

NEW HAMPSHIRE FIRE INSURANCE CO., PLAINTIFF AND APPELLANT, VS. MANILA PORT SERVICE, ET AL., AND EVERETT STEAMSHIP CORPORATION, DEFENDANTS AND APPELLEES.

G.R. No. L-20938. August 09, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Manila in Civil Case No. 47598 dismissing the action filed by appellant New Hampshire Fire Insurance Co. against appellees Manila Port Service and Everett Steamship Corporation.

The case was submitted, and the trial court's decision is predicated on, the following Stipulation of Facts:

"COME NOW plaintiff and defendants by their respective undersigned attorneys and to this Honorable Court respectfully submit the following Stipulation of Facts, to wit:

"THE PARTIES ADMIT:

"1. That plaintiff is a foreign corporation duly licensed to do business in the Philippines through its agent, American International Underwriters (Philippines), Inc. with principal office at AIU Building, Juan Luna, Manila; that defendant Manila Railroad Company is a corporation duly organized and existing under the laws of the Philippines with offices at Tutuban Station, C. M. Recto Avenue, Manila where it may be served with summons at Port Area, Manila; that defendant Everett Steamship Corporation is a corporation duly organized and existing under the laws of the Philippines and may be served with summons at 245 Juan Luna, Manila;

"2. That defendant Manila Railroad Company is included herein as party defendant it being the principal of defendant Manila Port Service;

"3. That defendants Manila Railroad Company and Manila Port Service were and are the operators of the arrastre service at the Port of Manila, authorized to deliver cargoes discharged or unloaded by vessels into their custody upon presentation of proper release papers, subject to the provisions, terms and condition of the Management Contract entered into in pursuance of law by and between said defendants and the Bureau of Customs, a copy of which is hereto attached as Annex 'A' (Exhibit '1' defendant MPS);

"4. Plaintiff has knowledge of and is bound by, the provisions of said Management Contract, particularly paragraph 15, which among others, defines the conditions, terms, limitations and restrictions governing the liability and responsibility of the defendant Manila Port Service for loss, damage or destruction of cargoes discharged into their custody at the Port of Manila;

"5. That during the time material to this action, Kern-Ville Far East Lines represented by its local agent, the herein defendant Everett Steamship Corporation was operating the vessel SS 'Castleville' on a commercial run between New Orleans, U.S.A. and Manila, Philippines;

"6. That on or about June 15, 1960, the vessel SS 'Castleville' took on board at New Orleans, U.S.A. for

shipment to Manila consignment cargoes including three (3) bales of cotton goods in the name of Ilaya Trading Company of Manila;

"7. That the consignee, Ilaya Trading Company, took from plaintiff an insurance policy for P6,194.11 covering the said shipment of 3 bales of cotton goods against all risks;

"8. That the vessel SS 'Castleville' arrived at the Port of Manila, Philippines on July 22, 1960 and began discharging its shipment on the same day into the custody of the defendants Manila Railroad Company and Manila Port Service; that the date of discharge of the last package which is the missing package of the shipment in question, from the carrying vessel was July 23, 1960 as shown in the cargo receipts;

"9. That the shipping documents covering the said bales of cotton goods were endorsed and transmitted to Ilaya Trading Company through its customs brokers, Universal Forwarding Agent, paid for the same, and being the owner thereof, cleared said documents through the defendant Manila Port Service and the Bureau of Customs; that on July 22, 1960, Universal Forwarding Agent, acting for and in behalf of the consignee filed a document captioned 'Provisional Claim' with the defendant Manila Port Service acknowledged received by the latter on the same date, July 22, 1960 and worded as follows:

'We advice you that the following Packages:

B/L No.

Marks & Nos.

No. of P'kges:

Contents

38

1508

Three (3)

Cotton Piece

MANILA

Bales

Goods

MADE IN USA

6618/20

ex above Steamer have been SHORT-LANDED and/or BAD ORDER and a provisional claim is hereby made for any shortage or damages that may be found to exist after examination.

'It is respectfully requested that investigation be made immediately in order to determine responsibility for same. Copy of said Provisional Claim is hereto attached as Annex B (Exhibit A-Plaintiff).'

"10. That of the aforementioned shipment of 3 bales of cotton goods due for delivery to Ilaya Trading Company, only two (2) thereof were actually and in fact delivered to Ilaya Trading Company;

"11. That the shipment of 3 bales of cotton goods was discharged complete and in good order and condition by the defendant Everett Steamship Corporation into the custody of the defendant Manila Port Service; and that the loss

of 1 bale occurred while the same was in the possession and custody of the defendant Manila Port Service; that under the covering Bill of Lading, signed by the consignee, it is stipulated that the vessel's responsibility for the cargo ceases upon discharge thereof ex ship's tackle; that defendant Manila Port Service's liability, if any, for the said one (1) bale shall be limited to P500.00 under Section 15 of the Management Contract;

"12. That by reason of said loss plaintiff as insurer, paid to the consignee, Ilaya Trading Company, the amount of P2,059.29 representing its liability under the insurance contract;

"13. That plaintiff and/or Ilaya Trading Company, the former having been subrogated to the rights of the latter by virtue of the payment mentioned in the preceding paragraphs, immediately filed a formal claim stating the particular merchandise missing, its marks and counter-marks, the contents and the value thereof of P1,015.00 representing the reasonable value of the lost shipment. Copy of the formal claim is hereto attached as Annex 'C' Exhibit 'B' - Plaintiff);

"14. That the parties agree that the only issue to be resolved is whether or not the filing of the document captioned 'Provisional Claim' on July 22, 1960 as above-quoted, is in compliance with the provision of Paragraph 15 of the Management Contract."

