INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., PETITIONER, VS. PRUDENTIAL GUARANTEE & ASSURANCE CO., INC., RESPONDENT.

G.R. No. 134514. December 08, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When cargo is placed on a vessel at the "shipper's load and count," the arrastre operator is required only to deliver to the consignee the container van received from the shipper, not to verify or to compare the contents thereof with those declared by the shipper. A claim for reimbursement for the loss, damage or misdelivery of goods must be filed within 15 days from the date the consignee learns of such problem(s).

The Case

For the resolution of the Court is a Petition for Review under Rule 45 of the Rules of Court assailing the March 10, 1998 Decision and the June 23, 1998 Resolution both promulgated by the Court of Appeals in CA-GR CV No. 52129 reversing the trial court's dismissal of the Complaint for the collection of a sum of money filed by Prudential Guarantee & Insurance Co., Inc. (Prudential) against International Container Terminal Services, Inc. (ICTSI).

The Facts

The challenged Decision sets forth the facts of this case as follows:

> "On April 25, 1990, mother vessel `Tao He' loaded and received on board in San Francisco, California, a shipment of five (5) lots of canned foodstuff complete and in good order and condition for transport to Manila in favor of Duel Food Enterprises ("consignee" for brevity). China Ocean Shipping Company issued the corresponding bill of lading therefor.
>
> "Consignee insured the shipment with Prudential Guarantee and Assurance, Inc. against all risks for P1,921,827.00 under Marine Insurance Policy No. 20RN-3011/90.
>
> "On May 30, 1990, the shipment arrived at the Port of Manila and discharged by [the] vessel MS `Wei He' in favor of International Container Terminal Services, Inc. for safekeeping.
>
> "On June 1, 1990, A. D. Reyna Customs Brokerage ("defendant brokerage" for brevity) withdrew the shipment and delivered the same to [the] consignee. An inspection thereof revealed that 161 cartons were missing valued at P85,984.40.
>
> "Claim for indemnification of the loss having been denied by [ICTSI] and [the] brokerage, consignee sought payment from [Prudential] under the marine cargo policy. Consignee received a compromised sum of P66,730.12 in settlement thereof. As subrogee, [Prudential] instituted the instant complaint against said defendants [ICTSI and brokerage].
>
> "Traversing the complaint, [ICTSI] counters that it observed extraordinary diligence over the subject shipment

> while under its custody; that the loss is not attributable to its fault or its agent, representative or employee; that consignee failed to file a formal claim against it in accordance with PPA Administrative Order No. 10-81; and that the complaint states no cause of action. By way of crossclaim, it sought reimbursement from defendant brokerage in the event it is adjudged to pay the loss.
>
> "In its Order dated March 3, 1992, the court a quo upon [Prudential's] motion, declared defendant brokerage in default for failure to file [it's] answer within the reglementary period. Acting on [ICTSI's] motion, the court a quo, in its Order dated May 27, 1992, allowed the former to present its evidence ex-parte against defendant brokerage relative to the cross claim.
>
> "On May 19, 1993, the court a quo rendered a decision dismissing the complaint against defendant brokerage for lack of evidence.
>
> "In its Order of July 12, 1993, the court a quo, upon motion of [ICTSI] and [Prudential], vacated the decision dated May 19, 1993 and set the case for hearing to give [ICTSI] an opportunity to cross examine [Prudential's] witnesses."[1]

On November 8, 1995, the trial court[2] rendered a Decision dismissing Prudential's Complaint against ICTSI in this wise:[3]

> "Failure on the part of the consignee to comply with the terms and conditions of the contract with [ICTSI], [Prudential] is not placed in a better position than the consignee who cannot claim damages against [ICTSI]. Hence, the complaint is hereby DISMISSED."

Reconsideration was denied by the Regional Trial Court in its Order dated December 27, 1995.[4]

Disposing of the appeal, the CA[5] ruled:

> "WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and, in lieu thereof, judgment is hereby rendered ordering [appellee] International [C]ontainer Terminal Services, Inc. (ICTSI) to pay appellant the sum of P66,730.12 with legal interest from May 13, 1991, until fully paid, plus 10% of xxx said claim by way of attorney's fee."[6]

Reconsideration of the CA Decision was denied in the herein challenged June 23, 1998 Resolution.[7]

Ruling of the Court of Appeals

The appellate court found ICTSI negligent in its duty to exercise due diligence over the shipment. It concluded that the shortage was due to pilferage of the shipment while the sea vans were stored at the container yard of ICTSI.

