

CHIOK HO, PLAINTIFF AND APPELLEE, VS. COMPAÑIA MARITIMA, ET AL., DEFENDANTS; MANILA PORT SERVICE, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-20553. April 30, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

During the period of May 11 to 15, 1960, a shipment of 69 cases containing radio parts was discharged from the vessel S.S. Samar of the Compañia Maritima and placed in the Special Cargo Coral of the Manila Port Service which was then operating the arrastre service at the Port of Manila, said shipment being consigned to the order of the Marinduque Iron Mines, Inc.

After paying the sum of P42.14 representing the arrastre charges, the shipment was delivered to the consignee thru a delivery permit on the back of which was stamped a notice limiting the liability of the Manila Port Service. In addition to such delivery permit, there was also delivered to the consignee pertinent gate passes on which was printed an annotation containing a similar notice relative to the limitation of the liability of the arrastre operator, and after examining the shipment as delivered in the manner above-mentioned, the consignee discovered that of the 69 cases of radio parts which were discharged from the carrying vessel into the custody of the Manila Port Service, only 65 cases were available, because 4 cases were found missing. The total invoice value of the radio parts contained in the missing cases is \$1,683.59 which, converted to our currency, amounts to P3,402.50.

The shipment having been assigned to one Chiok Ho, the latter on May 9, 1961 made a formal demand upon the Manila Port Service for the payment of said sum of P3,402.50, and upon its refusal to do so, Chiok Ho commenced the present action before the Court of First Instance of Manila to recover not only the amount of P3,402.50, but also P1,500.00 as attorney's fees, and P500.00 as expenses of litigation.

The Manila Port Service and the Manila Railroad Company, which became the real defendants in the case, denied in their answer the material allegations of the complaint and, as special defense, set up the management contract entered into between the Bureau of Customs and the Manila Port Service the contents of which were known to, and are binding on the plaintiff. And after the parties had submitted a partial stipulation of facts, but without submitting any additional evidence as was reserved in said stipulation, the court a quo rendered decision ordering defendants to "pay, jointly and severally, to plaintiff the amount of P3,402.60, with interest thereon at the legal rate from the date of the filing of the complaint, plus the sum of P1,000.00 as attorney's fees and the costs of action.

Defendants interposed the present appeal.

In the delivery permit and the pertinent gate passes which were used by the appellee to withdraw the shipment in question from the customs house where the same was deposited, there was stamped thereon a notice containing section 15 of the management contract entered into between the Bureau of Customs and the Manila Port Service relative to the liability of the Manila Port Service regarding said shipment wherein it was expressly provided that

when the claim for indemnity for a particular loss is rejected such claim shall be filed with said Manila Port Service "within 15 days from the date of discharge of the last package from the carrying vessel." Since the appellee did not file his claim with the Manila Port Service within the aforesaid period from May 15, 1960 the date of discharge of the last package of the shipment the carrying vessel, defendants contend that his claim is already barred and, consequently, his action should be dismissed.

The appellee, however, contends that it was impossible him to comply with the above requirement because the shipment was only delivered to him after the expiration of the reglementary 15-day period for which reason he only filed the claim required in the agreement much thereafter or on June 13, 1960 relative to cases covered by Bill of Lading No. Y-MA-10, and on June 16, 1960 relative to cases covered by Bill of Lading No. Y-MA-11. He cannot, therefore, be considered as having infringed the above requirement and, consequently, his complaint has a good cause of action.

The stipulation of facts submitted in this case between the parties, however, is totally bereft of the needed data for an intelligent determination of this case for there is nothing said therein as to when the shipment was actually delivered to the consignee. Said stipulation merely shows that from May 11 to 15, 1960 the shipment of 69 cases of radio parts was discharged from the carrying vessel and placed in the Special Cargo Corral of the Manila Port Service where it stayed indefinitely, while the next important item mentioned therein is that the consignee made a provisional claim for certain alleged loss on two occasions, one on June 13, 1960 relative to the cargo covered by Bill of Lading No. Y-MA-10 and another on June 16, 1960 relative to the cargo covered by Bill of Lading No. Y-MA-11. But the stipulation is completely silent as to when the shipment was delivered to the consignee. 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 the chance to discover if there is something missing lost in the shipment. Only in this way can he be apprised of the loss and file the necessary claim,—not otherwise since this is a matter of defense on the part of the defendants, in the absence of proof to the contrary, it should be presumed that the claim was filed within the reglementary period, as properly found by the lower court.

"Secondly, the provision of Section 15 of the Management tract is a matter of defense, in fact impleaded in defendants' Answer as an affirmative and special defense. The burden was, therefore, upon the defendants to prove that all conditions necessary to its applicability to the case at bar exist. Among the conditions imposed by said section are (a) that the cargo handled by the arrastre operator is delivered to the importer or consignee within 15 days from the date of discharge from the carrying vessel without being stored in the meantime in the arrastre operator's Special Cargo Corral for a length of time reading beyond the 15-day period, (b) that the loss of cargo occurred during the 15-day period, and (c) that the importer or consignee knew of such loss. Not one of these conditions was proved by the defendants. Therefore, as the situation contemplated by Section 15 of the Management Contract has not been shown by the defendants, the Court is constrained to rule that the 15-day period for the filing of a provisional claim cannot be applied in the instant case."

WHEREFORE, the decision appealed from is affirmed. No costs.

Bengzon, C. J., Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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