MARIANO UY CHACO SONS & CO., PLAINTIFF AND APPELLEE, VS. THE ADMIRAL LINE, DEFENDANT AND APPELLANT.

G.R. No. 22134. October 17, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

The plaintiff, Mariano Uy Chaco Sons & Co., alleges as a cause of action, that upon arrival of the S. S. Satsuma at the port of Manila on June 22, 1920, there were short-delivered one case of varnish and paint remover and fifty bales of oakum, for the conversion of which, defendant is liable. The defendant, the Admiral Line, relies on the defense in its second amended answer that the merchandise had been delayed, had been found, and delivery thereof had been tendered and rejected. Judgment was for plaintiff for the value of the case of varnish and paint remover, P22.80, for the value of the fifty bales of oakum, P700, for the freight, P195.50, and for the insurance, P18, or a total of P936.30, with legal interest and costs.

It is defendant's contention on appeal that plaintiff was in duty bound to have accepted the goods when tendered, as the plaintiff, not the defendant, was the owner of the goods and as there was no conversion by defendant. To this, plaintiff replies that it was justified, following such a long delay in delivery, in refusing the tender of the merchandise so tardily made.

Defendant relies on the general rule that mere delay in the delivery of goods by a common carrier, no matter how long continued, is not a conversion thereof, but is only a breach of the contract of carriage. Therefore, where a carrier fails to deliver goods within a reasonable time, although he thereby makes himself liable for the damages incurred by reason of the delay, the consignee cannot refuse to accept the goods from him and recover their value, but is compelled to receive them. The most usual element of damages for a carrier's negligent delay in delivering the goods of the consignee is the difference between the market value of the goods at the time when they should have been delivered, and the time when they were delivered, to which may be added reasonable expenses caused by the delay; but if there has been a conversion of the goods by the carrier, and the consignee has not thereafter accepted them, he is entitled to recover the value of the goods at the time they should have been delivered to him. (10 C. J., pp. 283, 307; 4 R. C. L., pp. 737, 745, 931; Carver's Carriage by Sea, sees. 711-727; 2 Hutchinson on Carriers, sec. 651; Baltimore & Ohio Railroad Co. vs. O'Donnell [1893], 49 O. St., 489; 21 L. R. A., 117; Chesapeake & Ohio Railway Co. vs. Saulsberry [1907], 12 L. R. A., [N. SJ, 431.)

That is sound doctrine. It should be applied to the multiform transactions coming before the courts. But our heads should not be so lost in the clouds of abstract theory, even if charmingly advanced by learned counsel, as to cause us to lose sight of the necessity of keeping our feet firmly planted on the mundane earth of actual fact.

The relevant data follows: The merchandise should have been landed on June 22, 1920. Not having been delivered either on that day or any subsequent day before May 21, 1921, and all efforts to secure satisfaction from the carrier having failed, the complaint was presented on the date last mentioned. It was amended on July 12, 1921. Answer in the form of a general denial was interposed by the defendant on August 11, 1921. The first

amended answer was filed on February 18, 1922. Formal tender of the goods was made by the defendant on October 7, 1922. Efforts at compromise having failed, plaintiff moved on April 27, 1923, for the assignment of the case for hearing. On August 14, 1923, defendant offered its second amended answer in which the claim now advanced was first announced, saying "That since the institution of this action, etc." One week later, on August 21, 1923, the trial commenced.

The interval which elapsed between the date when the merchandise should have been delivered and the presentation of the complaint was approximately eleven months. The delay which ensued between the date when the merchandise should have been delivered and the date when it was finally tendered was close to two years and four months. The time which passed between the date when the merchandise should have been delivered and the date when the defense of tender was set up, was over three years, and this particular line of defense was not announced until shortly before the trial.

With the facts to the forefront, certain pertinent interrogatories may be propounded. Accepting the general principles of carriers, damages, and conversion, are there not exceptions to these broad rules? Is there not some limit to the time which the consignee must wait for the delivery of his goods before he can justly assume conversion of them to have taken place and sue for the recovery of their value? Where the goods have not been landed with other goods as expected, and where after long delay they are still undelivered, cannot the consignee bring suit to recoup himself for the loss, without having to wait for a period of time which might extend to eternity, before asking for redress?

No case coming either from the local forum or from foreign jurisdictions which exactly fits the facts has been found. (But Behn, Meyer & Co. vs. Banco Espanol-Filipino [1908], 11 Phil., 253, and Yangco vs. Meerkamp & Company, R. G. No. 15498,[1] can be noted.) However, we invite attention to the following:

Volume 10, Corpus Juris, at page 272, is authority for this: "* * * A demand and a refusal to deliver is sometimes essential to show a conversion. Even after demand, if the goods are tendered before suit brought, the consignee cannot refuse to receive the goods and sue for conversion, his sole remedy being an action for damages resulting from the delay." Hutchinsoa's Treatise on the Law of Carriers (third edition, vol. 2, p. 717) contains this: "Though the carrier may delay ever so long, the owner cannot charge him with a conversion, or for value of the goods, if they are safely kept, unjess they have been demanded of the carrier and their delivery refused, * * * " relying on Hamilton vs. Chicago, Milwaukee & St. Paul Railway Company ([1897], 103 Iowa, 325). Following the lines of the note to the text, we find this: " Where property in the hands of a common carrier is not delivered within a reasonable time after it has reached its destination, the carrier, in the absence of any 1 Promulgated September 7, 1920, not reported. legal exemption and after demand has been made and delivery refused, is liable for a conversion of the property. The consignee, under such circumstances, may elect to waive all title to the property and sue for the conversion, and after he has done so, a subsequent tender by the carrier will not be available for it as a defense. * * * " Consulting the body of the decision, to confirm the foregoing, we discover this statement: " * * * A tender of the property, to be effectual, must have been made within the time in which the defendant was entitled to deliver it and the plaintiff bound to receive it. The tender made was not until long after the lapse of this period, and, not being accepted, is no bar to plaintiff's right to recover. ? * * " The subsequent case of Clark vs. American Express Co. ([1906], 130 Iowa, 254), after distinguishing Hamilton vs. Chicago, Milwaukee & St. Paul Railway Company, supra, continues: "* * * Under the conceded facts defendant tendered the goods to plaintiff before this action was com- menced, and plaintiff refused to receive them. His action, then, was not for conversion, but for damages. * * *"

A delay of more than two years in making delivery was conclusively unreasonable. A delay in pressing a defense predicated on tender, of more than two years counted from the date when the complaint was filed, was likewise

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unreasonable. The mancupation of the property by the defendant was sufficiently complete since it was unable to turn the goods over to the plaintiff at any time before the complaint was presented, and in fact, could not do so until a long time thereafter. Add these facts together, and the reasons why the plaintiff can be permitted to recover on its action are self-evident.

We would not be understood as laying down the absolute rule that tender not made until after the action is commenced is unavailable as a defense. Suit might conceivably be instituted with disconcerting haste. In this jurisdiction we have a remedial code susceptible to extremely elastic construction. What we do mean is that on the facts at bar, defendant was in effect guilty of conversion and must accordingly respond for the value of the property at the time of conversion.

What has been said disposes of the defendant's first assignment of error, and its second and third specifications of error fall with it.

Judgment affirmed with costs. So ordered.

Johnson, Street, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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[1] Promulgated September 7, 1920, not reported.

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