

DELGADO BROTHERS, INC., AND DELGADO BROKERAGE CORPORATION, PLAINTIFFS AND APPELLEES, VS. MANILA PORT SERVICE AND MANILA RAILROAD COMPANY, DEFENDANTS AND APPELLANTS.

G. R. No. 21781. June 30, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from a decision of the Manila Court of First Instance holding the appellants liable to the appellees for the sum of P243.96.

The facts are undisputed. A shipment consigned to the Catholic Relief Services, National Catholic Welfare Conference, consisting of 256 units of miscellaneous relief supplies, arrived in the port of Manila on July 4, 1959. All the packages in consignment were unloaded from the carrying vessel the last of which was on July 6, 1959.

As early as July 8, 1959, or only two days after the discharge of the last package, provisional claim on the goods was filed with the arrastre contractor, the Manila Port Service. Again on November 22, 1960, formal claim was presented and receipt of this was acknowledged by the Manila Port Service*. In said acknowledgment, it was stated that the "claim is under careful consideration and we shall let you know of our action in due time."

On December 25, 1960, the Delgado Brokerage Corporation, as broker for the consignee, made a follow-up letter of their claim. It was only on March 17, 1961 that the arrastre contractor sent notice to the broker advising that the "claim has prescribed inasmuch as you did not commence suit against us within one (1) year from July 6, 1959, the date of the discharge of the last package from the carrying vessel.

It appears that the shipment suffered a loss by way of shortage in weight before the Manila Port Service delivered the same to the broker and that the latter paid to the consignee the amount of P243.96 (as amended on account of the damage), for which reason the said broker was subrogated unto the consignee's rights and interests in the loss.

On May 6, 1961, the Delgado Brothers, Inc. and the Delgado Brokerage Corporation filed with the municipal court of Manila a complaint against the Manila Port Service and the then Manila Railroad Company, alleging that they had demanded from the defendants payment of the amount representing the loss but the latter, acting with gross and evident bad faith, failed and refused to pay the claim. The municipal court found the defendants liable for the sum of P243.96. The case was soon elevated by the defendants to the Court of First Instance but that court, after trial, likewise decided in favor of the plaintiffs, holding defendants liable, jointly and severally, for the same amount with legal rate of interest from the filing of the complaint.

The defendants have appealed.

The only issue here is whether or not the complaint of May 6, 1961 was filed within the period contemplated in paragraph 15 of the Management Contract under which the defendants operate the arrastre service in the port of

Manila. The said paragraph reads, in part:

**** in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery and/or non-delivery of goods, unless suit is filed in the Court of proper jurisdiction within a period of one (1) year from the date of the arrival of the goods, or from the date when the claim for the value of such goods has been rejected or denied by the CONTRACTOR, provided that such claim shall have been filed with the CONTRACTOR within fifteen days from the date of the arrival of the goods.****" (Italics ours)

Both periods mentioned in the quoted provision of the management contract have been recognized and made effective by this Court in earlier cases (*infra*). The first period refers to a case when the claimant takes action without waiting for the ruling of the contractor in which case the action should be filed within one year from the date of discharge of the goods; and the second when the claimant prefers to wait for such ruling in which case the action should be filed within one year from the date of rejection. (*Consunji, et al. vs. The Manila Port Service, et al.*, 110 Phil., 231.)

The defendants-appellants insist that while there are two periods provided for in the contract, in any event the suit must be filed within one year from the date of arrival of the goods. To uphold this contention would make it unfair to the consignee, for all that the arrastre contractor would need to do to bar the claimant from suing in court would be to assure the latter that his claim is under consideration and that he would be informed of its decision in due time; wait for one year; and then send notice that the claim has prescribed.

As already stated, provisional claim for the shipment in this case was made as early as July 8, 1959, or two days after the discharge of the last shipment. The arrastre contractor, however, communicated with plaintiffs only on December 2, 1960 when, for the first time, it made acknowledgment of plaintiff's claim. And again, the said contractor did not give any information of its decision upon the claim until March 17, 1961 when it finally expressed rejection thereof for the reason that the consignee or its broker did not commence suit against it within one year from July 6, 1959, the discharge of the last cargo from the carrying vessel.

We held in the case of *Continental Insurance Co. vs. Manila Port Service, et al.*, G. R. No. L-22208, March 30, 1966, that when the arrastre contractor fails to act on the claim within the period of one year from the date of discharge of the goods, the claim must be deemed rejected as of the expiration of one year from the date of discharge of the last package or cargo, in which case the action should be filed within one year from said rejection. Applying this solution to the case at bar, where July 6, 1959 was the date of the discharge of the last cargo from the vessel, the date when the claim is deemed to have been rejected would be after one year, or July 6, 1960. Since the complaint was filed on May 6, 1961, less than one year from July 6, 1960, this suit was filed well within the period required under the management contract.

IN VIEW HEREOF, the decision appealed from is hereby affirmed, with costs against the appellants.

Concepcion, C.J., Reyes, J.B.L., Barrera, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

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