

TAN LIAO, PLAINTIFF AND APPELLANT, VS. AMERICAN PRESIDENT LINES, LTD., DEFENDANT AND APPELLEE.*G.R. No. L-7280. January 20, 1956*

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

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This is an action filed by plaintiff-appellant Tan Liao against the defendant-appellee American President Lines, Ltd., for the recovery of P92,755, with interest from the time of the filing of the complaint, for damages allegedly suffered by plaintiff due to the wrongful and unauthorized delay, transshipment, and careless handling in the transportation, of a cargo of eggs undertaken by defendant for plaintiff from the port of New York, U. S. A., to the port of Manila.

The following facts are not disputed:

On July 30, 1946, plaintiff entered into a contract with the Kent Sales Co., Inc., of New York City, through the latter's agents in Manila, the People's Trading, for the importation of 2,000 cases of fresh hen eggs, for a total price of \$45,520 (P91,040 in Philippine currency), to be shipped on the S.S. "Marine Leopard", sailing from New York on August 7, 1946 (Exhibit B). Upon notification and receipt of the payment, made by letter of credit of the Philippine Trust Co. of Manila, the Kent Sales Co., Inc. issued on August 6, 1946 Invoice No. 5070 (Exhibit A) in favor of plaintiff, and on the same day contracted with the defendant shipping company to have the eggs shipped to Manila on the vessel S.S. "Marine Leopard" as refrigerated cargo, in accordance with B/L No. 5297 issued on August 6, 1946. Also on the same day (August 6), the defendant, through ship captain Frank J. Wood, received at the port of New York the 2,000 cases of eggs and loaded them on the S.S. "Marine Leopard" in a refrigerated space for delivery to plaintiff in Manila.

Upon arrival in, San Francisco, California, on August 30, 1946, the defendant unloaded the 2,000 cases of eggs from the S.S. "Marine Leopard", which resumed its voyage, arriving in Singapore in September, 1946. The eggs were later shipped on another of defendant's ships, the S.S. "General Meigs", on November 27, 1946, which arrived in Manila on December 26, 1946.

It is claimed by plaintiff that the discharge of his cargo at the port of San Francisco, was wrongful and unjustified, and a violation of the bill of lading Exhibit B which provided that the eggs would be shipped to Manila on the S.S. "Marine Leopard"; that when they were, discharged in San Francisco, the eggs were exposed to the hot summer weather without having been placed in refrigeration from August 30 to September 12, 1946, when they were transferred to the storage plants of the National Ice and Cold Storage; that the eggs could have been transhipped on August 31, 1946, on the S.S. "Clovis Victory", also one of defendant's ships, that arrived in Manila on September 20, 1946; that because of the delay in the shipment and the careless and repeated handling of the case³ of eggs by mechanical devices, a substantial number of them arrived broken and damaged; that upon arrival in Manila, plaintiff employed the services of marine surveyors C. B. Nelson & Co., who reported (Exhibit I) that 587 of the cases were broken, with the¹ eggs contained therein in leaking condition, while the rest of the eggs in the

1,413 . cases were in a state of deterioration; that upon recommendation of the surveyors, plaintiff immediately disposed of the eggs, realizing from the sale the amount of P27,300; that had the cargo arrived in Manila without any delay, plaintiff would have been able to sell each case of eggs for P60, or the entire shipment for the total sum of P120(000, thereby realizing a profit of P92,755 on his total investment; and that plaintiff having sold the eggs for only C27,300, he suffered a loss of P92,700, plus the sum of P55 which he paid the marine surveyors who inspected the cargo.

Defendant, upon the other hand, alleged in defense that under the terms of the Bill of Lading Exhibit B, it was at liberty to tranship the cargo in question on any other vessel; that when the eggs were discharged in San Francisco, they were immediately brought to the storage plant of the National Ice and Cold Storage Co. so that if they arrived in Manila in deteriorated condition, it was because of the inherent nature or defect of the eggs; that the delay in the transshipment of the cargo was due to the strike of the union of longshoremen in the western coast of the United States from September to November, 1947, although when the goods were unloaded in San Francisco, there was yet no threat of a strike; and that immediately after the. strike, the cargo was loaded and transported on the S.S. "General Meigs." As a special defense, defendant claimed that while plaintiff received the goods in question on December 26, 1946, he filed a claim with defendant for damages only on July 25, 1947 (denied on February 16, 1948), and brought suit on May 25, 1948, more than a year from the receipt of the goods, and so plaintiff's action had prescribed under section 3, ' paragraph 6 of the Carriage of Goods by Sea Act.

After trial, the Court below found that plaintiff had suffered a loss of P25,896.81 by reason of the delayed arrival of his cargo of eggs, which defendant could have transshipped on the S.S.. "Clovis Victory" which left San Francisco before the strike of the longshoremen in the west coast of the United States. The Court, however, found defendant's defense of prescription meritorious, and so dismissed the case. From the judgment of dismissal, plaintiff Tan Liao appealed to this Court.

The main argument of the appellant is that the present case does not fall within the following prescriptive provision of the Carriage, of Goods by Sea Act (section 3, paragraph 6):

"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."

