

DELGADO BROTHERS, INC., PETITIONER, VS. HOME INSURANCE COMPANY AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 16567. March 27, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal by certiorari to review the decision of the Court of Appeals (in CA-G.R. No. 20441-R), reversing the judgment of dismissal of the Court of First Instance of Manila (in Civil Case No. 29144) and, instead, ordering petitioner-defendant Delgado Brothers, Inc. to pay to respondent-plaintiff Home Insurance Company, the sum of P1,436.86 plus 6% per annum interest from the commencement of the action until fully paid.

On March 7, 1956, respondent Home Insurance Company filed with the Court of First Instance of Manila a complaint against petitioner Delgado Brothers, Inc. alleging that on February 17, 1955, Victor Bijou & Co. of 14 East 37th Street, New York 16, New York, U.S.A., shipped at New York for Manila aboard the vessel S.S. Leoville, and consigned to the Judy Philippines, Inc. of Manila, a shipment of 1 case Linen Handkerchief and 2 cases cotton piece goods, for which, the New York agent of said vessel, the Barber Steamship Lines, Inc., issued Bill of Lading No. 119; that said shipment was insured with herein respondent by the shipper and/or consignee; that said vessel arrived at the Port of Manila on March 30, 1955 and, thereafter, said shipment was unloaded complete and in good order from said vessel by petitioner, but the latter delivered the same to the consignee with 1 case of Linen Handkerchief in bad order, with a shortage of 503 yards of Linen Print Handkerchiefs, to the prejudice, loss and damage of the shipper and/or consignee in the sum of P1,287.20; that the shipper and/or consignee filed its claim with petitioner for said loss in the sum of \$713.08 (P1,436.86); and since respondent paid the amount to the shipper and/or consignee, the former was subrogated to the shipper's and/or consignee's rights and interests; that notwithstanding respondent's claim against petitioner, the latter failed and refused to pay the shipper and/or consignee and/or respondent the total claim of P1,287.20; and that as a result of petitioner's gross and evident bad faith to pay the claim of the shipper and/or consignee and/or respondent, it was compelled to file the case and will incur attorney's fees in the sum of P478.95. Respondent prayed that petitioner pay to it the sum of P1,287.20, with legal interest thereon from the filing of the complaint until fully paid; P149.66, the difference between P1,436.86 paid by respondent to the shipper and/or consignee and the said sum of P1,287.20; and P478.95 as attorney's fees, plus costs.

To this complaint, petitioner filed its answer on March 27, 1956, alleging as special defense that since no claim whatsoever was filed by respondent or the consignee, or their representatives against petitioner within the 15-day period from the date of the arrival of the goods before they could file a suit in the court of proper jurisdiction within 1 year from the date of said arrival at the Port of Manila, petitioner is completely relieved and released of any and all liability for loss or damage under the law and in accordance with the pertinent provisions of the Management Contract with the Bureau of Customs, covering the operation of the Arrastre Service for the Port of Manila; and that petitioner in no way acts as an agent of the carrying vessel or of the importer or consignee.

Petitioner, therefore, prayed for the dismissal of respondent's complaint.

On October 16, 1956, petitioner filed a motion to dismiss the complaint, on the ground that "the court has no jurisdiction over the subject matter of the complaint", to which, respondent filed an opposition on October 19, 1956, alleging that since the case is an action in admiralty, it is within the original jurisdiction of the court. On October 20, 1956, the court issued an order denying petitioner's motion to dismiss.

The case was, therefore, tried and, after trial the court, on March 6, 1957, rendered a decision dismissing the case and absolving petitioner from liability to respondent, not on the ground of lack of jurisdiction raised by petitioner-defendant, but on the merits of the latter's special defenses invoked in its answer.

Not satisfied with said decision, respondent appealed to the Court of Appeals which court, on December 29, 1959, rendered as already adverted to, a decision reversing the judgment of the Court of First Instance of Manila and ordering petitioner to pay to respondent the sum of P1,436.86, plus 6% per annum interest thereon from the commencement of the action until fully paid. Hence, this appeal.

Petitioner, in this instance, claims that the Court of Appeals (as did the Court of First Instance of Manila) erred in not dismissing respondent's complaint on the specific ground that it (Court of First Instance) had no jurisdiction over the subject matter of the action, the same not being an admiralty case, and the amount sought to be recovered falling within the exclusive original jurisdiction of the Municipal Court of Manila.

Appellant's contention is meritorious. In the case of *Macondray & Company, Inc. vs. Delgado Brothers, Inc.* (107 Phil., 779), the facts and issues of which are identical, *mutatis mutandis*, to the case at bar, we held:

"The case at bar does not deal with any maritime matter or with the administration and application of any maritime law. As custodian of the sixty-eight (68) cartons of paints it had received from the M/S Pleasantville, it was defendant's duty, like that of any ordinary depositary, to take good care of said goods and to turn the same over to the party entitled to its possession, subject to such qualifications as may have validly been imposed in the contract between the parties concerned. Such duty on the part of the defendant would be the same if the final destination of the goods were Manila, not Iloilo, and the goods had not been imported from another state. The only issues raised in the pleadings are (1) whether or not defendant had fully discharged its obligation to deliver the aforementioned sixty-eight (68) cartons of paint; and (2), in the negative case, the amount of indemnity due the plaintiff therefor. The determination of those questions does not require the application of any maritime law and cannot affect either navigation or maritime commerce. The foreign origin of the goods is—under the attending circumstances—immaterial to the law applicable to this case or the rights of the parties herein, or the procedure for the settlement of their duties. Indeed, it is well-settled that—

"In case of controversy involving both maritime and non-maritime subject matter, where the principal matter involved belongs to the jurisdiction of a court of common law or of equity, admiralty will not take cognizance of incidental maritime matters connected therewith but will relegate the whole controversy to the appropriate tribunal." (2 C.J.S. 66)". (Italics supplied.)