It also ruled that the filing of a claim depended on the issuance of a certificate of loss by ICTSI based on the liability clause printed on the back of the arrastre and wharfage receipt. Since ICTSI did not issue such a certificate despite being informed of the shortage, the 15-day period given to the consignee for filing a formal claim never began. By subrogation, Prudential, as insurer of the consignee, was entitled to hold the ICTSI liable for the shortage.

Assignment of Errors

Petitioner claims that the appellate court committed reversible errors (1) in ruling that ICTSI failed to adduce convincing evidence to rebut the finding of the independent adjuster and (2) in allowing the Complaint despite the failure of the consignee to file a formal claim within the period stated on the dorsal side of the arrastre and wharfage receipt.[8]

This Court's RulingThe Petition is meritorious.

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First Issue: Proof of Negligence

The legal relationship between an arrastre operator and a consignee is akin to that between a warehouseman and a depositor.[9] As to both the nature of the functions and the place of their performance, an arrastre operator's services are clearly not maritime in character.[10]

In a claim for loss filed by a consignee, the burden of proof to show compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator.[11] Since the safekeeping of the goods rests within its knowledge, it must prove that the losses were not due to its negligence or that of its employees.[12]

To discharge this burden, petitioner presented five Arrastre and Wharfage Bill/Receipts, which also doubled as container yard gate passes, covering the whole shipment in question. The short-landed shipment was covered by the gate pass marked "Exhibit 5."[13] The latter bore the signature of a representative of the consignee, acknowledging receipt of the shipment in good order and condition (Exh. "5-e"). Thus, we see no reason to dispute the finding of the trial court that "the evidence adduced by the parties will show that the consignee received the container vans xxx in good condition (Exhs. 1-6)."[14]

By its signature on the gate pass and by its failure to protest on time, the consignee is deemed to have acknowledged receipt of the goods in good order and condition.

Lamberto Cortez, petitioner's witness, testified that he personally examined the shipment and identified the gate pass which covered the delivery of the shipment and which was countersigned by the consignee's representative. He explained the import of his examination as follow

> "A: Before I sign this gate pass, sir, the representative of the consignee [gives] it to me then I write down the items, the goods to be delivered so that it will be mounted in the truck of the consignee. After mounting it, it will go to our office then I will check the number of the container if it is properly padlocked, and if it is okay, I will place there okay and I will sign it to be countersigned by the representative of the consignee, sir.
>
> Q:
>
> In other words, Mr. Witness, you said that this particular shipment was padlocked?
>
> A: Yes, sir.
>
> x x x x x x x x x
>
> Q:
>
> You also stated that the shipment was okay, will you point to that particular portion of the gate pass?
>
> A: After the physical check-up, I placed there okay, meaning it ha[d] no damage, sir.

The assailed Decision ruled that the petitioner was negligent, as evidenced by the loss of the original seal and padlock of the container, which were subsequently replaced with safety wire while the shipment was still stored at the ICTSI compound.[16]

The appellate court cites, as proof of petitioner's negligence, the Survey/Final Report of the independent adjuster, Tan-Gatue Adjustment Company, Inc. (Exh. "F").[17] The Report stated:

