

YU KIMTENG CONSTRUCTION CORPORATION, PLAINTIFF AND APPELLANT, VS. MANILA RAILROAD COMPANY, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-17027 (With Resolution of March 31, 1967). November 29, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Plaintiff sued defendants in the Court of First Instance of Manila for compensatory damages. After trial the complaint was dismissed and plaintiff brought the case to us on appeal.

The facts are not disputed. Plaintiff purchased in New York reinforced steel bars, which arrived at the port of Manila and were completely unloaded from the carrying vessel in eight (8) lifts on May 31, 1957. They were then delivered to defendant Manila Port Service, a subsidiary of the Manila Railroad Company in charge of the arrastre service. Plaintiff applied for and was given the corresponding delivery permits for the eight (8) lifts of steel bars on May 29, 1957, and on June 16, 1957 was billed by the Manila Port Service for arrastre charges on the entire shipment, in the sum of P348.48. On June 20, 1957 plaintiff's customs broker obtained delivery of only three (3) lifts. The five others were missing. On the same date plaintiff filed three provisional claims with defendant Manila Port Service, subsequently confirming the same on the following July 12, when formal claims were submitted. The total value of the missing steel bars was P5,770.40.

On October 19, 1957 defendant Manila Port Service wrote plaintiff, denying liability on the ground that the claims were "time-barred in accordance with the provisions of the Management Contract, under section 15 thereof ..." This contract was one between said defendant and the Bureau of Customs concerning the arrastre service, the pertinent portion of which reads as follows:

****; in any event the Contractor (the Manila Port Service, a subsidiary of the Manila Railroad Company) shall be relieved and released of any and all responsibility, or liability for loss, damage, mis-delivery, 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 when the claim for the value of such goods have been rejected or denied by the contractee, 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. ***

The trial Court, upholding defendants' position as alleged in their answer to the complaint, held that since the shipment of steel bars was completely discharged from the carrying vessel on May 31, 1957 the filing of the provisional claims on June 20 was beyond the fifteen-day period fixed in the contract, and hence defendants were released from liability. Plaintiff, on the other hand, contends that there are two alternative time limits for the filing of an action for damages under the provision of the contract aforequoted, namely, (1) one year from the date of discharge, and (2) one year from the date of rejection or denial by the contractor (Manila Port Service) of the claim for the value of the goods, provided that such claim has been filed With the contractor within fifteen (15) days from the date of discharge of the last package from the carrying vessel; and that this proviso refers to or

modifies only the second alternative. In other words, the fifteen-day limitation applies only for purpose of reckoning the period of one year within which to file suit from the date of rejection or denial of the claim, but not from the date of discharge of the goods.

We do not find it necessary now to decide between these conflicting interpretations of the parties. In several cases similar to the present one we have ruled that the period of fifteen (15) days within which a claim should be filed with the Manila Port Service should commence, not from the date of discharge of the goods from the carrying vessel, but from the date the consignee or claimant learns of the loss, damage or misdelivery for which the claim is made, since obviously he is in no position to allege such loss, damage or misdelivery before he comes to know about it, considering that the goods are in the care and custody of the arrastre contractor. Otherwise, all that the latter would have to do in order to escape liability is to withhold such knowledge from the consignee until after the expiration of fifteen days. (Republic of the Phil. vs. Manila Port Service, 119 Phil. 884; Chiok Ho vs. Compañia Maritima et al., G. R. No. L-20553, April 30, 1965 .

In the second of the cases just cited, we said:

"It is not enough that the consignee be notified of the discharge of the shipment from the carrying vessel in order that section 15 of the management agreement may be applicable. It is equally important to indicate the date when the shipment was actually delivered to the consignee in order that he may be given the chance to discover if there is something missing or lost in the shipment. Only in this way can he be apprised of the loss and file the necessary claim, not otherwise."

In this case plaintiff took delivery of three lifts of steel bars, out of the total of eight, on June 20, 1957; and it was then that it learned that the other bars were missing. Forthwith it filed provisional claims, thereby complying with the proviso in the contract fixing a period of fifteen days for that purpose.

Concerning the amount of damages recoverable by plaintiff, the trial court found in its decision that the value of the undelivered steel bars was P5,770.40. However, the uncontradicted evidence shows that the said steel bars were replaced by plaintiff with the same quantity purchased by it from local dealers for P7,955.00 (15.91 tons @ P500.00 a ton). This is the measure of the loss suffered. With respect to the claim for attorney's fees and litigation expenses, the sum alleged in the complaint is P1,000.00, which in the stipulation below between the parties was left by defendant to the discretion of the Court. We believe the amount is reasonable.

