

**AETNA INSURANCE COMPANY, PLAINTIFF AND APPELLANT VS.
BARBER STEAMSHIP LINES, INC., AND/OR LUZON STEVEDORING
CORPORATION AND/OR LUZON BROKERAGE CORPORATION,
DEFENDANTS AND APPELL...**

G.R. No. L-25266. January 15, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Aetna Insurance Company appealed on a legal question from the order of the Court of First Instance of Manila, dismissing its amended complaint against Barber Line Far East Service on the ground of prescription.

The facts are as follows:

On February 22, 1965 Aetna Insurance Company, as insurer, filed a complaint against Barber Steamship Lines, Inc., Luzon Stevedoring Corporation and Luzon Brokerage Corporation.

It sought to recover from the defendants the sum of P12,100.06 as the amount of the damages which were caused to a cargo of truck parts shipped on the SS Turandot. The insurer paid the damages to Manila Trading & Supply Company, the consignee.

In a manifestation dated March 31, 1965, Barber Steamship Lines, Inc., without submitting to the court's jurisdiction, alleged that it was a foreign corporation not licensed to do business in the Philippines, that it was not engaged in business here, that it had no Philippine agent and that it did not own nor operate the SS Turandot.

On April 5, 1965 Barber Steamship Lines, Inc., again with the caveat that it was not submitting to the court's jurisdiction, filed a motion to dismiss on the grounds of (a) lack of jurisdiction over the person and (b) that it was not the real party in interest.

Barber Steamship Lines, Inc. alleged that the service of summons was not effected upon it in accordance with section 14, Rule 14 of the Rules of Court. It clarified that the summons intended for it was served upon Macondray & Co., Inc. which was not its agent.

It asserted that it was not the real party in interest because according to the bill of lading annexed to the complaint the owner of the SS Turandot, the carrying vessel, was the Wilh, Wilhemsen Group. (Note, however, that the same bill of lading indicated that Barber Steamship Lines, Inc. was the vessel's agent).

Two days later, or on April 7, 1965 plaintiff Aetna Insurance Company filed a manifestation stating that the name of defendant Barber Steamship Lines, Inc. was incorrect and that the correct name was Barber Line Far East Service. Attached to the manifestation was an amended complaint containing the correction. Aetna Insurance Company manifested that copies of the amended complaint would be served on the parties by means of alias summons.

On April 20, 1965 Aetna Insurance Company filed a motion for the admission of its amended complaint. Barber Steamship Lines, Inc. opposed the motion. It contended that its pending motion to dismiss the original complaint should first be resolved before the amended complaint may be admitted.

Judge Ramon O. Nolasco in an order dated April 19, 1965 dismissed the complaint against Barber Steamship Lines, Inc. and directed that alias summonses be issued to the defendants named in the amended complaint.

On May 19, 1965 Barber Line Far East Service, supposedly without admitting to the court's jurisdiction, moved for the dismissal of the amended complaint on the grounds (1) that it is not a juridical person and, hence, it could not be sued; (2) that the court had no jurisdiction over its person; (3) that it was not the real party in interest and (4) that the action had prescribed according to the bill of lading and the Carriage of Goods by Sea Act. Aetna Insurance Company opposed the motion.

Judge Nolasco in his order of July 7, 1965 ruled that inasmuch as according to the complaint the shipment arrived in Manila on February 22, 1964 and the amended complaint, impleading Barber Line Far East Service, was filed on April 7, 1965, or beyond the one-year period fixed in the Carriage of Goods by Sea Act, the action had already prescribed. The case was dismissed as to Barber Line Far East Service.

The legal question under the above facts is whether the action of Aetna Insurance Company against Barber Line Far East Service, as ventilated in its amended complaint, which was filed on April 7, 1965, had prescribed.

As previously stated, the action was for the recovery of damages to a cargo of truck parts which was insured by Aetna Insurance Company and which arrived in Manila on the SS Turandot and were delivered in bad order to the consignee on February 25, 1968 (4 Record on Appeal).

The bill of lading covering the shipment provides:

"19. In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the dates when the goods should have been delivered. Suit shall not be deemed brought until jurisdiction shall have been obtained over the Carrier and/or the ship by service of process or by an agreement to appear."

On the other hand, the Carriage of Goods by Sea Act, Commonwealth Act No. 65 (Public Act No. 521 of the 74th Congress of the United States) provides:

"RESPONSIBILITIES AND LIABILITIES

"Section 3. xxx xxx xxx

"(6) xxx xxx xxx

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."

