

DELGADO BROS., INC., PETITIONER, VS. LI YAO & COMPANY, LUZON, BROKERAGE CO., INC. AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 12872. April 29, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal by certiorari under Rule 46 from a judgment of the Court of Appeals which affirmed that of the Court of First Instance of Manila ordering the petitioner to pay the respondent Li Yao & Company the sum of P9,009.73, legal interest thereon at 6% per annum from the date of the filing of the complaint until full payment thereof, P1,000 as attorney's fees and the costs of the suit; and dismissing the complaint against the respondent Luzon Brokerage Company, Inc. and the counterclaim of the latter against the petitioner (civil No. 18159).

The facts, as found by the trial and appellate courts, are:

On or about June 26, 1952, plaintiff ordered from the Republic Textiles, Inc., of Patterson, New Jersey, U.S.A., 50,000 yards of rayon silk piece goods at a unit price of \$.36 (or P.72) per yard. To pay the purchase price of this merchandise, plaintiff obtained a letter of credit from the China Banking Corporation in Manila. Thereafter, the Republic Textiles, Inc., shipped on board the SS/Belleville (of which steamship the Macondray & Co., Manila, was its agent) a total quantity of 49,998 38 yards of rayon silk piece goods, packed in twenty-four (24) wooden boxes marked as Nos. 105 to 114, 187 to 141. and 393 to 401, sold to plaintiff and consigned to the China Banking Corporation.

When the shipment of 24 boxes of rayon silk piece goods arrived in the port of Manila on or about September 1, 1952, the same were unloaded from the SS/Belleville and were delivered to the Delgado Brothers, who, (on) or about September 16 and 17, 1952, in turn, delivered the said shipment to the Luzon Brokerage, which the latter received in its capacity as broker of the China Banking Corporation. In the meantime, plaintiff paid to the China Banking Corporation, the balance of the aforesaid letter of credit opened by it with said bank; and the China Banking Corporation authorized its broker, defendant Luzon Brokerage, to deliver the aforesaid shipment of 24 boxes to plaintiff which defendant Luzon Brokerage actually delivered to plaintiff on or about September 26 and 27, 1952.

When Luzon Brokerage delivered said shipment of 24 boxes of rayon silk piece goods to plaintiff, seven (7) boxes thereof (Boxes Nos. 108, 112, 1838, 139, 141, 396 and 400) had already been opened and, upon checking their contents, plaintiff found that there was a total shortage of 6,765 5/8 yards of rayon silk piece goods.

In view of the denial of responsibility by the Macondray & Co. on the shortage found in said remaining six (6) boxes, plaintiff wrote defendant Delgado Brothers, demanding payment of the unaccounted lost portion of the aforesaid shipment amounting to 6,673 7/8 yards; but, said defendant denied responsibility for said loss, claiming that the six (6) boxes were delivered by it to the defendant Luzon Brokerage in the same condition as they were received by it from the SS/Belleville, and that the loss in question occurred after it had delivered the shipment to the Luzon Brokerage.

On account also of the denial of responsibility of the lost shipment by the Delgado Brothers, plaintiff's counsel wrote to the Luzon Brokerage a letter demanding payment of 6,673 7/8 yards of rayon silk piece goods lost in boxes Nos. 108, 112, 139, 141, 396 and 400. The Luzon Brokerage, thru its counsel, also denied responsibility on the loss of the cargo contained in said six (6) boxes, claiming that the shortages in question had already taken place before it received the same from the Delgado Brothers.

Convinced that the loss of said 6,673 7/8 yards of rayon silk piece goods had taken place while the afore-mentioned boxes were either in the possession of the Delgado Brothers, or in the possession of the Luzon Brokerage, but not knowing who of the two was actually responsible for the loss, plaintiff filed the present complaint against both the Delgado Brothers and the Luzon Brokerage, as alternative defendants. (Record on Appeal, pp. 33 to 36.)

Both the trial court and the Court of Appeals found—

* * * de que la preponderancia de las pruebas milita a favor de la teoria de la apelada Luzon Brokerage Co., Inc., esto es, que la perdida de las 6,673 7/8 yardas de rayon en cuestion ocurrio mientras el cargamento del que formaban parte las mismas, estaban aun en poder de Delgado Brothers Inc. Esta demandada admitio que los 24 cajones que constituian todo el cargamento consignado a la demandante estaban en buenas condiciones cuando se descargaron del barco, excepto un cajon que estaba en mal estado y por tal motivo se habia depositado el mismo en su "bad order coral". El hecho de que los 23 cajones que se descargaron en buenas condiciones, seis de los cuales se abrieron y se examinaron despues en vista de los "Request for Bad Order Examination"), Exhs. 1—Delgado y 1-A Delgado, sometidos por Luzon Brokerage Co., Inc., indica que dichos cajones ya estaban en mal estado antes de su entrega a Luzon Brokerage Co., Inc.

