

CALTEX (PHILIPPINES) INC., PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 21055. August 31, 1966*

Ponente: BARRERA, J.

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This is an appeal from the decision of the Court of First Instance of Manila (in Civ. Case No. 44253) ordering the defendants Manila Port Service and Manila Railroad Company, to pay to plaintiff Caltex (Phil.) Inc., the sum of P8,028.60, with legal interest thereon from April, 1960, until fully paid.

Plaintiff was the consignee of several shipments of lubricating grease, paraffin wax, acidless tallow, and other similar products, carried by the vessel "SS Ferndale" and discharged unto the custody of the Manila Port Service on March 22, and 23, 1960. Of the goods received by the Manila Port Service, consigned to Caltex (Phil.), Inc., 30 drums of acidless tallow oil compound, 1 crate of paraffin wax and 2 pails of lubricating oil could not be located. Thus, a provisional claim therefor was filed by the consignee with the arrastre operator on March 25, 1960, followed by formal demands. As no action thereon was taken, the consignee went to the Court of First Instance of Manila, demanding from the Manila Port Service the payment, not only of the sum of P6,422.88, allegedly the value of the missing goods, but also of the 25% marginal fee imposed and paid on that amount by said plaintiff. Defendant, in its answer, denied liability for the value of the undelivered articles.

After due trial, decision was rendered granting plaintiff's claim and ordering defendants to pay the same. The latter filed the present appeal.

It is claimed now by appellants that the lower court erred (1) in not limiting their liability to P500.00, pursuant to Section 15 of the Management Contract between the Bureau of Customs and defendant Manila Port Service; and (2) in holding defendants liable to pay to plaintiff-appellee the sum of P8,029.60.

The first assigned error cannot be sustained. The pertinent portion of Section 15 of the Management Contract, relied upon by appellants, reads as follows:

"x x x the CONTRACTOR shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but in no case shall be more than five hundred pesos (P500.00) for such package unless the value is otherwise specified or manifested, and the corresponding arrastre charges had been paid, including all damages that may be suffered on account of loss, destruction, or damage of any merchandise while in the custody or under the control of the CONTRACTOR x x x." (Underlining supplied.)

It is not disputed that 33 pieces of goods or containers, consigned to plaintiff-appellee, duly unloaded unto the custody of the defendant-appellant Manila Port Service, were not delivered. If appellants' prayer, that their liability be limited to P500.00 per missing or undelivered package were granted, the loss of the articles would have cost appellants much more than the amount awarded by the lower court. For, as ordinarily understood, and there is no showing that the term is given any technical meaning, package is a bundle made up for transportation;

a packet; a bale; a parcel; or that in which anything is packed; a box, case, barrel, crate, etc., in which goods are packed; a container. [1] The articles in this case were contained in drums, pails and crate. If appellants' liability were fixed at P500.00 per container, and there are 33 of them, they should have been required to pay more than P8,028.60. And yet, this is only the amount being claimed by plaintiff-appellee, it being allegedly the invoice value of the missing goods.

As to the second issue, it appears that the sum of P8,028.60 is broken as follows:

30 drums, acidless tallow.....	
P6,350.82	
1 crate, paraffin wax (texwax)	
38.72	
2 5-gal. pails, lube oil (Regal Oil A, R & O)	
33.34	
25% margin fee	
P6,422.88	
TOTAL	
P8,028.60	

Appellants, however, contest the valuation given to the articles and the inclusion of the 25% margin fee on the alleged value of the undelivered articles in Philippine pesos.

The records show that the purchasing price of acidless tallow oil compound was \$.147 per lb. or \$1,755.47 for 11,942 net lbs. (total net weight of the tallow in 30 drums); the paraffin wax at \$12.10 per crate; and the 5-gallon lube oil at \$3.03 per pail or \$6.06 for the 2 pails. (Exhs. B and B-1). In short, the total cost to the consignee of the missing goods was \$1,773.63. In preparing its claim, plaintiff-appellee apparently converted the cost of the tallow at the rate of P3.005 for every dollar (\$1,755.47 to P6,350.82); that of the paraffin wax (Texwax) at the rate of P3.20 for every dollar (\$12.10 to P38.72), and the cost of lube oil, at the rate of P5.50 for a dollar (P\$6.06 to P33.34). However, evidence was presented that as of April 18, 1960, the conversion rate of foreign exchange is P2.015 for every dollar (Exh. G). Consequently, the cost of the undelivered goods (\$1,773.63) should be only P3,568.86.

Appellants, likewise, dispute the inclusion of the "marginal fee", imposed and paid by the consignee on the cost of the importation, in the amount payable to the latter, the said fee not being part of the invoice value of the goods. However, it may be pointed out that under Section 15 of the management contract, the Contractor or arrastre operator is responsible, not only for the invoice value of the goods in case of loss or damage thereof, but also for "all damages that may be suffered on account of loss, destruction, or damage of any merchandise" while under its custody or control. It is not denied that a marginal fee corresponding to 25% of the foreign exchange used (imposed on the converted amount in Philippine currency), was paid by the plaintiff-appellee in connection with the importation involved herein. It cannot also be controverted that with the loss of the goods in question, the marginal fee paid on the foreign exchange used in the purchase thereof would also be lost. The amount corresponding to this fee is, therefore, collectible from the defendants as actual damages, which is allowed under Section 15 of the Management Contract.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby modified. The defendants-appellants are ordered to pay to the plaintiff-appellee the sum of P3,568.86, the value of the undelivered goods, plus the 25% margin fee paid on said sum, amounting to P892.22, or a total of P4,461.08, with legal interest thereon from April, 1960, until fully paid. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Regala, J., on leave, no part.

[1] Webster's New International Dictionary, second edition p. 1750.

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