Aetna Insurance Company contends in this appeal that the trial court erred (1) in holding that the Barber Line Far East Service was substituted for Barber Steamship Lines, Inc. and (2) in dismissing the action on the ground of prescription.

There is no merit in the appeal. The trial court correctly held that the one-year statutory and contractual prescriptive period had already expired when appellant company filed on April 7, 1965 its action against Barber

Line Far East Service. The one-year period commenced on February 25, 1964 when the damaged cargo was delivered to the consignee. (See *Chua Kuy vs. Everett Steamship Corporation*, 93 Phil. 207; *Yek Tong Fire & Marine Insurance Co., Ltd. vs. American President Lines, Inc.*, 103 Phil. 1125).

Appellant company invokes the rule that where the original complaint states a cause of action but does it imperfectly, and afterwards an amended complaint is filed, correcting the defect, the plea of prescription will relate to the time of the filing of the original complaint (*Pangasinan Transportation Co. vs. Phil. Farming Co., Ltd.*, 81 Phil. 273). It contends that inasmuch as the original complaint was filed within the one-year period, the action had not prescribed.

That ruling would apply to defendants Luzon Stevedoring Corporation and Luzon Brokerage Corporation. But it would not apply to Barber Line Far East Service which was impleaded for the first time in the amended complaint.

It should be recalled that the original complaint was dismissed as to Barber Steamship Lines, Inc. in the lower court's order of April 19, 1965. New summons had to be issued to Barber Line Far East Service which had replaced Barber Steamship Lines, Inc. as a defendant.

The filing of the original complaint interrupted the prescriptive period as to Barber Steamship Lines, Inc. but not as to Barber Line Far East Service, an entity supposedly distinct from the former. Appellant's contention that there was merely a correction in the name of a party-defendant is untenable.[*]

IN VIEW OF THE FOREGOING CONSIDERATIONS, the lower court's order of dismissal is affirmed. Costs against the plaintiff-appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

[*] Parenthetically, it may be noted that apparently Aetna Insurance Company merely relied on the bill of lading which contains the following relevant data:

Heading — Barber Line Far East Service

Ship — Turandot

Shipper — Fort Motor Company

Consignee — Manila Trading & Supply Co.

Ownership clause — The carrying vessel under this contract is owned by the Wilh, Wilhelmsen Group consisting of the following shipping companies: Dampskibsaktieselskabet Den Norske Afrika — Og Australielinie, Wilhelmsens Dampskibsaktieselskab, A/S Tonsberg, A/S Tankfart I, A/S Tankfart IV, A/S Tankfart V and A/S Tankfart VI.

Barber Steamship Lines, Inc. — General Agents in Manila — Macondray & Co., Inc.

The bill of lading was signed by Rice, Unruh & Co., agents, for Barber Steamship Lines, Inc. as agents.

On the basis of the bill of lading, Aetna Insurance Company in its original complaint sued Barber Steamship Lines, Inc. In its amended complaint, it dropped Barber Steamship Lines, Inc. and sued Barber Line Far East Service. In both instances, it designated Macondray & Co., Inc., Shurdut Bldg., Manila, as the agent.

On the basis of the same bill of lading, counsel for Barber Steamship Lines, Inc. and Barber Line Far East Service

(presumably the counsel was hired by Macondray & Co., Inc. which was the one served summons) contended that Aetna Insurance Company should have sued the owner of the SS Turandot, which was the Wilh, Wilhemsen Group, etc. The counsel further clarified that Barber Steamship Lines, Inc. was not doing business in the Philippines and had no agent here and that Barber Line Far East Service was a mere tradename and was not a juridical person.

Obviously, Aetna Insurance Company did not sue Wilh, Wilhemsen Group, etc. because it was beyond the jurisdiction of our courts. But Aetna Insurance Company failed to ascertain the agent for the vessel. The counsel for Barber Steamship Lines, Inc. and Barber Line Far East Service denied that Macondray & Co., Inc. was the agent for the SS Turandot. (See Art. 586 of the Code of Commerce as to the liability of a ship agent; Commissioner of Internal Revenue vs. United Lines Co., L-16850, May 30, 1962, 5 SCRA 175; Manila Steamship Co. vs. Abdulhaman, 100 Phil. 32 and Villanueva vs. Barber Wilhelmsen Line, 110 Phil. 34 where Macondray & Co., Inc. was sued as the agent of Barber Steamship Line).

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