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> "The 3,439 cartons comprising [the] balance of the shipment were found and accepted by consignee's representative in good order.
>
> "In our opinion, shortage sustained by the shipment was due to pilferage whilst the sea vans containing the shipment were stored at [the] [c]ontainer [y]ard of the [petitioner], [at] North Harbor, Manila but we cannot categorically state as to when and who undertook [it] due to the absence of documentary evidence.
>
> "The customs safety wire as well as the padlock of Sea Van No. HTMU-803515-6 where the short (missing) cartons discovered may have been tampered [with]/opened and returned/re-closed with finesse which [was] unfortunately not noticed during delivery and prior to opening at consignee's warehouse.
>
> "All the sea vans were reportedly full of contents when examined by the customs examiner for tax evaluation of contents.
>
> "The [ship agents] and arrastre contractors['] representative reportedly refused the invitation of the consignee to witness the stripping/withdrawal of the same from the sea vans at their warehouse averring that the shipment per Bill of Lading was shipped under ["]Shipper's Load and Count" hence, loss/damage, if any, to the shipment is not their liability.
>
> "We thoroughly investigate[d] this particular case at International Container Terminal Services, Inc., North Harbor, Manila[,] but up to this time no person(s) and/or group(s) could be pinpointed liable [for] the shortage of 161 cartons, hence, the delay [in the] issuance of this report."[18]

The adjuster insists that the shipment was complete when the customs examiner opened the sea vans for tax evaluation. However, the latter's report was not presented. Hence, there is no basis for comparing the cartons subjected to customs examination and those which were delivered to the consignee.

More important, the consigned goods were shipped under "Shipper's Load and Count." This means that the shipper was solely responsible for the loading of the container, while the carrier was oblivious to the contents of the shipment.[19] Protection against pilferage of the shipment was the consignee's lookout. The arrastre operator was, like any ordinary depositary, duty-bound to take good care of the goods received from the vessel and to turn the same over to the party entitled to their possession, subject to such qualifications as may have validly been imposed in the contract between the parties.[20] The arrastre operator was not required to verify the contents of the container received and to compare them with those declared by the shipper because, as earlier stated, the cargo was at the shipper's load and count. The arrastre operator was expected to deliver to the consignee only the container received from the carrier.

Petitioner claims that the absence of a request for a bad order survey belied the consignee's assertion that the shipment was filched while in ICTSI's custody, and that such absence did not stop the 15-day period from running. Normally, a request for a bad order survey is made in case there is an apparent or presumed loss or damage. The consignee made no such request despite being provided by the petitioner a form therefor.

The lack of a bad order survey does not toll the prescriptive period for filing a claim for loss, because the consignee can always file a provisional claim within 15 days from the time it discovers the loss or damage. Such a claim would place the arrastre operator on notice that the shipment sustained damage or loss, even if the exact amount thereof could not be specified at the moment. In this manner, the arrastre operator can immediately verify its culpability and liability. A provisional claim seasonably filed is sufficient compliance with the liability clause.[21]

From the foregoing discussion, it is clear that the appellate court erred in concluding that the shortage was due to the negligence of the arrastre operator.

Second Issue:
Period to File a Claim for Loss
Petitioner contends that the appellate court misconstrued the liability clause printed on the dorsal side of the Arrastre and Wharfage Bill/Receipt. The contentious provision of this document reads:

> "`Liability Clause'
> "`The duly authorized representative of herein named CONSIGNEE, and ICTSI hereby certify to the correctness of the description of the containerized cargo covered by this CY GATEPASS, the issuance of which constitutes delivery to and receipt by Consignee of the containerized cargo as described in this CY GATEPASS, in good order and condition, unless otherwise indicated. This CY GATEPASS is subject to all terms and conditions defined in the Existing Management Contract between the PPA & ICTSI[;] PPA Administrative Order No. 10-81, ICTSI shall, however, be liable to the extent of the local invoice value of each package but not to exceed P3,500 Philippine currency for imported cargoes and P1,000 for domestic cargoes (consistent with Administrative Order 10-81 unless revised), unless the value thereof is otherwise specified or manifested or communicated in writing together with the invoice value and supported by a certified packing list to ICTSI by any interested party/ies before the discharge of the cargo and corresponding port charges ha[ve] been fully paid. This provision shall only apply upon filing of a formal claim within 15 days from the date of issuance of the Bad Order Certificate or certificate of loss, damage or non-delivery by ICTSI.'"[22]

Petitioner argues that the 15-day limitation for filing a claim against the arrastre operator should run from the time of the delivery of the goods to the consignee, and that the latter's failure to file a claim within said period is sufficient ground to deny the claim for loss.

