

**GENATO COMMERCIAL CORPORATION, PLAINTIFF-APPELLEE, VS.
MANILA PORT SERVICE AND MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS.**

G.R. No. L-24092. September 13, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal, on questions purely of law, from a decision of the Court of First Instance of Manila sentencing the Manila Port Service and the Manila Railroad Company – hereinafter referred to collectively as defendants – to pay to Genato Commercial Corporation – hereinafter referred to as plaintiff – the sum of P428.32, with interest thereon, from October 21, 1963, until fully paid, and the costs.

On the date last mentioned, plaintiff filed with the Municipal Court of Manila a complaint against herein defendants for the recovery of the sums of P586.19 and P379.02, representing, respectively, the value of 16-1/3 cartons of Royal Corned Beef, and that of 18 pieces of propeller shafts, which defendants ---- as arrastre operators for the port of Manila, unto whose custody said goods, together with others, had been discharged by carrying vessels - had allegedly failed to deliver to plaintiff, as consignee of said goods. Subsequently, however, plaintiff withdrew its second cause of action (re-lative to the propeller shafts), and, in due course, there-after, the municipal court rendered judgment for the plain-tiff, under the first cause of action, but for the reduced sum of P428.32, with interest thereon, at the legal rate, from the date adverted to above, plus P50.00 as attorney's fees, and the costs. On appeal therefrom, taken by the de-fendants, the Court of First Instance of Manila affirmed said judgment, except as regards the award for attorney's fees, which was eliminated.

The case is now before us on appeal taken by the de-fendants, who maintain that plaintiff's complaint should have been dismissed, upon the ground that the present ac-tion has not been commenced within the period prescribed in section 15 of the Management Contract between the defendants, which admittedly binds plaintiff herein, reading:

"x x x in any event the contractor shall be relieved and released of any and all respon-sibility for loss, damage, mis-delivery, and/or non-delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year from the date of the discharge of the goods or from the date when the claim for the value of such goods have been rejected or denied by the contractor, provided that such claim shall have been filed with the Contractor within fif-teen days from the date of discharge of the last package from the carrying vessel x x x."

Pursuant to this section, the arrastre operator can not be sued by the consignee except within one (1) year, either from the date of the discharge of the goods, or from the date when the claim for the value thereof shall have been reject-ed or denied by the arrastre operator. In the case at bar, the goods were discharged from the carrying vessel – assuming, only for the purpose of argument, that this is the discharge alluded to in the Contract – unto the custody of the operator on August 15, 1962, or more than a year prior to the filing of the complaint, on October 21, 1963. Plain-tiff claims, however, the benefit of the second alternative given thereto in the above quoted

section 15 of the Management Contract, namely: the right to file suit within one year from the date when the claim of the consignee shall have been rejected or denied by the arrastre operator; but, the defendants argue that this alternative cannot be availed of in the present case, because the arrastre operator has neither rejected nor denied plaintiff's claim. Inasmuch as said operator cannot, by inaction, deprive the consignee of its right to the aforementioned alternative, this Court has held^[1] that, when the arrastre operator fails to deny or reject the claim of the consignee, the term for the exercise of the latter's right of action shall begin to run upon expiration of one (1) year from the date of discharge of the last package upon the custody of said operator. Such date, in the case at bar, was August 15, 1962, so that plaintiff had one year from August 15, 1963 within which to commence the present action. Since the same was begun on October 21, 1963, it is obvious that defendants' contention can not be sustained.

Defendants further assail the decision appealed from, upon the theory that 5 cartons of the shipment in question were already damaged, or in bad order condition, when they were discharged from the carrying vessel, and that the value of said 5 cartons should be deducted from the award made in favor of the plaintiffs. It should be noted, however, that plaintiff's claim is predicated, not upon any damage sustained by the goods consigned thereto, but upon non-delivery of 16-1/3 cartons of "Royal" Corned Beef. Whether or not the 5 cartons allegedly damaged on board the carrying vessel were among those lost is a question of fact which can not be taken up in this appeal, the same having been brought to this Court directly from the Court of first instance "on pure questions of law."

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against the defendants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] The Continental Insurance Co. v. Manila Port Service, et al., G.R. No. L-22208, March 30, 1966; Delgado Brothers, Inc., et al. v. Manila Port Service et al., G.R. No. L-21781, June 30, 1966; Fireman's Fund Insurance Co. v. Manila Port Service, et al., G.R. No. L-21412, September 28, 1966; and The American Insurance Co. v. Manila Port Service, et al., G.R. No. L-22780, February 18, 1967.

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