In support of his contention that the above provision does not apply, plaintiff-appellant argues that the suit or action referred to therein is one for "loss or damage, either apparent or concealed" to the goods, and not one for a breach of the contract of carriage on the part of the carrier where, as in this case, it is guilty of delay in the shipment of the goods, causing losses and damages to the consignee. The distinction drawn is more apparent than real. Actually, any and all injury or damages suffered by the goods, while in transit and in the custody of the carrier, amounts to a breach of the contract of carriage, unless due to fortuitous event; for the carrier is bound to transport the goods safely and so breaches its contract if it neglects such duty.

Appellant also makes a distinction between damage to the goods and damages to the, shipper or consignee, and claims that while the former falls within the prescriptive period .in question, the latter is governed by the provisions of the Code of Civil Procedure (now the New Civil Code) on limitation of actions. We see no difference between the two. Whatever damage or injury is suffered by the goods while in transit would result in loss or damage to either the shipper or the consignee. As long as it is claimed, therefore, as it is done here, that the losses or damages suffered by the shipper or consignee were due to the arrival of the goods jn damaged or deteriorated condition, the action is still basically one for damage to the goods, and must be filed within the period

of one year from delivery or receipt, under the above-quoted provision of the Carriage of Goods by Sea Act.

Appellant furthermore urges that the action or suit referred to in the provision in question refers only to loss or damage, to the goods in relation to their "loading, handling, storage, carriage, custody, care, and discharge" (section 2, *supra*), and does not cover or include loss or damage due to the wrongful and unreasonable delay in their transportation. The argument is equally untenable. The obligation of the carrier to carry the goods naturally includes the duty not to delay their transportation, so unjustified delay, the carrier is held liable therefor. Besides, the damages or losses claimed to have been suffered by appellant, on account of the unreasonable delay in the shipment of his cargo, still arose from the arrival of the goods in decayed and damaged state, resulting in appellant's inability to sell them at the price he would have obtained had they arrived in good condition. This is shown by the averments of his amended complaint that such wrongful and unauthorized delay was the

"reason for which a great portion of the said cargo of eggs decayed and became broken and rotten before the same was actually delivered to the plaintiff" (First Cause of Action, paragraph 4, Rec. App., 15) (Italics supplied.) and that because of "the almost rotten condition in which the cargo was found at the time it reached Manila, the sale thereof only produced the sum of P27,300, or a difference of P92,700 which is the Amount of sure profits which the plaintiff should have realized on said 2,000 cases of hen fresh eggs had they arrived on time in the port of Manila * * *" (Second Cause of Action, paragraph 7, Rec. App., pp. 18-19). (Italics supplied.)

And the second cause of action of appellant's complaint clearly alleges that the defendant shipping company

"has failed to comply with its duty and contractual obligation with the plaintiff to exercise due care in the custody and handling of the said cargo of eggs as required and demanded by the delicate nature of the eggs and by the gross negligence and acts of omission on the part of the defendant, the aforesaid cargo suffered damages while the same was still in its custody, control and possession, as conclusively established by the numerous broken boxes or containers of the eggs as well as the great number of broken eggs" * * *; (paragraph 2, Rec. App., pp. 16-17.) (Italics supplied.)

Needless to say, such alleged negligence of the defendant company in the custody and handling of appellant's cargo falls squarely within the provisions of the Carriage of Goods by Sea Act.

There would be some merit in appellant's insistence that the damages suffered by him as a result of the delay in the shipment of his cargo, are not covered by the prescriptive provision of the Carriage of Goods by Sea Act above referred to, if such damages¹ were due, not to the deterioration and decay of the goods while in transit, but to other, causes independent of the condition of the cargo upon arrival, like a drop in their market value. But the ultimate objective of appellant's action being to recover damages suffered by reason of the decay and deterioration of his goods while in transit, the same is still governed by the prescriptive period of one year under the Carriage of Goods by Sea Act.

Coming now to appellant's second proposition that the Carriage of Goods by Sea Act does not repeal the provisions of the Code of Civil Procedure on prescription of actions, the question has already been resolved by this Court in the case of *Chua Kuy vs. Everett Steamship Corp.*, 50 Off. Gaz. No. 1, p. 159, and the very recent case of *Go Chan & Co. vs. Aboitiz & Co.*, *Supra*, p. 179 promulgated December 29, 1955, wherein, -we ruled that the prescriptive period of one year established in the Carriage of Goods by Sea Act modified pro tanto the provisions of Act No. 190 as to goods transported to and from Philippine ports in foreign trade, the former being a special act while the latter is a law of general application.

Lastly, appellant urges that, assuming that his action against the defendant company prescribes in one year, the same accrued, not upon his receipt of the goods, but upon denial of his claim for damages by the defendant on

February 16, 1948. The claim is clearly without merit, for the law in question explicitly requires -that suit must be brought "within one year after delivery of the goods or the date when the goods should have been delivered". Neither could the pendency of the extra-judicial claim for damages filed with the defendant company toll or suspend the running of the period of limitation; for as already ruled in the case of Chua Kuy vs. Everett Steamship Corp., supra, neither the proposal for arbitration for the fact that negotiations have been made for the adjustment of a controversy suspends the running of the period for prescription, unless there is an express agreement to the contrary. There "being no stipulation between appellant and the defendant company that the prescriptive period for the filing of an action for loss or damage to the goods would be suspended by the filing of a claim with the carrier for damages and pending action thereon appellant is required to bring suit against the latter within one year from the receipt of his goods, and not having done so, his action had already prescribed.

Wherefore, the decision appealed from is affirmed. No pronouncement as to costs. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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