On the other hand, the appellate court overruled the trial court, because the filing of the claim was dependent upon the issuance of a certificate of loss, damage or nondelivery. Since the petitioner did not issue such certificate, the 15-day limit, the CA opined, did not begin to run against the consignee. Private respondent argues that the clear and unambiguous language of the liability clause does not support petitioner's construction.

We agree with the petitioner. In order to hold the arrastre operator liable for lost or damaged goods, the claimant should file with the operator a claim for the value of said goods "within fifteen (15) days from the date of discharge of the last package from the carrying vessel x x x."[23] The filing of the claim for loss within the 15-day period is in the nature of a prescriptive period for bringing an action and is a condition precedent to holding the arrastre operator liable. This requirement is a defense made available to the arrastre operator, who may use or waive it as a matter of personal discretion.[24]

The said requirement is not an empty formality. It gives the arrastre contractor a reasonable opportunity to check the validity of the claim, while the facts are still fresh in the minds of the persons who took part in the transaction, and while the pertinent documents are still available. Such period is sufficient for the consignee to file a provisional claim after the discharge of the goods from the vessel.[25] For this reason, we believe that the 15-day limit is reasonable.

We should hasten to add that while a literal reading of the liability clause makes the time limit run from the moment the shipment is discharged from the carrying vessel, this Court has chosen to interpret this condition liberally in an endeavor to promote fairness, equity and justness.[26] A long line of cases has held that the 15-day period for filing claims should be counted from the date the consignee learns of the loss, damage or misdelivery of goods.[27]

In the case at bar, the consignee had all the time to make a formal claim from the day it discovered the shortage in the shipment, which was June 4, 1990, as shown by the records. According to the independent adjuster, the stripping or opening of the sea vans containing the shipped canned goods was made at the consignee's place upon

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receipt of the shipment. After discovering the loss, the consignee asked the adjuster to investigate the reason for the short-landing of the shipment. By the time the claim for loss was filed on October 2, 1990, four months had already elapsed from the date of delivery, June 4, 1990.

Prudential did not explain the delay. It did not even allege or prove that the discovery of the shortage was made by the consignee only 15-days before October 2, 1990. The latter had to wait for the independent adjuster's survey report dated September 7, 1990, before filing the claim with the former. By that time, however, it was clearly too late, as the 15-day period had expired.

In any event, within 15 days from the time the loss was discovered, the consignee could have filed a provisional claim, which would have constituted substantial compliance with the rule.[28] Its failure to do so relieved the arrastre operator of any liability for the nondelivery of the goods.[29] More specifically, the failure to file a provisional claim bars a subsequent action in court.[30] The rationale behind the time limit is that, without it, a consignee could too easily concoct or fabricate claims and deprive the arrastre operator of the best opportunity to probe immediately their veracity.

WHEREFORE, the Petition is hereby GRANTED. The assailed Decision and Resolution are SET ASIDE, and the trial court's Decision is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] CA Decision, pp. 1-2; rollo, pp. 20-21.

[2] Regional Trial Court of Manila, Branch 40, presided by Judge Felipe G. Pacquing.

[3] RTC Records, pp. 209-210.

[4] RTC Records, p. 223.

[5] Third Division composed of JJ Jorge S. Imperial, chairman; Eubolo G. Verzola and Artemio G. Tuquero, members.

[6] CA Decision, p. 4; rollo, p. 23.

[7] CA Resolution, rollo, p. 18.

[8] Petition, pp. 4-9; rollo, pp. 6-11.

[9] Summa Insurance Corporation v. Court of Appeals, 253 SCRA 175, 181, February 5, 1996; Northern Motors, Inc. v. Prince Line, 107 Phil. 253, 258, February 29, 1960; Lua Kian v. Manila Railroad Co., 19 SCRA 5, 8-9, January 5, 1967.

[10] Delgado Brothers, Inc. v. Home Insurance Co., 1 SCRA 853, 858-859, March 27, 1961; and Insurance Co. of North America v. Manila Port Service, 3 SCRA 553, 555-556, November 29, 1961.

[11] Ibid.; Chiok Ho v. Compañia Maritima, 13 SCRA 734, 737, April 30, 1965

[12] Malayan Insurance Co., Inc. v. Manila Port Services, 28 SCRA 65, 68-69, May 15, 1969.

