

FULTON INSURANCE COMPANY, PLAINTIFF-APPELLEE, VS. MANILA RAILROAD COMPANY, ET AL., DEFENDANTS?APPELLANTS.*G.R. No. 24263. November 18, 1967*

Ponente: ANGELES, J.

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An appeal from the decision of the Court of First Instance of Manila, in Civil Case No. 53457, dated September 30, 1964, as amended by its order dated December 1 of the same year, ordering the defendants Manila Railroad Company and Manila Port Service to pay to the plaintiff Fulton Insurance Company the amount of P4,701.20 representing the value of Certain lost goods, P500.00 by way of attorney's fees, and costs - said defendants assailing the decision and order aforementioned on grounds of prescription and lack of jurisdiction.

The law questions involved are disclosed in the following resume of the antecedent facts of the case.

On August 1, 1961, fifty-one cartons listing adding machines and three cartons advertising matters were shipped by the Vamco Intercontinental, Ltd. at San Francisco, California thru the SS President Grant to Marsman & Company at Manila as consignee. The vessel arrived at the port of Manila on August 25, 1961, and on the same day, discharged the shipment un-to the custody of the Manila Railroad Company and Manila Port Service, arrastre operators. On August 30, 1961, the consignee filed a "provisional claim" for damages against both the ship owners and the arrastre operators. The Manila Railroad Company and Manila Port Service subsequently delivered the goods to the consignee, but of the fifty-one cartons listing adding machines, only twenty-seven (27) together with the three cartons advertising matter were actually re-ceived by the Marsman & Company on September 18, 1961; and out of the twenty-four missing cartons, seven were later recovered by the Manila Police Department, leaving seventeen cartons unaccounted for. As insurer of the shipment, the Fulton Insurance Company paid to the consignee, the value of the lost listing adding machines, and was thereby subrogated to the rights of the consignee. Defendants having refused or failed to pay the value of the lost goods, Fulton Insurance Company commenced action in the Court of First Instance of Manila on July 23, 1962, suing alternatively both the carrier and the arrastre operators for recovery of P4,701.20 representing the value of the lost listing adding machines and attorney's fees in the sum of P250.00. It is alleged in the complaint among others, that the loss of the seventeen cartons listing adding machines was due either to the negligence of the shipping company or the arrastre operators, the Manila Railroad Company and Manila Port Service. This case was docketed as No. 51017 of the Court of First Instance of Manila.

On January 31, 1963, the court dismissed the case as against the Manila Railroad Company and Manila Port Service upon a "motion to dismiss" of said defendants, the court declaring itself without jurisdiction over the subject-matter of the action because the amount claimed was less than P5,000.00 which properly falls within the jurisdiction of the City Court of Manila. A motion for reconsideration of the order filed by the plaintiff having been denied, Fulton Insurance Company on March 20, 1963, filed a new complaint in the same court against the Manila Railroad Company and Manila Port Service, reproducing the allegations made in the first case, except that the demand for attorney's fees was increased from P250.00 to P500.00. This case was docketed as No. 53457

of the court.

Defendants Manila Railroad Company and Manila Port Service answered in due time denying all the material allegations of the complaint, at the same time interposing a special defense that "the claim has become time-barred and/or prescribed for the failure of the consignee or its representative to file the claim for the value of the cargoes allegedly lost within fifteen (15) days from the date the last package was discharge from the carrying vessel; and/or its failure to file suit within one (1) year from said date of discharge."

On September 30, 1964, the trial court, after a joint hearing of the two cases, rendered a decision, dismissing the complaint in Civil Case No. 51017, absolving the defendant American President Lines, Ltd. of any liability; but in Civil Case No. 53457, ordered the defendants Manila Railroad Company and Manila Port Service to pay Fulton Insurance Company the sum of P500.00 plus the additional sum of P500.00 as attorney's fees, and the costs. The plaintiff received notice of the decision on October 7, 1964.

