

GOVERNMENT SERVICE INSURANCE SYSTEM (AS ADMINISTRATOR OF THE PROPERTY INSURANCE FUND UNDER R. A. NO. 656.), PLAINTIFF AND APPELLANT, VS. MANILA RAILROAD COMPANY AND MANILA PORT ...

G.R. No. 13276. February 25, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an amended decision of the Court of First Instance of Manila dismissing this case, without costs. The facts are set forth in said amended decision, from which we quote:

"* * * On April 16, 1956, the INDUSTRIA AMERICANA & COMPANY shipped at Long Beach, California, U.S.A. on board the SS 'STEEL ARCHITECT' of the Isthmian Lines, Inc. one (1) box and forty (40) pieces of tractor parts (Exh. A) consigned to the National Marketing Corporation (NAMARCO), thru the Philippine National Bank, for which the shipping company issued its Bill of Lading No. 12 (Exh. B). The SS 'STEEL ARCHITECT' arrived at the Port of Manila and the consignment of 1 box and 40 pieces of tractor parts were discharged by the vessel into the possession of the Manila Port Service on May 22, 1956. The consignee NAMARCO, thru its customs broker, J. D. Vera Brokerage, received from the Manila Port Service on June 12, 1956, the consignment short of 11 pieces of tractor parts with a value of P2,046.50. On July 12, 1956, the consignee NAMARCO, thru its customs broker, J. de Vera Brokerage, filed a formal claim, for the value of the short-delivered 11 pieces of tractor parts against the defendant Manila Port Service (Exh. F.) The consignment in question consisting 1 box and 40 pieces of tractor parts consigned to the NAMARCO was insured with the plaintiff GSIS, and due to the short-delivery of 11 pieces of tractor parts, the said plaintiff GSI& paid to NAMARCO the value of the 11 pieces of tractor parts short-delivery the sum of P2,046.50 (Exh. H).

"The defendants Manila Railroad Company¹ and Manila Port Service put up the defense to the effect that since no claim whatsoever was filed against them for the alleged short-delivery of 11 pieces of tractor parts either by the plaintiff, the consignee or its representative within the 15-day period from date of discharge of the last package at the Port of Manila, defendant Manila Port Service, as Arrastre Operator for the Port of Manila, is completely relieved and released of any and all liability for shortage or loss under the law and in accordance with the Management Contract (Exh. 1) with the Bureau of Customs covering the operation of arrastre service for the Port of Manila.

"The issue now to be resolved in this case is whether or not the Management Contract, Exhibit 1, executed by and between the Manila Port Service and the Bureau of Customs, covering the operation of arrastre service for the Port of Manila, is binding on the plaintiff who is not a formal party thereto."

In its original decision, promulgated on September 20, 1957, said court held that the provisions of the Management Contract in question were not binding upon plaintiff, the Government Service Insurance System, and accordingly, rendered judgment against defendants Manila Railroad Company and Manila Port Service for the sum of P1,898.93, plus costs. On motion for reconsideration filed by the aforementioned defendants, said original decision was set aside by the lower court, which rendered, on October 15, 1957, an amended decision, reversing

its former stand upon the following: grounds:

"Upon careful analysis of the Management Contract, the Court finds that it is not an ordinary contract in the sense that it is intended to bind only the privies thereto. The Management Contract covering the operation of the arrastre service was executed not only for the benefit of the parties thereto but also for importers and consignees who wish to take advantage of the services of the arrastre operator in the importation and exportation of commodities coming in and out of the Port of Manila.

"The Management Contract also contains provisions for the charges and fees which importers, customs brokers and consignees have to pay to effect the release of their cargo from the arrastre operator; and similarly, it contains provisions defining the extent and limitations of the responsibility of the contractor in connection with its functions as operator of the arrastre.

"It is true that as a general rule contracts are binding only upon the immediate parties thereof; but where favors to third parties are clearly and deliberately conferred therein, said contract is also binding upon the third parties for whom said conferment Of favor is intended. This is the ruling of the Supreme Court in the cases of *Mendoza vs. PAL* (90 Phil., 836) and *Kauffman vs. PNS* (42 Phil., 182).

