

ONG YET MUA HARDWARE CO., PLAINTIFF AND APPELLEE VS. MANILA RAILROAD CO., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-15271. November 29, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the judgment, dated February 24, 1959, of the Court of First Instance of Manila in its Civil Case No. 36764, the dispositive portion of which reads:

"For the Foregoing Consideration, the Court hereby renders judgment, sentencing the defendant to pay the plaintiff the sum of P1,469.83, with 6% interest thereon from the date of the filing of the complaint on May 30, 1958, until fully paid, plus the sum of P200.00 as and for attorney's fees and costs."

Ong Yet Mua Hardware Co., Inc. was the consignee of four (4) cases of planes and plane blades which were unloaded from the vessel "SS Perseus" at the Port of Manila in or about June, 1956. Upon its discharge, said cargo was placed under the custody of the Manila Port Service, an arrastre operator for the Port of Manila and a subsidiary of the Manila Railroad Company. Of the four (4) cases of planes and plane blades, only two (2) were delivered by the Manila Port Service to the consignee. Accordingly, the latter filed a claim against the Manila Railroad Co. for the recovery of P1,469.83, representing the invoice value of missing case No. 46 at P384.78 and case No. 47 at P607.97. Defendant admits liability for the entire invoice value of case No. 46, but claims that its liability with respect to case No. 47 is limited only to the amount of P500.00, in accordance with the management contract entered into by and between the Manila Port Service and the Bureau of Customs, the pertinent provisions of which read:

"Sec. 15. * * * and 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 (500.00) for each package unless the value is either specified or manifested * * *."

On the other hand, plaintiff-consignee contends that, not having been a party to the management contract, it could not be held subject to the limited liability clause invoked by the defendant.

It appears, however, that stamped in ink in the delivery permit issued by the Bureau of Customs and secured at the instance of the consignee were the printed words, reading as follows: '

"This permit is presented subject to all the terms and conditions of the Management Contract between the Bureau of Customs and the Manila Port Service and amendments thereto or alterations thereof, particularly but not limited to Paragraph 15 thereof, limiting: the Company liability to P500.00 per package, unless the value of the goods is otherwise specified, declared or manifested * * *."

Upon presentation of said permit to the Manila Port Service, the latter issued a gate pass, in which the following relevant statements again appear:

"* * * Issuance of this Gate Pass constitutes delivery to, and receipt by CONSIGNEE of the goods as described herein. The presentation of the permit to deliver the shipment consisting wholly or partly of the above goods, is subject to all terms and conditions contained in the Management Contract between the Bureau of Customs and Manila Port Service and all amendments thereto or alteration thereof, particularly but not limited to Paragraph 15 thereof limiting the Company liability to P500.00 per package, unless the value of the goods is otherwise specified or manifested * * *."

Nonetheless, the lower court resolved the issue in favor of the plaintiff, by adjudging the management contract as not binding on the consignee, even while its duly authorized broker, the Serrano Brokerage, had signed the gate pass and delivery permit. Defendant thus interposed this appeal directly to this Court upon the plea that it would merely raise questions of law.

Appellant has correctly invoked our pronouncement in the case of *Tomas Grocery vs. Delgado Bros., Inc.* (105 Phil., 549; 66 Off. Gaz., [27] 4422), wherein, among other things, we said:

"The appellant contends that it is not a party to the management contract entered into by the Bureau of Customs and the appellee and that for that reason it could not be bound by such condition. It appears that the 822 cases of milk were withdrawn from the appellee by Protacio Villafuerte, a licensed customs broker * * *. The notice of the claim for loss filed with the appellee was signed by him for and in behalf of the appellant * * *. In the permit to deliver imported goods, dated February 1955, issued by the Collector of Customs, the name of the customs broker appears * * *. The gate passes issued by the appellee to bring the cargo out of the pier was in the name of the said customs broker * * *. The appellant has not repudiated its privity with the broker and has accepted the benefit of delivery of 822 cases of milk through him. Therefore, it is bound by the notice appearing on the back of the permit to deliver imported goods * * * and on the gate passes * * * that claims for losses must be filed with the Contractor within fifteen (15) days from the date of the arrival of the goods before the appellant could sue the appellee in court for recovery of the value of the losses. As the trial court aptly observed, the appellant cannot avail itself of the provisions of the management contract * * *, when its agent Protacio Villafuerte, a licensed customs broker, accepted delivery of the cargo, as shown by the permit to deliver imported goods * * * and the gate passes * * * and at the same time deny being a party thereto when adverse to its interests. * * *" (Italics supplied)

This doctrine, repeatedly affirmed in other decisions of this Court (*Northern Motors Co. vs. Prince Line et al.*, 107 Phil., 253; *Bernabe & Co. Inc. vs. Delgado Bros. Inc.*, 107 Phil. 287; *Delgado Bros. Inc. vs. Li Yao, & Co* 107 Phil., 939; *Ysmael & Co. vs. U. S. Lines*, G. R. No. L-14384, April 30, 1960; *Domestic Ins. Co. vs. Manila Port Service*, G.R. No. L-15060, August 31, 1960) is conclusive on the present litigation.

Contrary to appellee's assertions, no question of fact is involved in this case, the only evidentiary matter of record being the stipulation of facts submitted by the parties (see *Moran on Rules of Court*, Vol. 1, p. 698, 1957 ed., citing authorities). Since it does not appear in the stipulation that the respective invoice values of the missing goods were declared or manifested as to be exempt from the limited liability clause found in the management contract, the latter applies with full force and effect.

Wherefore, the judgment appealed from is set aside, and another one is entered, sentencing the defendant-appellant, to pay the plaintiff the sum of P884.78 only, with legal interest thereon from the filing of the complaint until fully paid. Costs in both instances against plaintiff-appellee.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Judgment set aside.

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