

**PHILIPPINE EDUCATION COMPANY, INC., PLAINTIFF-APPELLEE, VS.
MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS.**

G.R. No. L-24287. January 24, 1968

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

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

Direct appeal from a judgment of the Court of First Instance of Manila in its Civil Case No. 53072, ordering appellant to pay P1,431.64, plus interest, P200.00 attorneys' fees and costs.

As consignee of shipment of books and magazines, from New York to Manila on board the M/S "EFFIE MAERSK", the appellee Philippine Education Co., Inc. filed with the appellant arrastre operator, Manila Port Service, (a branch of the Manila Railroad Company) a provisional claim (Exh. G) for shortage and/or damage, dated June 29, 1960. The carrying vessel arrived at the port of Manila on that same day, June 29, and the last discharge of its cargo was done on June 30, 1960. A formal claim with full data was filed and received on October 25; amended claim was submitted later, for P1,431.64.

The Manila Port Service rejected the claim as not filed on time, and action was begun on June 29, 1961, in the City Court of Manila, that rendered judgment for the plaintiff. Appeal was taken to the Court of First Instance, which also found for the plaintiff, as hereinabove described.

Not satisfied, the arrastre operator elevated the claim to this Court, alleging that the provisional claim was insufficient; that the formal claim was made beyond the 15-day period from last discharge of cargo, and hence, there was non-compliance with paragraph 15 of the Management Contract, prescribing timely filing of the claim as condition precedent to recovery; and that the judgment rendered by the Court below was not in conformity with the said contract that limited recovery to invoice value, and in no case to exceed P500.00 for each package.

We find the appeal meritorious, for the reason that the provisional claim, Exhibit G, is evidently premature and speculative and was not in substantial compliance with paragraph 15 of the Management Contract. Exhibit G is dated June 29, 1960, the same day the vessel carrying the cargo arrived in port, and before it had discharged the cargo. There is no showing anywhere in the record that on the day the provisional claim had been made, the consignee had already discovered, or had been reliably informed, of a shortage or damage to its goods. The claimant was merely speculating on a possibility, and this is shown by the detail that the provisional claim was for "shortlanded and/or landed in bad order" cargo, justifying the inference that the consignee was then still uncertain about the existence or nature of the alleged damage.

This Court has repeatedly rejected, as insufficient, damage claims made prior to the discharge of the last package from the vessel: *Shell Co. vs. Compañía General de Tabacos*, L-20230, July 30, 1965; *Fireman's Fund Ins. Co. vs. Manila Port Service*, L-22454, April 29, 1966, 16 S. C. Rep. Anno. p. 795; *Domestic Ins. Co. vs. Manila Railroad Co.*, L-24066, Aug. 30, 1967, 20 S. C. Rep. Anno. 1090; *Rizal Surety & Ins. Co. vs. Manila Railroad Co.*, L-22409, April 27, 1967, 1967 B PHILD 206. The last case cited is practically on all fours with the one before us.

No valid claim having been filed within the requisite period, the damage claim of appellee is barred.

IN VIEW OF THE FOREGOING, the appealed decision is reversed, and the complaint ordered dismissed. Costs against appellee.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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