

**FIREMEN'S INSURANCE COMPANY, PLAINTIFF-APPELLEE, VS.
MANILA PORT SERVICE, MANILA RAILROAD COMPANY, KLAVENESS
LINE AND/OR SMITH, BELL & CO. (PHIL.), INC., DEFENDANTS.
MANILA PORT...**

G.R. No. 22810. August 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by the Manila Port Service and the Manila Railroad Company - hereinafter referred to collectively as appellants - from a decision of the Court of First Instance of Manila.

The facts are set forth in said decision, from which we quote:

"On February 24, 1962, James S. Baker and Company, as shipper shipped on board the M/S 'Bougainville', owned and operated by defendant Klaveness Line and represented in the Philip-pines by its agent, defendant Smith, Bell & Co. (Phil.), Inc., for carriage to Manila a ship-ment consisting of 50 pails grouting materials and 100 pails concrete surface hardening com-pounded consigned to E. J. Nell Co. of Manila. The bill of lading exhibit A cover the shipment.

"The M.S. Bougainville arrived in Manila and discharged the shipment on March 16, 1962 complete and in good order into the custody of defendant Manila Port Service which is the arrastre operator in the port of Manila. The receipt of the cargo in good order is evidenced by cargo receipts exhibits 5-Vessel to 14-Vessel, inclusive, which are signed by the checkers of both the MPS and the vessel. Subsequently thereafter, when the consignee E. J. Nell Co., Inc. took delivery of the ship-ment from defendant MPS thru its broker, the First Forwarder Co., Inc., defendant MPS de-livered 13 pails grouting material forming part of the shipment dented with loosened covers and contents damaged. The MPS issued bad order examination certificate exhibit D. The said bad order examination certificate contained the notation 'B. O. Pier' showing that the damage to the cargo took place in the pier. Since the shipment was insured with the plaintiff, the latter upon presentation of the claim for enforcement of the insurance by the consignee, E. J. Nell Co., Inc., paid the con-signee the amount of P1,281.19 for the damage to the 13 pails grouting material which were delivered dented with loosened covers and con-tents unfit for use. Upon payment of the amount of the insurance, the plaintiff thereby became subrogated to the rights of E. J. NeIl Company to indemnity for the damaged shipment and the plaintiff then filed with the defendants claim for P854.14 representing the reasonable value of the damaged shipment but defendants refused to pay said claim.

"The consignee filed on March 19, 1962 the provisional claim exhibit E with the defendant MPS for the 13 damaged pails grouting material and the provisional claim exhibit F was filed with defendant Smith, Bell and Co. The formal claim exhibit J was filed by the consignee with defendant Smith, Bell and Co., on May 12, 1962. The formal claim exhibit K was filed by consignee Edward J. Nell Company with the MPS on May 12, 1962. Attached to the formal claim is exhibit K-1 which is a copy of the invoice setting forth the value of the claim."

In due course, the lower court rendered a decision dismissing the complaint "as against defendants Klaveness Line and/or Smith, Bell & Co.," upon the ground that "the entire shipment was discharged from the carrying vessel complete and in good order into the custody of the MPS" (Manila Port Service), and "ordering the xx xx xx Manila Port Service and/or Manila Railroad Company to pay plaintiff the sum of P854.14, with interest at the legal rate, from the date of the filing of the complaint, the sum of P200 as attorney's fees, and costs." Hence, the present appeal, which is be-fore this Court, appellants having specifically stated, in their notice of appeal, the intention to seek therefrom a "review on pure question of law."

Appellants assail: (1) the jurisdiction of the lower court; and (2) plaintiff's cause of action against them.

They question the trial court's jurisdiction to hear and decide this case, because the relief sought in the complaint, insofar as appellants are concerned, is the recovery of P854.14, plus attorney's fees, in the sum of P200, and costs, which is within the original exclusive jurisdiction of municipal courts. It should be noted, however, that in addition to appellants herein, who were sued as custodians or depositaries of the goods consigned to E.J. Nell Co., the latter's subrogee, plaintiff herein had, also impleaded, in the alternative, Klaveness Line and/or Smith, Bell & Co. (Phil.), under the contract of carriage between them and the shipper, James S. Baker. Admittedly, the action under such contract of carriage calls for the exercise of admiralty jurisdiction, which municipal courts do not have, and is within the original exclusive competence of courts of first instance. And, since Section 5 of Rule 2 of the Rules of Court permits the joinder of the two (2) causes of action, in the alternative, it follows that the Court of First Instance of Manila had jurisdiction over both, even if one of said cause of action were within the exclusive jurisdiction of a lower court. Thus, in *Rizal Surety & Insurance Co. vs. Manila Railroad*[1] this Court expressed itself as follows:

"The sole issue is one purely of law, whether or not the court below had jurisdiction over the case.