On October 12, 1964, plaintiff filed a motion for reconsideration of the decision without setting the same for hearing, which was supplemented however, by a "motion to set", dated November 1, 1964, setting the aforesaid motion for reconsideration for hearing on November 14, 1964. Defendants opposed the motion. In an order dated November 18, 1964, the court denied the motion declaring itself without jurisdiction to pass upon the same after the 30-day period for appeal. Upon a motion for reconsideration of this last order, the court, on December 1, 1964, amended the decision of September 30, 1964, and ordered the defendants to pay to the plaintiff the sum of P4,701.20 plus the additional sum of P500.00 as attorney's fees, and the costs. Defendants appealed.

Appellants contend that the claim of Fulton Insurance Company has prescribed. It is pointed out that the goods in question were discharged from the carrying vessel on August 25, 1961, while the complaint (Case No. 53457) was filed on March 20, 1963, or one year and seven months later; and since under Section 15 of the Management Contract, it is provided "x x x in any event the CONTRACTOR (appellants herein) 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 of the discharge of the goods", the action has become time-barred. Appellee meets the argument by maintaining that it actually complied with the requirement in the said contract by filing Civil Case No. 51017 in the Court of First Instance of Manila on July 23, 1962; that although the case was dismissed as against herein appellants, it subsequently filed Civil Case No. 53457 in the same court before the dismissal became final; and since the cases were tried jointly, Civil Case No. 53457 should be considered as a continuation of Civil Case No. 51017 and both cases deemed filed within the required period.

Neither contention is correct.

1. The Court of First Instance of Manila is the court of proper jurisdiction. It may not be seriously debated that appellee was right in suing herein appellants and the American President Lines as alternative defendants under alternative causes of action in the first case (No. 51017). Such procedure is expressly sanctioned by law.[1] The prevailing rule is that a consignee, when uncertain of the place and time of the loss or damage to its goods, may in one case seek relief alternatively, against the arrastre operators under a contract of deposit and the steamship company under a contract of carriage by sea. The action calls for the exercise of admiralty jurisdiction, which municipal courts do not have, and is within the original exclusive jurisdiction of courts of first instance;[2] and since Sec. 5, Rule 2 of the Rules of Court permits the joinder of causes of action in the alternative, it follows that even if one of the causes of action were within the exclusive jurisdiction of a lower court by reason of the amount of the demand involved,[3] the Court of First Instance of Manila has jurisdiction over both.[4] The Court of First Instance of Manila is the court of proper jurisdiction contemplated in the Management Contract aforementioned.

The Court, therefore, should not have dismissed the case as against herein appellants although the amount of the claim against them was less than P5,000.00.

2. The second case (No. 53457) filed against herein appellants was not time-barred, although it may not legally be considered as a continuation of Civil Case No. 51017. The rule that the subsequent abandonment or dismissal of an action other than on the merits, takes no time out of the period of prescription,[5] is not applicable to the case at bar by reason of the provisions of Article 1155 of the new Civil Code which expressly provides that the prescription of actions is interrupted when they are filed before the court.[6] Such interruption took place in this case when the first action was filed in the Court of First Instance of Manila which, as previously pointed out above, was the court of proper jurisdiction contemplated in the Management Contract, taking into consideration the allegations of the complaint filed in that case. That interruption lasted during the pendency of the action,[7] until the order of dismissal for alleged lack of jurisdiction became final.[8] From the discharge of the goods on August 25, 1961 to the filing of the complaint, Civil Case No. 51017, on July 23, 1962, appellee then had one (1) month and two (2) days left of the one-year prescriptive period provided for in the Management Contract. That case was dismissed as against herein appellants on January 31, 1963; and on February 22, 1963, appellee filed a motion for reconsideration of the order of dismissal which was denied on March 4, 1963. The record fails to show when the plaintiff received notice of the order of denial of the reconsideration. Assuming, nonetheless, that the plaintiff received notice thereof on the same date, that is, on March 4, 1963, it had eight (8) days left within which to perfect an appeal; but as no appeal was taken therefrom, the order of dismissal became final on March 12, 1963. That date, therefore, was the starting time when the period of prescription commenced to run again. Consequently, from March 12, 1963 to March 20, 1963, when the complaint docketed as Civil Case No. 63457 was filed, only eight days of the more than one month left of the prescriptive period had again elapsed. Clearly, therefore, the second action was not time-barred.

