

SHELL COMPANY OF THE PHILIPPINES, LIMITED, PLAINTIFF AND APPELLEE, VS. COMPANIA GENERAL DE TABACOS DE FILIPINAS, ET AL, DEFENDANTS; MANILA PORT SERVICE AND/OR MANILA RAILROAD CO...

G.R. No. 20230. July 30, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On April 12, 1960, at Los Angeles, California, U. S. A., Shell Chemical Company shipped on board M/S Sally Maersk of the Maersk Line a cargo consisting of ten (10) drums of styrene monomer with invoice value of US \$804. 06 (P1,620. 18 at P2.015 per U. S. dollar) for Manila consigned to Shell Company of the Philippines, Ltd. Said vessel arrived in Manila on May 6, 1960. Per cargo receipts Nos. 82552 and 82553, the ten drums of styrene monomer were unloaded and delivered on May 7, 1960 to the Manila Port Service, a subsidiary of the Manila Railroad Company managing and operating the arrastre service in the Port of Manila. One day prior to discharge, that is on May 6, 1960, Ildefonso Tionloc, Inc. acting as customs broker of Shell Company of the Philippines, Ltd., filed with the claims division of the Manila Port service a provisional claim dated May 5, 1960, in the following tenor:

"We beg to advice you that the following packages ex above steamer have been (short loaded or bad order) and provisional claim is hereby made for any shortage or damage that may after examination be found to exist.

"It is requested that examination of your records of discharge be made immediately in order to determine responsible of the same." [Sic]

* * * * *

A similar claim dated May 18, 1960 was presented on May 23, 1960 by Ildefonso Tionloc, Inc. to Compañia General de Tabacos de Filipinas, the shipping agent in Manila of Maersk Line.

On May 19, 1960 Ildefonso Tionloc, Inc. filed with, and was granted by, the Bureau of Customs a permit to deliver imported goods covering 10 drums of styrene monomer. Said permit which was signed by Ildefonso Tionloc, Inc. bore at the back thereof the provisions of Paragraph 15 of the arrastre management contract between the Bureau of Customs and the Manila Port Service.

No delivery, however, was made, so on August 8, 1966 Shell Company of the Philippines, Ltd. wrote Compañia General de Tabacos de Filipinas stating that the 10 drums of styrene monomer could not be located and that it was therefore filing a claim against the latter for the invoice value thereof in the sum of \$804.06. In reply, Compañia General de Tabacos de Filipinas informed Shell Company of the Philippines, Ltd. that the ten drums of styrene monomer were "discharged complete and in good order, against the following clean receipts: T/S #82552—6 drums, T3 #82553—4 drums" and therefore the claim should be pressed against the "arrastre contractors and/or your cargo underwriters". Whereupon, Shell Company of the Philippines, Ltd., by letter dated August 24, 1960,

directed its claim against the Manila Port Service. The Manila Port Service made no reply but issued on September 16, 1960 a certificate stating that the 10 drums of styrene monomer do not appear in its records to have been delivered.

Thus, on May 6, 1961 Shell Company of the Philippines, Ltd. brought an action before the Court of First Instance of Manila against Compañia General de Tabacos de Filipinas and/or Manila Port Service and/or Manila Railroad Company for the recovery of the value of the goods in question. In its answer Manila Port Service denied liability, invoking the provisions of Paragraph 15 of the arrastre management contract it entered into with the Bureau of Customs. After hearing the parties, the trial court held the management contract unenforceable against Shell Company of the Philippines and rendered the following judgment:

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiff and against the defendants Manila Port Service and Manila Railroad Company, ordering the latter to pay to the former the sum of P1,620.18, representing the value of the 10 drums of styrene monomer, with interest thereon at 6% per annum from May 8, 1961 until fully paid, plus the sum of P500. 00 as attorney's fees, and the costs of this suit.

"The defendant Compañia General de Tabacos de Filipinas is absolved from the complaint.

"SO ORDERED."

Only the Manila Port Service appealed to this Court.

The issues are: (1) Is the arrastre management contract between the Bureau of Customs and the Manila Port Service binding upon Shell Company of the Philippines, Ltd.? (2) If so, was the provisional claim for shortage or damage to the goods in question filed by Ildefonso Tionloc, Inc., as customs broker of Shell Company of the Philippines, Ltd., one day prior to their discharge from the carrying vessel sufficient compliance with the provisions of Paragraph 15 of the aforesaid arrastre management contract?