"The complaint in this case named as alterna-tive defendants under alternative causes of action: (1) C.F. Sharp & Co., Inc., for breach of contract of carriage by sea; and (2) Manila Port Service and Manila Railroad Company, for violation of arras-tre contract. The cause of action against C.F. Sharp & Co., Inc., being in admiralty, comes within the jurisdiction of the Court of First Instance (Section 44[d], R.A. 296, as amended, *International Harvester Co. of the Philippines v. Judge Aragon*, 84 Phil. 363); whereas, the cause of action against the Manila Port Service and Manila Railroad Company comes within the exclusive original jurisdiction of the municipal court inasmuch as the amount of the demand is less than P5,000.00. (Section 88, R.A. 296, as amended by R.A. 2613; *Delgado Brothers, Inc. v. Home Insurance Company*, L-16567, March 27, 1961.)

"At the time the complaint was filed, plaintiff did not know at what precise stage of the series of transactions the loss complained of occurred. If the loss took place in transit, C.F. Sharp & Co., Inc., would be liable therefor; but if the loss occurred after the goods were landed and discharged from the carrying vessel; the Manila Port Service would bear the loss. Hence, the joinder of causes of action and parties defendants in the alternative which is permitted by Section 5 of Rule 2 of the Rules of Court, x x x:

xx xx xx xx

And, since one of the causes of action is cognizable by the Court of First Instance the suit should be filed, as was correctly done by the plaintiff, in said court, notwithstanding that the other cause of action - if standing alone - would fall within the jurisdiction of the municipal court, by reason of the amount of the demand (*Sapino v. Manila Oceanic Lines*, L-18776, January 30, 1964). In *International Harvester Co. of the Philippines v. Judge Aragon* (84 Phil. 363), where a similar action was filed with the municipal court, we held that the municipal court lacked jurisdiction over the case inasmuch as one of the alternative causes of action against the shipping firm, was an action in admiralty, cognizable by the Court of First Instance.

"The subsequent dismissal of the cases as against C.F. Sharp & Co., Inc. did not bring the case within the

exclusive original jurisdiction of the municipal court nor deprive the Court of First Instance of Manila of the jurisdiction it had already acquired over the case when the complaint was filed. It is well settled that jurisdiction once acquired is not lost but continues until the case is finally terminated. (*Pamintuan v. Tiglao*, 53 Phil. 1; *Philippine Land-Air-Sea Labor Union [PLASLU], Inc. v. Court of Industrial Relations*, 93 Phil. 747.)"

Appellants, moreover, impugn plaintiff's cause of action upon the ground that the consignee had made use of a permit and a gate pass issued by the arrastre operator and bearing, stamped thereon, a statement to the effect that said permit and gate pass are subject to all of the terms and conditions of the aforementioned Management Contract, one of which is that

"x x x 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 in the court of proper jurisdiction is brought within a period of one (1) year from the date when the claim for value of such goods have been rejected or denied by the CONTRACTOR, provided that such claim shall have been filed with the CONTRACTOR within fifteen (15) days from the date of the discharge of the last package from the carrying vessel."

and that the requisite claim has not been filed, either by the consignee or by its subrogee, "within fifteen (15) days from the date of the discharge of the last package from the carrying vessel," which took place on March 16, 1962.

In the present case, a formal claim was filed by plaintiff herein more than 15 days after the date last mentioned, or on May 12, 1962. Although a provisional claim had been made on March 19, within said period of 15 days, appellants maintain that the aforementioned provision of the Management Contract refers to formal claims, not to one provisional in nature. We have already held, however, that a provisional claim, filed within the requisite period, will satisfy the requirements of said provision, provided that sufficient facts are set forth in the claim to afford the arrastre operator a "reasonable opportunity to check the validity of the claim, while the facts are still fresh in the minds of the persons who took part in the transaction and while the pertinent documents are still available." [2] The determination of the issue raised by appellants herein thus depends upon whether or not the provisional claim filed by the consignee had given the former the opportunity adverted to above.

