

RELIANCE SURETY AND INSURANCE COMPANY, PLAINTIFF AND APPELLEE, VS. MANILA RAILROAD COMPANY AND MANILA PORT SERVICE, DEFENDANTS AND APPELLANTS.

G.R. No. L-19589. April 30, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from a decision of the Court of First Instance of Manila which was certified to Us by the Court of Appeals on the ground that no factual issues are involved.

It appears that on November 20, 1959, the Insular La Yebana Tobacco Corporation imported into the Philippines six boxes of automotive spare parts which were shipped by the SS Sunnyville under Bill of Lading No. 46. The goods were discharged at the port and received in full and good order by the Manila Port Service from the carrying vessel on or about December 17, 1959. However, not one of the boxes was delivered to the consignee so there resulted a loss in the value of P10,989.14, although the invoice value was only P6,994.57.

The consignee, thru its broker, the Eastern Brokerage Co., filed provisional claim for the missing cargo on March 28, 1960, months after the discharge of the cargoes of the SS Sunnyville at the Manila port.

Meanwhile, the goods having been insured, the consignee collected from the insurer, the Reliance, Surety and Insurance Co., Inc., the value of its loss.

The Reliance Surety and Insurance Co., Inc., in turn, as subrogee of the consignee, demanded from the Manila Port Service payment of the value of the lost goods, and upon its failure, instituted the instant proceedings with the Court of First Instance of Manila.

Answering the complaint filed by the insurer, the defendants Manila Port Service and Manila Railroad Company set up the defense that since no claim, provisional or otherwise, had been filed within the fifteen day period provided for in the Management Contract, as appearing in the "Important Notice" printed on the back of the Permit to Deliver Imported Goods, the plaintiff should be considered barred from filing the case, and that, in any case, liability cannot exceed P500.00.

Plaintiff, on the other hand, in its reply, argued that it is not bound by the provisions of the Management Contract, to which the consignee, its subrogor, was not a party.

Upon a stipulation of facts submitted by the parties, the lower court, finding plaintiff's claim to be justified, rendered decision condemning defendants to pay the plaintiff the sum of P6,994.57, with legal interest from the late of filing of the complaint, plus costs.

The only question to be settled in this appeal is whether or not the plaintiff should be bound by the provision of the Management Contract to the effect that the consignee's failure to file its claim for the missing cargo or package from the carrying vessel would bar it from recovering its loss.

The facts of this case do not call for an application of our ruling in the many cases^[1] brought before Us where We found the consignees of cargoes bound by the provisions of the Management Contract. As the lower court has aptly observed, the rationale of these decisions sustaining the enforceability of the management contract upon and against the consignee is that the latter had, by its acts, made himself a party therein by signing, thru its broker, the annotation in the delivery permit concerning the management contract. Clearly, in the instant case, however, the consignee did not, either personally or thru its broker, sign the annotation and did not make use of any delivery permit as the goods were never withdrawn from the piers. There is no positive finding of the lower court that the consignee had been aware of the conditions of the management contract.

In this respect, We are fully in accord with the lower court that the jurisprudence applicable to our case at bar is that of *Sun Bros. & Co. vs. Manila Port Service*, 107 Phil., 988, pertinent portion of which We quote:

"In the memorandum filed by the defendants-appellants, in lieu of oral argument, our attention is called to the case of *Tomas Grocery vs. Delgado Bros.*, 105 Phil., 549. That case has no pertinence to the case at bar. In that case the consignee or importer withdrew the goods from the piers after signing a gate pass, in which a portion of the Management Contract is quoted, which portion limits the liability of the contractor to P500, unless the value of the goods have been declared to be greater. The notice in the gate pass authorizing the importer to bring the cargo out of the pier was held by us to bind the owner of the goods, because he signed the pass, and, therefore, knew its provisions and is estopped from denying the conditions therein. There was no gate pass in the case at bar as the goods were never withdrawn from the piers because they were lost while in the possession of the defendants-appellants. The consignee or importer cannot, therefore, be bound by the provision of the management contract limiting liability of a contractor to P500." (Italics ours)

In conformity with the above ruling, We hold that the consignee in this case is not bound by the provision of the Management Contract limiting to fifteen days the period within which to file claim for the missing cargo. In this case; as well as in the aforementioned case of *Sun Bros. & Co. vs. Manila Port Service*, supra, the consignee not only had no knowledge of the Management Contract, but also was not able to claim the goods in question.

WHEREFORE, the decision appealed from is hereby affirmed. Costs against the defendants-appellants.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

[1] *Sec Insurance Company of North America vs. U. S. Lines, et al.*, G. R. No. L-17032, March 31, 1964; *Insurance Co., of North America vs. Manila Port Service*, G. R. No. L-17731, November 29, 1961; *Commercial Union Assurance Co. vs. Manila Port Service*, G. R. No. L-14972, October 31, 1961; and earlier cases cited therein.

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