There are two school of thoughts as to the legal effect of the cessation of the interruption by an intervening action upon the period of prescription. There is the view expressed and perhaps, not without reasons, that the full period of prescription should start to run anew, reckoned from the date of the cessation of the interruption.[9] The contrary view is, that the cessation of the interruption merely tolls the running of the remaining period of prescription, deducting from the full period thereof, the time that has already elapsed prior to the filing of the intervening action.[10] Nevertheless, all discussion on this point is academic; considered in the light of either view, We find that the second action is not barred.

Finally, appellants maintain that the court below, acted without jurisdiction in issuing the order of December 1, 1964, amending the decision of September 30, 1964. It is pointed out that the plaintiff received notice of the decision on October 7, 1964, and, therefore, the period of appeal would expire on November 6, 1964; that while it is true the plaintiff filed a motion for reconsideration of the decision of October 12, 1964, however, as it did not contain a notice of the date and place of hearing thereof, the motion for reconsideration did not suspend the running of the period for appeal; and when said motion was implemented by a "motion to set" dated November 11, 1964, setting it for hearing on November 14, 1964, the period for appeal had already elapsed. Hence, the court had no more jurisdiction to entertain the motion for reconsideration.

We find the position taken by the appellants on this particular point to be meritorious. The present provision of section 2 of Rule 37 construed in relation to sections 4, 5 and 6 of Rule 15 of the Rules of Court provides that a written notice of a motion for new trial shall be served by the movant on the adverse party stating the time and place of the hearing thereof, and the court shall not act upon the motion without proof of such notice. Said provision repealed the provision of section 146 of the old Code of Civil Procedure and the rulings founded thereon,[11] to the effect that the notice must be served by the court on the adverse party.[12] The notice therein

required is now mandatory, and the failure of herein appellee to give notice of the time and place of hearing of the motion it filed in the court below, was indeed fatal to its cause. Thus in the case of Manila Surety & Fidelity Co., Inc. v. Batu Construction Co., et al., L-16636, June 24, 1965, where appellants also failed to give notice of the time and place of hearing of their motion for reconsideration in the trial court and were practically in the very same position that herein appellee is now situated, this Court, speaking thru Justice Makalintal, resolved the same points now raised in this appeal as follows:

"Appellants maintain that the motion was in reality one for new trial under Rule 37, section 1, paragraph (c), and that pursuant to section 2 of the same Rule, they specifically pointed out the findings of the court which they honestly believed to be contrary to law, making express reference to the pertinent documentary evidence and legal provisions. The suggestion is that when the motion is upon that ground, the court may act upon it even if the movant has not set the same for hearing. The Rules, however, are quite clear on the matter. Section 2 of Rule 37, regarding motion for new trial, requires that a written notice thereof be served by the movant on the adverse party, and this requirement applies whichever of the grounds allowed for such motion be relied upon.

"The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. And according to section 6 of the same Rule, no motion shall be acted upon by the court without proof of such notice. Indeed it has been held that in such a case, the motion is nothing but a useless piece of paper (Philippine National Bank v. Donasco, L-18638, February 28, 1963, citing Manakil v. Revilla, 42 Phil. 81; Roman Catholic Bishop of Lipa v. Municipality of Unisan, 44 Phil. 866; and Director of Lands v. Sanz, 45 Phil. 117). The reason is obvious: unless the movant sets the time and place of hearing, the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.