In this connection, said provisional claim states that the entire shipment, of 50 pails of grouting materials and 100 pails of concrete surface hardening compound, "cannot be found within the pier premises and/or were found (in) damaged condition" and that provisional claim is made "for non-delivery and/or any possible damages or losses that may be found to exist therein." It further requested that the arrastre operator "check" its "tally sheets and acquaint" the claimant of the operator's "finding at the most earliest possible time" and that said operator furnish the claimant "Bad Order Certificate And/or Shorthanded Certificate, or certification of delivery if the above cargo is not landed or could not be located in the pier premises and/or after examination of Bad Order cargoes."

The record before us does not show, however, the date on which the goods were actually delivered to the consignee. Hence, we are unable to determine whether the provisional claim was made before or after such delivery. If filed prior thereto, the efficacy of said provisional claim might be debatable, under the doctrine laid down in *Shell Co. of the Philippines vs. Compañia General de Tabacos* [3] and *New Hampshire Fire Insurance Co. vs. Manila Port Service* [4] in which claims filed before discharge of the goods from the carrying vessel, and before the consignee had actual knowledge of the loss or damage referred to in the claims, were declared "premature and speculative." These two (2) cases are, however, distinguishable from the one at bar, for the provisional claims in said former cases were for shortlanding or landing in bad order ex-steamer, and did not cover the damage or loss that occurred in the possession of the arrastre operator, after the shipment had been fully discharged, in good order, from the carrying vessel, whereas the provisional claim in the case before us covers "non-delivery and/or any possible damages or losses that may be found to exist. x x x."

At any rate, we have held^[5] that "the period of 15 days within which a claim should be filed with the Manila Port Service should commence, not from the date of discharge of the goods from the carrying vessel, but from the date the consignee or claimant learns of the loss, damage or misdelivery for which the claim is made," or from the date on which, with the exercise of reasonable diligence, such information could have been secured.^[6] Inasmuch as the date when the consignee or claimant came to know or could have known of the damaged condition of the goods involved in the present case has been neither alleged nor proved, and the alleged violation of the pertinent provision of the Management Contract is a matter of defense of appellants herein, such defense cannot be sustained for lack of one of the elements essential therefor. In other words, it has not been shown that on May 12, 1962, when plaintiff's formal claim was filed, over 15 days had elapsed since the consignee or its subrogee had or could have learned of the damage suffered by the goods aforementioned.

Upon the other hand, it has been established that, upon delivery of said goods, 13 pails of grouting materials were found to be dented with loosened covers and the contents damaged. What is more the arrastre operator issued a "bad order examination certificate" which contained the notation "B. O. Pier," indicating that the damage to the cargo had taken place in the pier, and, hence, after delivery of the goods by the carrier to the arrastre operator, as attested to by the receipts Exhibit 5-Vessel to 14-Vessel, which are signed by the checkers of both (carrier and arrastre operator). If such delivery of the arrastre operator and the delivery to the consignee took place before the filing of the provisional claim, on March 19, 1962, the same, despite its general tenor, gave the arrastre operator a reasonable opportunity to check the validity of said claim, because the records of said operator - namely, its aforementioned bad order examination certificate - showed that 13 pails of the grouting materials specified in the provisional claim, had been damaged in the pier. As a consequence, said claim was substantially adequate to meet the requirements of the Management Contract.

In other words, whether said claim was filed before or after delivery of the goods to the consignee, appellants' defense cannot - considering the circumstances obtaining in this case - be sustained.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against appellants herein.

Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] L-20875, April 30, 1966.

[2] *Consuji vs. Manila Port Service*, L-15551, Nov. 29, 1960.

[3] L-20230, July 30, 1965.

[4] L-20938, August 9, 1966.

[5] *Yu Kimteng Construction Corp. vs. Manila Port Service*, L-17027, November 29, 1965.

[6] *Yu Kimteng Construction Corp. vs. Manila Port Service*, *supra*, Resolution on the motion for reconsideration, March 3, 1967.

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