"The consignee, thru its broker, by taking delivery of the shipment in question from the piers, by signing the corresponding releases, such as the gate pass and delivery permit containing annotations making reference to the pertinent provisions of the Management Contract, Exhibit 1, and by paying the corresponding arrastre charges as fixed by the said contract, by such acts, said consignee has manifestly made itself a party to the said Management Contract for the reason that it derived benefits and favors from said contract.

"Besides, plaintiff having sued defendant Manila Port Service in its capacity as operator of the arrastre service for the Port of Manila and on its liability under the Management Contract, it cannot come to Court to avail of the provisions of the said contract when favorable to it and at the same time deny being bound by its provisions when adverse to its interest."

Hence, this appeal by the plaintiff, which maintains that:

"1. The lower court erred in setting aside its original decision dated September 20, 1957, and in rendering its amended decision dated October 15, 1957."

"2. The lower court erred in holding that the Management Contract (Exh. 1) is binding upon third persons, particularly the NAMARCO, the assured of herein plaintiff; and

"3. The lower court erred in rendering its amended decision dated October 15, 1967 because it violated Article 1183 and/or 1188 of the Civil Code."

Inasmuch as the first assignment of error is based, not upon the absence of authority or jurisdiction of the lower court to render the amended decision appealed from, but upon the merits thereof, which, in turn, depends upon the issues raised in the second and third assignments of error, we will proceed to the consideration of the latter.

The question whether plaintiff is bound by the stipulation in the Management Contract, Exhibit 1, requiring the filing of a claim within 15 days from discharge of the goods, as a condition precedent to the accrual of a cause of action against the defendants, has already been settled in *Northern Motors, Inc. vs. Prince Line et al.*, 107 Phil., 253, *Mendoza vs. Phil. Air Lines, Inc.*, (90 Phil., 836), and *Freixas & Co. vs. Pacific Mail Steamship Co.* (42 Phil., 199), adversely to plaintiff's pretense. We have repeatedly held that, by availing himself of the services of the arrastre operator and taking delivery therefrom in pursuance of a permit and a pass issued by the latter, which were "subject to all the terms and conditions" of said management contract, including, inter alia, the requirement thereof that "a claim is filed with the Company within 15 days from the date of arrival of the goods", the consignee—and, hence, the insurer, or plaintiff herein, as successor to the rights of the consignee—became bound

by the provisions of said contract. The second assignment of error is, therefore, untenable.

As regards the third assignment of error, plaintiff alleges that said provision of the management contract constitutes an impossible condition, because the goods in question were discharge on May 22, 1956 and delivery thereof to the consignee took place 21 days later, or on June 12, 1956, so that it was physically impossible for the consignee to file its claim for short delivery within the period fixed in the aforementioned contract. The possibility or impossibility of compliance with the aforementioned condition depended, however, not upon the date on which the consignee had chosen to take delivery of the goods, but upon the time of the notice, if there was any, of the arrival of said goods, placing the same at its disposal, and of its diligence thereafter in examining the goods before the delivery thereof. In the case at bar it appears that as early as June 2, 1956, the consignee had expressed its readiness to take delivery of the goods, thus indicating that it knew of the arrival thereof prior thereto, but the record does not show how it learned of said arrival, or whether notice thereof was given to the consignee or its representative by the arrastre operator and, in the affirmative case, on what date. Thus it is necessary that evidence on these points be taken with a view to ascertaining whether or not the consignee had had reasonable opportunity to comply with the disputed condition of the management contract, and, in the negative case, whether or not, considering the date when it was notified of the arrival of the goods, the consignee should be deemed to have acted with the diligence required by the spirit and purpose of said disputed condition, in filing its claim on June 16, 1956.

Wherefore, the case is remanded to the lower court for further proceedings, without special pronouncement as to costs. It is so ordered.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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