Respondent, however, submits that the above-quoted ruling is wrong and argues a re-examination of the issue, arguing that petitioner's arrastre service is maritime in nature and, therefore, actions against petitioner arrastre operator properly come under the jurisdiction of the Court of First Instance of Manila.

We have carefully considered respondent's arguments, but found nothing to justify a departure from our conclusion in the *Macondray Case*, *supra*. Section 2 of the Management Contract entered into between petitioner and the Bureau of Customs on October 21, 1950 (effective January 1, 1951), reads as follows:

"2. During the period while this agreement remains in force and effect, the Contractor (herein petitioner Delgado Brothers, Inc.) shall be, and the sole manager of the Arrastre Service at the Port of Manila, subject

always, however, to the terms, conditions, restrictions, subjections, supervisions, and provisions in this agreement contained, with the exclusive right or privilege of receiving, handling, carrying for, and delivering all merchandise, imported and exported, upon or passing over, the Philippines Government-owned wharves and piers in the Port of Manila; as also, the recording or checking of all merchandise which may be delivered to the Port of Manila at shipside, except coal, lumber and fire-bricks in quantity, case crude oil and kerosene and gasoline in lots of over ten thousand cases or its equivalent, and whole cargoes of one commodity when consigned to one consignee only as hereafter provided, and in general to furnish lighting and water services and other incidental services, in order to undertake such work, and with full power to fix the number and salaries of, and to appoint and dismiss, all officers, employees and laborers, temporary and permanent, which may be necessary, and to do all acts and things which said Contractor may consider conclusive to the interests of the Arrastre Service." (Italics supplied.)

Under this provision, petitioner's functions as arrastre operator are (1) to receive, handle, care for, and deliver all merchandise imported and exported, upon or passing over Government-owned wharves and piers in the Port of Manila, (2) as well as to record or check all merchandise which may be delivered to said port at shipside, and in general (3) to furnish light and water services and other incidental services in order to undertake its arrastre service. Note that there is nothing in those functions which relate to the trade and business, of navigation (1 Am. Jur. 564), nor to the use or operation of vessels (Id. at 568). Both as to the nature of the functions and the place of their performance (upon wharves and piers shipside), petitioner's services are clearly not maritime. As we held in the Macondray case, they are no different from those of a depositary or warehouseman. Granting, arguendo, that petitioner's arrastre service depends on, assists, or furthers maritime transportation (Id. at 565), at may be deemed merely incidental to its aforementioned functions as arrastre operator and does not, thereby, make petitioner's arrastre service maritime in character.

"To give admiralty jurisdiction over a contract as maritime, such contract must relate to the trade and business of the sea; it must be essentially and fully maritime in its character; it must provide for maritime services, maritime transactions, or maritime casualties." (The James T. Furber, 129 Fed. 808, cited in 66 L.R.A. 212; italics supplied.) See also 2 C.J.S. 66, supra.

The case of Cebu Arrastre Service vs. Collector of Internal Revenue (99 Phil., 297; 53 Off. Gaz., 2487) cited by respondent is irrelevant to the present case, considering that the functions of the Cebu Arrastre Service involve the loading and unloading of coastwise vessels calling at the port of Cebu and are, therefore, of a "stevedore", subject to the percentage tax under Section 191 of the Tax Code. Similarly, the case of American Stevedores vs. Porello (330 U.S. 446, 91 Ed. 1011) is inapplicable, involving as it does, stevedores or longshoremen, not an arrastre operator. In the instant case, Delgado Brothers, Inc. has nothing to do with the loading or unloading of cargoes to and from the ships. Its operation on and its responsibility for the merchandise and goods begins from the time they are placed upon the wharves or piers or delivered along sides of ships. Evans vs. New York & Pacific Steamship Co. Ltd., et al. (145 F. 841) cited by respondent is, likewise, not in point. It should be noted that in said case, the New York & Pacific Steamship Co. Ltd. (owner of the steamship "Capac" and with whom appellant Evans has a contract evidenced by a bill of lading), and not the warehouseman or depositary Beards Erie Basin Stores, was the one sued by said appellant Evans for recovery of the value of 20 bales of rubber which said steamship failed to deliver. Hence, the District Court of New York properly held that the contract with the steamship company was maritime in nature, over which it had jurisdiction to entertain and decide. Undoubtedly, the Court of First Instance of Manila has jurisdiction in cases where suit is brought directly against the carrier or shipowner.

Respondent cannot invoke the rule against multiplicity of suits, for the simple reason that said rule has to be subservient to the superior requirement that the court must have jurisdiction. (See International Harvester Company of the Philippines vs. Judge Aragon, et al., 84 Phil., 363; 47 Off. Gaz., 701).

With these conclusions, it is needless to discuss the other points raised in the briefs.

Wherefore, the decision of the Court of Appeals appealed from is hereby reversed and set aside, and case dismissed, with costs against the respondent. So ordered.

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

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