

**JOSE BERNABE & CO., INC., PLAINTIFF AND APPELLANT, VS.
DELGADO BROTHERS, INC., DEFENDANT AND APPELLEE.***G.R. No. 12058. April 27, 1960*

Ponente: CONCEPCION, J.

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This is an action for the recovery of P2,251.60, representing the alleged value of a flywheel consigned to and belonging to plaintiff, Jose Bernabe & Co., Inc., and allegedly damaged in the possession of defendant Delgado Brothers, Inc., the arrastre contractor for the Port of Manila, in charge of receiving cargo unloaded from vessels unto the piers and of delivering said cargo to the consignee thereof, or his duly authorized representative, pursuant to and subject to a Management Contract entered into between the Bureau of Customs and said defendant on October 21, 1950. The case was submitted upon an stipulation of facts, whereupon the Court of First Instance of Manila rendered judgment dismissing the case, without pronouncement as to costs. Hence, this appeal by the plaintiff in which only questions of law are raised.

It appears that on January 11, 1956, the S.S. Phyrus arrived at the Port of Manila, with, among other things, a shipment of machine spare parts, including a flywheel, consigned to and belonged to plaintiff; that the shipment was unloaded from the S.S. Phyrus and received by the defendant, in the course of its arrastre operations, during the night of January 11, 1956, "uncrated or unpacked and in an apparent good order condition;" that when plaintiff's representative proceeded to take delivery of its aforementioned shipment, he requested a Bad Order Examination of said flywheel; that the inspection was conducted by a representative of the defendant, in the presence of plaintiff's representative; that upon said inspection, the flywheel appeared to be cracked in several parts thereof; and that, consequently, plaintiff's representative filed the corresponding claim for indemnity, which was denied by the defendant.

The first issue in this appeal refers to the burden of proving the cause of the damage above referred to. Defendant maintains that it is upon the plaintiff, and that the same having failed to prove how the damage was caused, the case was properly dismissed. Upon the other hand, plaintiff contends that the flywheel having been unloaded from the vessel and received by the defendant "uncrated or unpacked and in an apparent good order condition", it was incumbent upon the defendant to show that the damage it had, when plaintiff's representative sought to take delivery was not due to its (defendant's) fault or negligence, and that, having failed to do so, it (defendant) is liable therefor.

The theory of the defense is untenable and the lower court erred in adhering thereto and in not sustaining that of the plaintiff. As custodian of the flywheel, which it received "in an apparent good order condition," it was incumbent upon the defendant to establish, either that said object was already damaged when it was unloaded from the S.S. Phyrus, despite its appearance to the contrary, or that the damage was not imputable to said defendant. Having failed to introduce any evidence in support of either alternative, the conclusion must necessarily be that the flywheel was in as "good order condition" as it appeared to be at the time of its unloading, and that the damaged condition it had when plaintiff's representative proceeded to take delivery thereof was due to

a cause for which the defendant, is answerable and liable.

It is urged, however, that, under its management contract with the Bureau of Customs, the defendant "shall not be held responsible for (a) failing to report damage which cannot be easily detected during discharge, such as hook holes, chafage, stains, dents and old and second hand cases, or cargo with inadequate packing, and (b) failing to report damage to packages received at night." The latter ground for exemption is inapplicable to the flywheel in question for, although unloaded at night, it was uncrated and unpacked. Neither may the defendant avail of the first ground, it not having even tried to prove that the damage to the flywheel was such that it could not "easily be detected during discharge." On the contrary, the stipulation to the effect that it was "in an apparent good order condition" when delivered to the defendant, with nothing to indicate that such appearance was deceiving, establishes a prima facie case in favor of plaintiff's claim.

The next question is whether the defendant may be held liable for the full value of the flywheel. In this connection, it has been stipulated by the parties that when plaintiff's representative took delivery of the shipment in question, it signed and presented a "permit to deliver imported goods," bearing the following notice in rubber stamp:

"IMPORTANT NOTICE"

"This Permit is presented subject to all the terms and conditions of the Management Contract between the Bureau of Customs and Delgado Brothers, Inc., dated October 21, 1950, and amendments thereof, particularly but not limited to Paragraph 15 thereof limiting the Company liability to P500.00 per package, unless the value of the goods is otherwise specified, declared or manifested and the corresponding arrastre charges have been paid; providing exemptions or restrictions from liability; and releasing the Company from liability unless suit is brought within one (1) year from the date of the arrival of the goods, or from the date when the claim for the Value of the goods has been rejected, provided such claim is filed with the Company within 15 days from the date of arrival of goods".

and that, upon presentation of this permit to the defendant, the latter issued Gate Pass No. H-91408, on which the following words are printed:

"The undersigned, duly authorized to respectively represent the Bureau of Customs, the above named, consignee and the Arrastre Service Operator hereby certify to the correctness of the above description, of the goods covered by this Gate Pass. Issuance of this Gate Pass constitutes delivery to and receipt by CONSIGNEE of the goods as described herein, subject to all the terms and conditions contained in the Management Contract between the Bureau of Customs and Delgado Brothers, Inc., dated October 21, 1950, and all amendments thereto or alterations thereof, particularly but not limited to Paragraph 15 thereof limiting the company liability to P500.00 per package, unless the value of the goods is otherwise specified or manifested; providing exemptions from liability unless suit is brought within one (1) year from the date of the arrival of the goods, or from date when the claim for the value of the goods has been rejected, provided such claim is filed with the Company within 15 days, from the date of the arrival of the goods."