[13] RTC Records, p. 195.

[14] RTC Decision, RTC Records, pp. 209-210.

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[15] TSN, October 5, 1995, pp. 5-6.

[16] CA Decision, p. 3; rollo, p. 22.

[17] RTC Records, pp. 172-175.

[18] Ibid.

[19] Keng Hua Paper Products Co., Inc. v. Court of Appeals, 286 SCRA 257, 270, February 12, 1998.

[20] Macondray & Co., Inc. v. Delgado Brothers, Inc., 107 Phil. 779, 782, April 28, 1960; Atlantic Mutual Ins. Co. v. Manila Port Service, 110 SCRA 240, 242, November 29, 1960; Delgado Brothers, Inc. v. Home Insurance Co., Insurance Co. of North America v. Manila Port Service, 3 SCRA 553, 556, November 29, 1961(Check: 1 SCRA 853); Lua Kianv. MRC, supra; Summa Ins. Corp. v. CA, supra; Malayan Insurance Co., Inc. v. Manila Port Service, 28 SCRA 65, 69, May 15, 1969.

[21] Atlantic Mutual Insurance Co. v. United Phil. Lines, Inc. 16 SCRA 521, 524-525, March 31, 1966; State Bonding & Insurance Co. v. Manila Port Service, 18 SCRA 1139, 11-43-1144, February 28, 1966; Yu Kimteng Construction Corporation v. Manila Railroad Company, 15 SCRA 292, 294, November 29, 1965; American Insurance Co. v. Manila Port Service, 19 SCRA 383, 385, February 18, 1967.

[22] Exh. "5," RTC Records, p. 195.

[23] Consunji v>. Manila Port Service,
[24] Insurance Co. of North America v. Manila Port Service, 21 SCRA 422, 426, October 11, 1967.

[25] Consunji v. Manila Port Service, supra; State Bonding Insurance Co., Inc. v. Manila Port Service, 18 SCRA 1139, 525, March 31, 1966; Atlantic Mutual Insurance Co. v. United Phil. Lines, Inc., supra, p. 525; State Bonding Insurance Co., Inc. v. Manila Port Service, 18 SCRA 1139, December 17, 1966; Shell Chemical Co. [Phil.s.], Inc. v. Manila Port Service, 72 SCRA 35, 39, July 7, 1976.

[26] Manila Port Service v. Court of Appeals, 22 SCRA 1364, 1370, March 29, 1968; and Communications Insurance Co., Inc. v. Manila Port Service, 39 SCRA 490, 493, June 10, 1971.

[27] Consunji v. Manila Port Service, supra, pp. 234-235; Yu Kimteng Construction Corp. v. Manila Railroad Company, 15 SCRA 292, 294-295, November 29, 1965; Insurance Co. of North America v. Manila Port Services, 32 SCRA 39, 42-43, March 25, 1970; Government Service Insurance System v. Manila Railroad Company, 15 SCRA 383, 387, November 29, 1965; Rizal Surety & Ins. Co. v. Manila Railroad Co., 19 SCRA 347, 349, February 17, 1967; New Zealand Ins. Co., Ltd. v. Manila Port Service, 19 SCRA 801, 803-804, April 24, 1967; Fireman's Ins. Co. v. Manila Port Service, 20 SCRA 1274, 1279-1280, August 31, 1967; Insurance Co. of North America v. Manila Port Service, 32 SCRA 39, 42-43, March 25, 1970.

[28] Atlantic Mutual Insurance Co. v. United Phil. Lines, Inc., supra, pp. 524-525; Domestic Insurance Co. of the Philippines v. Manila Railroad Company, 20 SCRA 1190, 1194, August 30, 1967; and State Bonding and Insurance Co., Inc. v. Manila Port Service, 18 SCRA 1139, 1144, February 28, 1966.

[29] Insurance Co. of North America v. Manila Port Service, supra, pp. 43-44.

[30] Universal Insurance & Indemnity Co. v. Manila Railroad Company, 32 SCRA 364, 366, April 24, 1970.3

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