Appellant maintains that Shell Company of the Philippines, Ltd. has made itself bound by the provisions of the management contract, particularly Paragraph 15 thereof, when it signed and presented to appellant, through its broker, the permit to deliver imported goods, on the reverse side of which appears the following:

"Important Notice

"This Permit is presented subject to all the terms and conditions of the Management Contract between the Bureau of Customs and Manila Port Service and amendments thereto and 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; declared or manifested and the corresponding arrastre charges have been paid, providing exemptions of restrictions from liability; and releasing the Company from liability unless suit is brought within one (1) year from the date of discharge of the goods, or from the date when the claim for the value of the goods has been rejected, provided, such claim shall have been filed with the Company within 15 days from date of discharge of the last package from the carrying vessel."

In a long line of decisions we have consistently ruled that a consignee who, personally or through a broker, secures from the Bureau of Customs a delivery permit where in is reproduced the limitations contained in the "Important Notice" quoted above, signs and presents it to the arrastre contractor, and obtains thereunder partial delivery of the goods, is bound by the provisions of the management contract between the Bureau of Customs and the arrastre contractor as if he were a party thereto.[1] In such cases the consignee was not only aware of the limitations contained in Paragraph 15 of the Management contract but it also took advantage of and received benefits under said contract. In those cases, however, where the consignee did not sign the delivery permit and completely failed to obtain delivery thereunder because all the goods were missing or could not be located, we

denied enforceability of the provisions of the management contract upon the consignee.[2]

The consignee in the instant case did not make use of the delivery permit and derived no benefit from the management contract. Shell Company of the Philippines, Ltd. could not have made use of the delivery permit or accepted the services of the Manila Port Service for no delivery, partial or total, was ever made because all the goods could not be found. As a matter of fact, the Manila Port Service certified to the non-delivery of said goods.

Sheer notice of the provisions of the management contract on the part of Shell Company of the Philippines, Ltd. does not suffice to bind it as a party thereto. Where the consignee did not, personally or thru its broker, make use of any delivery permit as the goods were never withdrawn from the piers, it is not bound by the notice appearing on the back of the permit that claims for losses must be filed within fifteen days from the discharge of the goods.

We now come to the issue of whether or not a provisional claim for damage or short delivery filed before the goods are actually discharged from the carrying vessel is sufficient compliance with the conditions in Paragraph 15 of the management contract in the cases where such conditions bind the consignee. We hold that Paragraph 15 of the management contract clearly and specifically requires the claim to be filed "within fifteen (15) days from date of discharge of the last package from the carrying vessel." Quite obviously therefore such claim should be filed after discharge of the goods from the vessel. A claim filed before such discharge is premature and speculative.

Wherefore, the judgment appealed from is hereby affirmed, with costs.

So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

[1] Tomas Grocery vs. Delgado Bros., Inc., 105 Phil., 549; 56 Off. Gaz., (27) 4422; Northern Motors, Inc. vs. Prince Line, 107 Phil., 253; Bernabe vs. Delgado Bros., Inc., 107 Phil., 287; Bernabe vs. Delgado Bros., Inc., 58 Off. Gaz., (6) 1104; Juan Ysmael & Co., Inc. vs. United States Lines Co. L-14394, April 30, 1960; Domestic Insurance Co. vs. Manila Port Service, L-15060, Aug. 31, 1960; Ong Yet Hua Hardware Co., Inc. vs. Manila Railroad, 110 Phil., 219; Villanueva vs. Barber-Wilhelmsen Line, 110 Phil., 84; Commercial Union Assurance Co., Ltd. vs. Manila Port Service, 113 Phil. 358; Insurance Company of North America vs. Manila Port Service, 113 Phil. 559; Domestic Insurance Company of the Philippines vs. Manila Port Service, 114 Phil. 131; Atlantic Mutual Insurance Co. vs. Manila Port Service, 116 Phil. 786; Insurance Company of North America vs. United States Lines, 119 Phil. 783.

[2] Sun Bros & Co. vs. Manila Port Service, 58 Off. Gaz., (9) 1722; Reliance Surety & Insurance Co. vs. Manila Railroad Co., 119 Phil. 1091.

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