The pertinent part of paragraph 15 of the Management Contract, referred to in the notice stamped on the aforementioned "permit to deliver imported goods" reads:

"It is further understood and strictly agreed that the CONTRACTOR shall at its own expense handle all merchandise upon or over said piers, wharves and other designated places, and at its own expense perform all work undertaken by it hereunder diligently and in a skillful workmanlike and efficient manner; and the CONTRACTOR shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred pesos (P500.00) for each package unless the value is otherwise specified or manifested, and the corresponding arrastre charges had been paid, including all

damages that may be suffered on account of loss, destruction, or damage of any merchandise while in the custody or under the control of the contractor upon any pier, wharf or other designated place under the supervision of the BUREAU, * * *."

Defendant maintains that, pursuant to this paragraph, its liability in favor of plaintiff herein cannot exceed P500.00, inasmuch as the value of the flywheel had not been otherwise "specified, declared or manifested." However, plaintiff, asserts that, not being a party to said Management Contract, it is not bound by the provisions thereof, pursuant to Article 1311 of the Civil Code of the Philippines. This argument has already been rejected by this Court in *Jose Bernabe & Co., Inc. vs. Delgado Brothers, Inc.*, supra, p. 287, in which, under conditions substantially identical to those obtaining in the case at bar, we held:

"Appellant argues, that In the light of the above-quoted article, contracts are binding and enforceable only between the parties, their assigns and heirs, the only exception being a third person not a party thereto, in whose favor a benefit is clearly and deliberately conferred. Although appellant admits that the aforementioned Management Contract contains provisions "benefitting persons not parties thereto for said contract pertains to serving the public (sic)', and that 'anyone desiring to avail of such services has the right to demand it despite the fact that he was not a party to the Management Contract', it claims, nevertheless, that/such third parties can not be bound by stipulation' and conditions thereunder which are onerous or prejudicial to them.

"Appellant's argument does not accord with and is not justified by the spirit (if not the letter) of the law. When a third person accepts the benefits of a contract, he is also bound to accept the concomitant obligations corresponding thereto. As the lower court correctly observed: 'Plaintiff should not take advantage of the management contract when it suits him to do so, and reject its provisions when it thinks otherwise.'

"Appellant, further, contends that the contractual obligation in the aforequoted Paragraph 15 of the Management Contract limiting appellee's liability is arbitrary, unjust, and unreasonable being practically forced upon it, since there was absolutely no way for it to receive the imported cargo except by engaging appellee's services as sole operator of the arrastre service in the Port of Manila. Its consent, it is claimed, was not voluntary, and hence, not valid.

"In answer, it may be stated that appellant could adequately protect itself, by simply specifying or manifesting the actual value of the imported cargo in the various documents required of it under the law (Import entry [Sec. 1267, Rev. Adm. Code]; written declaration [Sec. 1268-6, in connection with Secs. 1269 and 1271, Rev. Adm. Code]), and paying the corresponding arrastre charges of the same,' pursuant to the provisions of said Paragraph 15, and of thy 'Important Notice' contained in the Delivery Permit and Gate Pass which its representative or broker accepts, signs, and utilizes, upon taking delivery of the imported cargo from appellee arrastre operator, in "which event, the latter expressly binds itself and undertakes to reimburse appellant the actual value of the cargo, in case of its damage, destruction, or loss while under its custody. If appellant failed to so state the value of its merchandise in any of these documents required by law before he cleared its goods, and paid only the arrastre charge based on a lesser value, it can not in justice now demand the full undeclared value."

To the same effect are the decisions of this Court in *Northern Motors, Inc. vs. Prince Line et al.*, (supra, p. 253), *Mendoza vs. Phil. Air Lines, Inc.*, (90 Phil., 836), and *Freixas & Co. vs. Pacific Mail Steamship Co.* (42 Phil., 199).

Wherefore, the decision appealed from is hereby reversed and another one shall be entered, sentencing; defendant Delgado Brothers, Inc. to indemnify plaintiff, Jose Bernabe & Co., Inc. in the sum of Five Hundred Pesos (P500.00), with interest thereon at the legal rate, from December 13, 1955 date of the filing of the complaint, with costs against said defendant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Barrera, JJ.,

concur.

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