

**RIZAL SURETY & INSURANCE CO., PLAINTIFF AND APPELLEE
VS. MANILA RAILROAD CO., MANILA PORT SERVICE AND C.F. SHARP
& CO. INC., DEFENDANTS. MANILA RAILROAD CO., AND MANILA
PORT SER...**

G.R. No. 19485. February 17, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Manila Railroad Company and the Manila Port Service appealed from the decision of the Court of First Instance of Manila ordering them to pay jointly and severally the sum of P2,815.02, plus P500.00 attorney's fees and costs, to the plaintiff Rizal Surety & Insurance Company.

The facts are stipulated by the parties. The Manila Port Service is a subsidiary of the Manila Railroad Company and was, at the time material to this case, the operator of the arrastre service at the port of Manila, with authority to receive and deliver cargo discharged or unloaded by vessels into its custody upon presentation of the proper papers. Its liabilities in connection with such work were subject to the terms, conditions and limitations of its management contract with the Bureau of Customs. On or about October 10, -1959 the vessel "SS Dresden," operated by defendant C.F. Sharp & Company, took on board at Buenos Aires, Argentina for shipment to Manila four hundred fifty-four (454) cases of Hereford corned beef consigned to Natividad U. Lim of Manila. Lim insured the shipment for P19,584.29 with appellee Rizal Surety & Insurance Company. The "SS Dresden" arrived in Manila on December 13, 1959. On December 17, 1959 the carrying vessel completely discharged into the custody of the Manila Port Service all the 454 cases of Hereford corned beef in good order, with the exception of one case, which was damaged. Of this shipment appellants delivered to the Rapid Brokerage Inc., Lim's customs broker, 357 cases on January 20, 1960 and one case on January 29, 1960, or a total of 358 cases. In accordance with the policy issued by appellee, it paid Lim the sum of P2,815.02, the value of the 96 cases which had been lost. On January 21, 1960 a claim was filed with the Manila Port Service for the short delivery. The claim was rejected and this suit was commenced on October 14, 1960 by the insurer, as subrogee of the rights of the consignee.

Defendant C.F. Sharp admitted its liability for P19.77, the C.I.F. value of 33 tins of corned beef missing from the damaged case discharged from the vessel, and it was ordered by the lower court to pay said amount to appellee. On the other hand, the Manila Railroad Company and the Manila Port Service were held liable jointly and severally as aforesaid.

Appellants deny liability on the ground that the claim was filed beyond the period of fifteen days from the date of discharge of the last package from the carrying vessel, as required by paragraph 15 of the Management Contract, which provides:

"* * * in any event the Contractor shall be relieved and released from any loss, damage, mis-delivery and/or non-delivery of goods, unless suit in the Court of proper jurisdiction is brought within a period of one year

from date of the discharge of the goods or from the date when the claim for the value of such goods have been rejected or denied by the contractor, provided that such claims shall have been filed with the Contractor within fifteen (15) days from the date of discharge of the last package from the carrying vessel."

To be sure, Natividad U. Lim, the consignee and appellee's predecessor-in-interest, had notice of the abovequoted stipulation, having taken delivery of the goods under a "permit to deliver" issued by the Bureau of Customs and the corresponding "gate pass" issued by the Manila Port Service, on each of which the stipulation was duly stamped. The delivery permit, however, was received by her only on January 18, 1960, while the gate pass was given to her two days later, or on January 20, 1960. By then it was already impossible to comply with the requirement that the claim be filed within fifteen (15) days from discharge, more than 30 days having elapsed already.

Furthermore, the stipulation of facts shows that the shipment was completely discharged into the custody of appellant, all the 454 cases being in good order except one, which had suffered some damage. The loss, therefore, while the merchandise was in appellant's hands. There is no evidence as to the exact date the loss occurred, and the consignee had no reason to file a claim until she was in a position to know about the loss; and the earliest date she could possibly have discovered it was January 18, 1960, as it was only then that the Bureau of Customs issued the delivery permit, assuming that she could have obtained the necessary "gate pass" and actually taken delivery of the shipment on the same date. Under the circumstances, a literal compliance with the disputed provision of the management contract would be illogical and oppressive. The consignee cannot be charged with negligence or delay in the assertion of her rights, for not only did she file her claim with appellants the day immediately following delivery of the shipment to her, minus the missing cases, but she filed a provisional claim on December 13, 1959, even before the discharge from the vessel was completed. In other words, the consignee did all that she could be expected to do and to require her to do more in order to comply with strict letter of the management contract was entirely unjustified.

Wherefore, the judgment appealed from is affirmed, with costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro. JJ., concur.

Judgement affirmed.

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