for the value of such goods have been rejected or denied by the CONTRACTOR." Defendants allege that plaintiff cannot avail of this alternative, because they have neither denied nor rejected the consignee's claim. It is obvious, however, that defendants cannot, through their inaction or omission, deprive the consignee and its subrogee of a right vested in them under the Management Contract. Hence, it is well settled[2] that, if the arrastre operator fails to deny or reject the claim of a consignee or his subrogee, such claim shall be deemed rejected or denied upon the expiration of one (1) year from the date, at least, of discharge of the shipment in question from the carrying vessel, which, in the case at bar, took place on May 18, 1960. Consequently, plain-tiff herein had one (1) year from May 18, 1961, or up to May 18, 1962, within which to file the present action.

The same having been instituted on July 13, 1961, or well within the aforementioned period, the decision appealed from must be, as it is hereby, reversed, and another one rendered, sentencing the defendants, jointly and severally, to pay to plaintiff the aforementioned sum of P157.60, with interest thereon, at the legal rate, from July 13, 1961, until fully paid, as well as the costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] 156 O. G. 4422.

[2] *The Continental Insurance Co. v. Manila Port Service, et al.*, G.R. No. L-22208, March 30, 1966; *Delgado Brothers, Inc., et al. v. Manila Port Service, et al.*, G.R. No. L-21781, June 30, 1966; *Fireman's Fund Insurance Co. v. Manila Port Service, et al.*, G.R. No. L-21412, September 28, 1966; and *The American Insurance Co. v. Manila Port Service, et al.*, G.R. No. L-22780, February 18, 1967.

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