Wherefore, the judgment appealed from is reversed and defendants-appellees are ordered to pay plaintiff-appellant the sum of P7,955.00 as compensatory damages and P1,000.00 as attorney's fees and litigation expenses, including costs.

Bengzon, C. J., Bautista Angelo, Concepción, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

Judgement reversed.

RESOLUTION

March 13, 1967

MAKALINTAL, J.,

The Manila Railroad Company and the Manila Port Service have moved to reconsider our decision dated November 29, 1965, ordering them to pay plaintiff-appellant Yu Kimteng Construction Corporation the sum of P7,935.00 as compensatory damages and P1,000.00 as attorney's fees and litigation expenses, including costs.

The following grounds are alleged in support of the motion: (1) that the Court departed from its previous rulings upholding the validity of paragraph 15 of the management contract, to the effect that a claim for the value of the goods damaged, undelivered or misdelivered must be held within 15 days from the date of discharge of the last package from the carrying vessel, as a condition precedent before the arrastre contractor may be sued; (2) that movants liability, if any, under the management contract is limited to P500 for each package unless the value is otherwise specified or manifested; (3) that the conclusion that appellant learned of the missing bars at the time when the three lifts were delivered, is erroneous; and (4) that attorney's fees should not have been imposed.

The following facts are not disputed: The carrying vessel arrived in Manila on May 28, 1957. The next day May 29, the Bureau of Customs delivered to appellant the three delivery permits covering the shipment of eight lifts of reinforced steel bars. On May 31 the shipment was completely discharged from the ship into the custody of appellees. On June 16 appellant was billed by appellee Manila Port Service for arrastre charges on the entire shipment, in the sum of P348.48. On June 20 the Manila Port Service issued a gate pass to appellant. On the same day it delivered to appellant's customs broker three lifts only, hence the latter filed provisional claims on that day for the five missing lifts.

Appellees' principal defense is that appellant should have filed its claim within 15 days from the date of the complete discharge of the goods from the carrying vessel, as provided in paragraph 15 of the management contract. They cite the cases of Tomas Grocery vs. Delgado Brothers, 105 Phil. 549; Commercial Union Assurance Co. vs. Manila Port Service, 113 Phil. 348; GSIS vs. Manila Port Service, 111 Phil. 154; and Shell Co. of the Phil. vs. Cia. Gral. de Tabacos, L-20230, July 30, 1965.

The principal ruling in Shell Co. of the Phil. vs. Cia. Gral. de Tabacos is not applicable here. That ruling is to the effect that a provisional claim filed before the goods are discharged from the carrying vessel, being premature and speculative, is not compliance with the requirement that such claim must be filed within 15 days from the date of discharge of the last package.

In Commercial Union Assurance Co., Ltd. vs. Manila Port Service, *supra*, the facts are as follows: The shipment was completely discharged on May 9, 1956; the arrastre operator delivered the same on May 25, 1956; and the consignee filed a provisional claim for loss on the same day. On appeal, this Court reversed the lower court's decision and dismissed the complaint on the ground that the claim was one day late.

In GSIS vs. MRR the consignment was discharged into the possession of Manila Port Service on May 22, 1956. On June 12, 1956, the Manila Port Service delivered the same to the consignee, and on the same day the latter filed a formal claim for short delivery. The Manila Port Service invoked paragraph 15 of the management contract. The lower court dismissed the complaint, and the consignee appealed (L-13276, Feb. 25, 1961) This Court through Mr. Justice Concepción, now Chief Justice, remanded the case so that the evidence could be taken "with a view to ascertaining whether or not the consignee had had reasonable opportunity to comply with the disputed condition of the management contract and in the negative case, whether or not, considering the date when it was notified of the arrival of the goods, the consignee should be deemed to have acted with the diligence required by the spirit and purpose of said disputed condition, in filing its claim on June 16, 1956."