In this appeal, the petitioner assigns as errors committed by the Court of Appeals the following:

- That the Court of Appeals committed an error of law in not admitting in evidence "Exhibit 4-Delgado", which is the "Management or Arrastre Contract" entered into between petitioner and the Bureau of Customs pursuant to the provisions of Act No. 3002, as amended, thus depriving petitioner of its special defenses limiting petitioner's liabilities in the handling and delivery of imported cargoes as contained in paragraphs 1, 2, and 3 of petitioner's amended answer.
- The Court of Appeals" committed an error of law in ruling that the "Management or Arrastre Contract, Exhibit 4 Delgado", particularly paragraph 15 thereof, expressly limiting the liability of your petitioner to P500.00 per package unless the value is specified or otherwise manifested and the corresponding arrastre charges have been paid, is not binding upon Li Yao & Co. for the reason that such a stipulation expresses a legal principle applicable only in (to) ordinary common carrier contract, although the admitted fact in this case is that Li Yao & Co. made use of the services or facilities of petitioner in the handling and delivery of its cargoes.
- The Court of Appeals erred in ruling that the said provision in the "(Management of Arrastre Contract Exhibit 4—Delgado" cannot limit the liability of petitioner as against Li Yao & Co. by stating that the case of Mendoza vs. PAL, 90 Phil., 836), where it was ruled that a third party consignee is bound by the terms of an airway bill, is not applicable to this case.
- The Court of Appeals erred in ruling that the said provision in the "Management or Arrastre Contract Exhibit 4—Delgado", (which is known to every importer who uses the services or facilities of petitioner by virtue of a notice stamped in the "Delivery Permit Exhibit 3-Delgado", is not binding upon Li Yao & Co. in the absence of consideration and express acceptance by the latter.

The errors assigned by the petitioner reduce themselves into this issue: whether paragraph 15 of the management contract entered into by and between the petitioner and the Bureau of Customs on 21 October 1950 pursuant to

Act No. 3002, as amended by Republic Act No. 140, limiting the petitioner's responsibility to P500 a package, is binding upon the respondent who was not a party thereto.

In *Northern Motors, Inc. vs. Prince Line, et al.*, supra, p. 253, this Court held—

We come now to the determination of the second issue of whether appellant was bound by the provisions of said Paragraph 15 of the Management Contract. Appellant contends that since it was not party to the said contract, it was not bound by its provisions. The facts of this case and the law applicable thereto do not support this view.

Article 1311 of the new Civil Code, states:

"ART. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

"If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A more incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person."

Tested in the light of the above legal provision, Paragraph 15 of the Management Contract in, question, it is believed, contains provisions which are in the nature of stipulations "pour autrui", that is, for the benefit or in favor of a third party, the appellant in the case at bar. By virtue thereof, appellee is expected to render service, not to the Bureau of Customs, but specifically and principally to the importers or consignees of the cargoes. Upon the importer's or consignee's compliance with certain conditions, namely, presentation of approved delivery permits, payment of arrastre fees, etc., he is entitled to receive, and the appellee arrastre "contractor is obliged to discharge and deliver, the cargoes or merchandise corresponding to those described in the delivery permit of said importer or consignee. There can scarcely be any doubt that by said provision in the contract, appellee and the Bureau of Customs deliberately and purposely conferred benefit upon appellant, because it is to the latter that merchandise was to be delivered in good order and payment made, in the event of damage, destruction, or loss thereof while in appellee's control or custody.

* * * * *

According to the law,[6] before delivery of the cargo could be made, the consignee or owner, or his representative must first clear them from the Bureau of Customs and obtain therefrom a Delivery Permit and a Gate Pass. Among the conditions imposed by law for this purpose is for the owner or consignee to submit to the Collector of Customs a written declaration containing, inter alia, a "just and faithful account of the actual cost of said merchandise, including and specifying the value of all containers or coverings, and that nothing has been omitted therefrom or concealed whereby the Government of the Republic of the Philippines might be defrauded of any part of the duties lawfully due on the merchandise." In the delivery permit thus obtained, the following "Important Notice" is stamped or printed:

"IMPORTANT NOTICE"

"All cargo covered by this permit are delivered to and received by Consignee's and importer's representative subject to all the terms and conditions of the Management Contract between the Bureau of Customs and Delgado Brothers, Inc. (appellee), (or whoever may be the arrastre contractor) 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 and the corresponding arrastre, changes have been paid. * * *." (Italics supplied.)

On the Gate Pass which covers the receipt and release of the goods duly signed by the importer's or consignee's representative, the following annotation also appears:

"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. (appellee) (or whoever may be the arrastre contractor) dated October 21, 1950, and all amendments thereto or alterations thereon, 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. * * *." (Italics supplied.)

Even, therefore, if appellant was not a signatory to said Management Contract, it legally became a party, thereto when it (through its broker, the Luzon Brokerage Co., Inc.) obtained the delivery permit and gate pass in the above manner prescribed by law and, making use of them, demanded from appellee the delivery of the 33 cases, pursuant to appellee's undertaking in virtue of the very same Management Contract. * * *

Conformably thereto, the judgment appealed from is modified by reducing the amount to be paid by the petitioner to the respondent to P3,000, legal interest thereon from the date of the commencement of the action to the date of payment thereof, P1,000 as attorney's fees, and costs. No pronouncement as to costs in this instance.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

[6] Secs. 1267, 126S-(b), 1269 and 1273, Rev. Adm. Code.

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