

**UNITED INSURANCE COMPANY, INC., PLAINTIFF-APPELLEE, VS.
ROYAL INTEROCEAN LINES, ET AL., DEFENDANTS, MANILA PORT
SERVICE AND/OR MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS.**

G.R. No. 22688. April 27, 1967

Ponente: REGALA, J.

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REGALA, J.:

Appeal on questions of law from the decision of the Court of First Instance of Manila in its Civil Case No. 21808 entitled "United Insurance Company, Inc., Plaintiff, versus Royal Interocean Lines and/or Manila Port Service and/or Manila Railroad Company, Defendants."

The plaintiff is the insurer of a shipment of 3,768 cases of corned beef consigned to the Visayan Commercial of Manila, loaded on the S/S "Straat Van Diemen," a vessel owned and operated by defendant Royal Interocean Lines. The said vessel arrived at the port of Manila on October 4, 1961, and the said cargo was discharged unto the custody of the Manila Port Service which also delivered the same to the consignee. Upon delivery, however, the cargo was found short of sixty-six (66) cases. Claims were filed by the broker with the Manila Port Service, the arrastre operator, followed by formal claims with the carrying vessel and the plaintiff insurance company. The value of the loss was paid by the plaintiff to the consignee and the former was thereby subrogated to the rights of the latter. Hence, the plaintiff filed with the Court of First Instance a complaint against the Royal Interocean Lines, the Manila Port Service and the Manila Railroad Company as alternative defendants.

In its answer, the defendant carrier denied liability by claiming that the cargo in question was completely discharged to the custody of the arrastre operator, and interposed a counterclaim for damages representing attorney's fees against the plaintiff which, according to said de-fendant, acted with gross and evident bad faith, thereby compelling it to hire the services of counsel.

The defendant arrastre operator, on the other hand, disclaimed having received the missing cases from the carrying vessel. As special defense, it averred that since no claim for value was filed by the consignee or its representative within fifteen days from the date of discharge of the last package from the carrying vessel, the claim had become time-barred and/or had prescribed pursuant to the Management Contract.

The lower court found from the evidence that the en-tire cargo of 3,768 cases of corned beef were delivered to the Manila Port Service but, as already stated, the latter failed to deliver 66 cases to the consignee. Consequently, the said arrastre operator, together with its mother com-pany, was held liable for \$1,118.32, or P3,371.43, the value of the missing cases and the actual amount paid by plaintiff to the consignee under the insurance policy covering the shipment.

Having been adjudged liable, the Manila Port Service and the Manila Railroad Company have appealed. For the first time in this appeal, they dispute the jurisdiction of the trial court over the subject matter of the action as to

them considering that, while plaintiff's cause of action against their co-defendant, Royal Interocean Lines, is for breach of contract of carriage or affreightment (therefore, involving maritime admiralty matters), the cause against them as arrastre operator is for the short delivery of the cargo valued at only P3,371.43, which is less than the minimum amount falling under the jurisdiction of that court.

Among other things, the complaint alleges that -

"x x x the loss occurred while defendant carrier had custody of the cargo and failed to discharge the same or, after discharge of the cargo, while defendant port service had custody of the goods, in either of which case, there was violation of the duty properly to safely carry and discharge the goods on the port of the carrier or, in the alternative, to make de-livery of the goods on the part of defendant port service after discharge."
(Paragraph 9)

This allegation simply shows that during the filing of the complaint, the plaintiff was yet uncertain as to whose custody the goods were under when the loss took place. Hence, it had to join both the shipping company and the arrastre operator as alternative defendants, pursuant to Section 13 of Rule 3 of the Rules of Court, to wit:

"Alternative defendants. - Where the plaintiff is uncertain against which of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right to relief against the other."

Such a joinder of parties is also sanctioned by the first paragraph of Section 5, Rule 2 of the same Rules, which says:

"Joinder of causes of action. - Subject to rules regarding jurisdiction, venue and joinder of parties, a party may in one pleading state, in the alternative or otherwise, as many causes of action as he may have against an opposing party (a) if the said causes of action arise out of the same contract, transaction or relation between the parties, or (b) if the cause of action for demands for money, or are of the same nature and character."

According to the second paragraph of the same section, "in the cases falling under clause (a) the action shall be filed in the inferior court unless any of the causes joined falls within the jurisdiction of the Court of First Instance in which case it shall be filed in the latter court."

There is no question that one of the causes of action as found in the complaint - that of admiralty against the Royal Interocean Lines - is cognizable by the Court of First Instance.[1] Notwithstanding, therefore, that the other cause of action would fall within the jurisdiction of the municipal and/or city court by reason of the amount involved,[2] the case was correctly filed with the Court of First Instance.

This is not the first time that this issue is brought before us for resolution. In the case of Switzerland General Insurance Co., Ltd. v. Java Pacific and Hoegh Lines and the Manila Railroad Company, G. R. No. L-21760, promulgated on April 30, 1966, this court, citing same section 5 of Rule 2, stated:

"As may be seen, the instant case comes within the purview of the rule abovequoted for therein it is postulated that a party may in one pleading state in the alternative as many causes of action as he may have against an opposing party if they arise from the same transaction with the particularity that the case may be filed in the court of first instance if any of said causes of action falls within its jurisdiction. This is precisely what was done in this particular case. Because of the uncertainty of the place where the disappearance of the shipment occurred, plaintiff brought the case in the alternative before the court of first instance upon the theory that it may have occurred while the shipment was in transit or while in the custody of the arrastre operator."[3]

Anent the other contention of the appellants that the action is time-barred since no claim for value was filed within fifteen days from the date of discharge of the goods, pursuant to section 15 of the Management Contract,

the record shows that provisional claim for said goods was filed with the arrastre operator on October 8, 1961, barely three days after the discharge of the last cargo from the carrying vessel. It has been settled that filing of a mere provisional claim within the prescribed 15-day period is sufficient compliance with the requirement.[4]

Finding no reversible error in the decision under appeal, the same is hereby affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Castro, J., took no part.

[1] Sec. 44(d), Rep. Act 296, as amended.

[2] Sec. 88, Rep. Act 296, as amended.

[3] Same ruling was applied in *Rizal Surety & Insurance Co. v. Manila Railroad Co., et al.*, L-29875, April 30, 1966; *Insurance Co. of North America v. U.S. Lines Co.*, L-21021, May 27, 1966; and *Fireman's Fund Insurance Co. v. Cia General de Tabacos de Filipinas, et al.*, L-22625, April 27, 1967.

[4] See *Atlantic Mutual Insurance Co., et al. v. Manila Port Service*, L-21907, April 29, 1966; *State Bonding & Insurance Co., Inc. v. Manila Port Service*, L-21833, Feb. 28, 1966; *Yu Kimteng Construction Corp. v. MRR*, L-17027, Nov. 29, 1965; and *G.S.I.S. v. MRR*, L-20342, Nov. 29, 1965.

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