"We are not impressed by the argument that the 'supplement' filed by the appellants on May 30 should be deemed retroactive as of the date the motion for reconsideration was filed and therefore cured the defect therein. To so consider it would be to put a premium on negligence and subject the finality of judgments to the forgetfulness or whims of parties?litigant and their lawyers. This of course would be intolerable in a well-ordered judicial system."

And in the same manner that the "supplement" to the motion for reconsideration in the above-cited case failed to cure the defect of said motion for reconsideration, We also cannot subscribe to the contention of herein appellee that the failure to give notice of the time and place of hearing of its motion for reconsideration was cured when it subsequently filed a motion to set it for hearing. The motion for reconsideration that failed to give the requisite notice of hearing, did not toll the running of the period for appeal, and the said reglementary period naturally elapsed. The decision of September 30, 1964 therein sought to be reconsidered, had then become final when the subsequent motion to set the same for hearing was filed on November 11, 1964. We have to declare, therefore, that the order of December 1, 1964 complained of, amending the aforesaid final decision, is null and void.

WHEREFORE, the said order of December 1, 1964, should be, as hereby set aside, and the decision of September 30, 1964 it amended, affirmed. On equitable considerations, no costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro and Fernando, JJ., concur.

[1] Sec. 5, Rule 2, and Sec. 13, Rule 3, Rules of Court.

[2] Sec. 44(d), Republic Act 296, as amended; International Harvester Co. of the Phil. v. Judge Aragon, 84 Phil.

363.

[3] Sec. 88, Republic Act 296, as amended by Republic Act 2613; Delgado Bros. Inc. v. Home Insurance Co. L-16567, March 27, 1961.

[4] Firemen's Ins. Co. v. Manila Port Service, et al. L-22810, Aug. 31, 1967; The American Ins. Co. v. Macondray & Co. Inc., et al., L-24031, Aug 19, 1967; Switzerland Gen. Ins. Co. Ltd. v. Java Pacific & Hoegh Lines, et al., L-21760, April. 30, 1966; Rizal Surety & Ins. Co. v. MRR, L-20875, April 30, 1966.

[5] Conspecto v. Fruto, 31 Phil. 144; Santos v. Vera, 69 Phil. 712; Oriental Com. Co. Inc. v. Jereidini, 71 Phil. 25; Jarder v. Jarder, et al., 90 Phil. 873.

[6] Cabrera, et al. v. Tiano, L-17299, July 31, 1963; See Peralta et al. v. Alipio, 97 Phil. 719, where We made the following observations: "The statute of limitations contained in the Code of Civil Procedure (Act 190) contains no specific or express provision on the suspension or interruption of the running of the period of prescription by the institution of an action. There is a firmly established rule in many American states that the commencement of the suit prior to the expiration of the applicable limitation period interrupts the running of the statute as to all parties to the action (43 Am. Jur., sec. 247, pp. 202- 203). This rule is similar to that contained in Art. 1155 of the New Civil Code. This principle, however, does not appear in Act No. 190, our old statute of limitations, x x x"; See also II Reyes & Puno, An Outline of Phil. Civil Law (1967), pp. 257-258, where this comment appears: "Manresa and Tribunal Supreme of Spain hold that the filing of the action interrupts the prescription of actions regardless of the results of the action (TS 4 Jan. 1901; 17 Dec. 1927; 8 Nov. 1948)."

[7] Florendo v. Organo, 90 Phil. 483.

[8] Vda de Nato v. Court of Industrial Relations, et al. L-16671, March 30, 1962.

[9] See Florendo v. Organo, supra.

[10] See Vda. de Nator v. CIR, et al. supra.

[11] Soriano v. Ramirez, 44 Phil. 519; Ignacio v. Sison and Navarro, 56 Phil. 451.

[12] Moran, Rules of Court, Vol. II (1963 Ed.) p. 212.

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