After submission of their respective memorandum, the trial court rendered the decision adverted to above, which, in part, reads:

"Paragraph No. 11 of the aforequoted stipulation of facts expressly states 'that the loss of 1 bale occurred while the same was in the possession and custody of the defendant Manila Port Service'. As the vessel's responsibility ceases upon discharge of cargo ex ship's tackle, it is clear that the defendant Everett Steamship Corporation cannot be held liable for the value of the lost cargo.

"As regards the defendants Manila Port Service and Manila Railroad Company, it is clear from Paragraphs Nos. 8 and 9 of the aforequoted stipulation of facts that the provisional claim filed in behalf of the consignee was actually filed on July 22, 1960, that is, one day previous to the date of the discharge of the last package into the custody of the defendants, and said provisional claim made no mention of the actual number of bales, much less the value of the cargo intended to be covered by said provisional claim. It was, therefore, obviously a mere speculative claim, and this Court is of the opinion, and so holds, that Paragraph No. 15 of the Management Contract (Annex A to the Stipulation of Facts) contemplated an actual and not a mere speculative claim.

"Indeed, said provisional claim is clearly irrelevant as far as the defendants are concerned, for the responsibility of the defendants begins from the date of discharge of the last package of cargo into their custody, and not before. To consider provisional claims of the kind involved in the instant case as valid and effective is to render the provisions of said management contract relating to the filing of claims a mockery."

The only issue to be resolved in this appeal, as the parties themselves agreed, [1] is whether or not the document in question captioned "Provisional Claim" filed with appellees on July 22, 1960 is in compliance with the provision of paragraph 15 of the Management Contract, which reads:

"x x x 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 discharge of the goods, or from the date when the claim for the value of the 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 discharge of the last package from the carrying vessel x x x."

It is to be noted, as hereinbefore stated, that the case has been submitted for decision, and has been decided, solely

upon the facts as stipulated by the parties. From this stipulation, it clearly appears --

- (1) That the provisional claim was filed the very day the vessel arrived in port and even before the discharging of its shipment has been completed.
- (2) That the provisional claim was for short-landing or landing in bad order ex. steamer.
- (3) That the 3 bales of cotton in question were in fact discharged complete and in good order and condition by the steamship company into the custody of the defendant Manila Port Service.
- (4) That the loss of the third bale occurred while the same was in the custody of the said Manila Port Service.

Under the circumstances, it is evident that the so-called provisional claim is nothing but a speculative one, as there is no showing that at the time of the filing of the claim, the claimant or its agent-broker had already knowledge of any shortage of, or damage to, the goods, as in fact there was none. It was, likewise, filed prematurely because as it afterwards resulted, there was no short-landing nor landing in bad order. What occurred here is that the third bale of cotton was lost after it has been landed in good order and while it was in the custody of the defendant Manila Port Service. This loss is certainly not covered by the provisional claim which is based specifically on the supposed ground of short-landing or landing in bad order, which if true, would have made the steamship company and not the arrastre operator, liable. It is clear, therefore, that the herein provisional claim is not borne out by the facts. On the other hand, there is no claim whatsoever filed against the Manila Port Service for the loss of part of the cargo while in its custody.

The trouble with the whole situation appears to be that the consignee or his agent-broker relies on what seems to be a stereo-type form of claim presented immediately upon arrival of the vessel in port, without apparently any effort being exerted to verify the condition of the shipment and even before the cargo is unloaded. As paragraph 15 of the Management Contract provides, the claim is supposed to be made after the discharge of the last package from the carrying vessel, in order to afford the consignee or his broker, opportunity to examine his shipment. Of course, if the consignee or his broker discovers or is informed of a shortage or damage to the goods before said discharge of the last package, or even during the unloading, then a provisional claim may properly be presented without awaiting a final determination of the extent of the loss or damage. It is for this reason that we held in the case of *Switzerland General Insurance Company, Ltd. v. Java Pacific & Hoegh Lines, et al.*, [2] that a provisional claim filed one (1) day before the date of the last discharge of the shipment was a substantial compliance with the requirement of Section 15 of the Management Contract, because upon examination of the shipment even before they were discharged from the vessel, in the presence of the representatives of both parties, certain shortages were already actually found. In the case at bar, the parties admit in their stipulation of facts that, contrary to the provisional claim, the goods were landed complete and in good order and condition and that the loss occurred while the goods were in the possession and custody of the defendant Manila Port Service, after the discharge and after the filing of the provisional claim.

WHEREFORE, the judgment appealed from is hereby affirmed, with costs against the appellant.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Regala, Makalintal, Bengzon, JP, Sanchez, and Ruiz Castro, JJ., concur.

[1] See paragraph 14 of the Stipulation of Facts, *supra*.

[2] G.R. No. L-21760, April 30, 1966.

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