After the requisite proceedings, the lower court rendered a decision on August 20, 1962, stating: (1) that no

evidence was presented to show that the consignee knew or was notified of the arrival of the goods earlier than June 2, 1956; (2) that the Customs examiner inspected and found the entire shipment intact on June 11, 1956; (3) that the loss occurred only after the Customs inspection on June 11, 1956 and before delivery to the consignee's broker on June 12, 1956; (4) that it was impossible for the consignee to file its claim within 15 days from the discharge of the shipment by the vessel, since the loss took place only on the 20th or 21st day after said discharge; (5) that the condition being impossible, it was deemed not imposed. Accordingly, the Court ordered the Manila Railroad Company and the Manila Port Service to pay the insurer of the consignee. Upon appeal by the defendants (L-20842, Nov. 29, 1965) this Court, through Justice J. P. Bengzon, said:

"Appellants invoke Section 15 of the Management contract providing for release of the arrastre operator from liability unless a claim for the value of the goods lost is filed with it within fifteen days from the date of discharge of the last package from the carrying vessel. As ruled by this Court, however, such condition does not strictly apply in all cases. It was not so applied in *Republic vs. Manila Port Service*, L-19115, March 31, 1964, because in said case the consignee was able to take hold of the shipment only after two months and a half from the arrival of the vessel and the subsequent discharge of the goods therefrom.

"In *Chiok Ho vs. Compania Maritima*, L-20553, April 30, 1965, we held that what is important is the date when the shipment was actually delivered to the consignee in order that he may be given the chance to discover if there is something missing or lost in the shipment.

"As early as *Consunji vs. Manila Port Service*, 110 Phil. 231, this Court stated that it would be unfair and inequitable to apply the 15-day proviso where the consignee comes to know the damage or loss only after the lapse of such 15-day period, for instance, where delivery by the contractor takes place 16 days after the discharge of the last package from the vessel.

"The rule to follow in such cases is that stated in *Yu Kimteng Construction vs. Manila Railroad Co.*, L-17027, Nov. 29, 1965, namely to count the 15-day period not from the discharge of the last package from the carrying vessel but from the date the consignee learned or could have learned, of the loss, damage or misdelivery.

"In the case at bar, as stated, the shipment was delivered to the consignee's broker only on June 12, 1956, after 21 days following its discharge from the carrying vessel; the loss occurred only after the customs examination on June 11, 1956 but prior to the delivery to the consignee's broker. It is clear that the consignee learned of the loss only on June 12, 1956, when the Manila Port Service effected a delivery that was short by eleven pieces. A provisional claim was filed on June 16, 1956, well within 15 days from such knowledge of the loss. Such claim, therefore, was made on time and is not barred by the provision of Section 15 of the management contract."

In the case under reconsideration, the appellant promptly expressed its desire to take delivery of the shipment. It presented to the Manila Port Service the three permits to deliver on June 3, 1957. On June 16, 1957, the Manila Port Service billed the consignee's broker for the full shipment of eight lifts. One of the bills, No. 54142, is dated June 2, 1957, while the other two, Nos. 54143 and 54144, are dated June 16, 1957. But from appellant's controverted statement, it appears that all three bills were presented for payment to appellant on the same day, June 16, 1957. From this fact, it is obvious that as of that date the shipment was still intact. Otherwise the Manila Port Service would not have billed the consignee for the arrastre charges thereon.

Since the loss must have occurred after the lapse of fifteen days from date of discharge from the carrying vessel, the consignee could not have filed a claim during that period. It could file a claim only after the loss occurred, and this it did within fifteen days thereafter. Appellant did all it could and was expected to do under the term of the management contract.

The next question refers to the amount of damages that should be paid to appellant. Appellees invoke the If

provision of paragraph 15 of the management contract that "the Contractor shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred pesos (P500.00) for each package unless the value is otherwise specified or manifested and the corresponding arrastre charges had been paid."

There is indeed no showing that appellant had declared the value of the five missing lifts. It appears from the bills sent by appellees (Nos. 54142 to 54144) that appellant paid the arrastre fees on the basis of the weight of the merchandise, that is, at P5.00 per ton of 1,000 kilos or 40 cu. ft. of iron or steel bars (No. 54143); and at P13.50 per ton or any fraction thereof of any single package weighing more than two tons (Nos. 54142 & 54144).

However, the defense was not interposed by appellees in their answer to the complaint, and evidence as to the actual value of the missing lifts and the other suffered by appellant in order to procure their replacement was duly admitted at the trial. In fact the only reason alleged by appellees in their answer as to why they refused to pay appellant's claim was that it had not been filed within the fifteen-day period stated in the management contract. It was quite late for them to raise the new defense for the first time on appeal.

With respect to the award of attorney's fees, it should be noted that in the stipulation of the parties below they expressly left the amount thereof to the discretion of the court. And the amount of P1,000.00 we have awarded is just and reasonable.

Wherefore, the motion for reconsideration is denied.

Concepción, C. J., Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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