

THE AMERICAN INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS. COMPAÑIA MARITIMA, ET AL., DEFENDANTS. MACONDRAY & CO., INC., DEFENDANT-APPELLEE.

G.R. No. 24515. November 18, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the order of the Court of First Instance of Manila (Civil Case No. 55056) dismissing, on the ground of prescription, the amended complaint of plaintiff-appellant, The American Insurance Company, as against alternative defendant Macondray & Co., Inc.

On August 11, 1962, a certain cargo insured with plaintiff corporation was shipped in New York, U.S. A. aboard "M/S TOREADOR", of which the general agent in the Philippines is appellee Macondray & Co., Inc. (hereinafter referred to as Macondray). The cargo, with an invoice value of \$3,539.61 CIF Cebu, was consigned to the order of the importer Atlas Consolidated Mining and Development Corporation.

Inasmuch as the final port of call of the "M/S TOREADOR" was Manila, the carrier, in accepting the cargo at the point of shipment, agreed to transship the same, after its discharge in Manila, aboard an inter-island vessel to its destination in Cebu.

On September 18, 1962 the "M/S TOREADOR" arrived at the port of Manila and on the same date discharged the cargo in question. Pursuant to the arrangement the cargo was subsequently loaded aboard the "SS SIQUIJOR, an inter-island vessel. The shipment was finally discharged in Cebu on September 24, 1962.

When the consignee took delivery of the shipment it was found to be short of two (2) pieces of tractor parts worth \$2,834.88, or P11,063.12 at the exchange rate of P3.9025. Plaintiff paid the insured value of the lost merchandise to the consignee. To recover the said sum of P11,063.12 plaintiff, as subrogee of the consignee's rights, filed on September 24, 1963 a complaint against the Compañia Maritima and the Visayan Cebu Terminal Co., Inc. as alternative defendants. The former was sued as operator and owner of "SS SIQUIJOR" and the latter as operator of the arrastre service at the port of Cebu charged with the care and custody of all cargo discharge there.

In view of Maritima's allegation in its answer that the lost merchandise had not actually been delivered to it, plaintiff filed on November 6, 1964 a motion to admit its amended complaint impleading Macondray and Luzon Brokerage Corporation as additional defendants and elimina-ting the Visayan Cebu Terminal Co., Inc. According to plaintiff, "the amended complaint is necessary in view of defendant Maritima's assertion and records tending to show that the lost merchandise was not delivered to it, contrary to Macondray's representation, even after the filing of the original complaint, that the cargo was delivered to Maritima." The amended complaint was admitted on November 14, 1964.

On December 23, 1964 Macondray moved to dismiss the amended complaint against it on the ground that plain-tiff's action had already prescribe under the provisions of the carriage of Goods by Sea Act* which provides

in section 3 (6):

"In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods is all have been delivered: x x x"

Macondray contended that since the amended complaint in which it was impleaded for the first time was filed only on November 6, 1964 and admitted on November 14, 1964, the period of one year had expired whether reckoned from one or the other of the two dates, namely: September 18, 1962, when the "M/S TOREADOR" arrived at the port of Manila and discharged the cargo for transshipment to Cebu on board the "SS SIQUIJOR", and September 24, 1962 when the ship-ment finally arrived in Cebu and was discharged the same day.

The motion to dismiss was granted and plaintiff interposed the present appeal from the order of dismissal. Plaintiff avers that the one year prescriptive period provided for in the Carriage of Goods by Sea Act does not apply in this case, which should be governed by the statute of limitations in the Civil Code. In support of this contention it is pointed out that the cargo in question was transshipment cargo; that the discharge thereof in Manila terminated the obligation of Macondray as carrier; and that its obligation to transship the cargo to Cebu was merely that of a "forwarding agent" of the shipper. Reliance is placed on Clause 11 of the bill of lading which states:

"This carrier, in making arrangements for any transshipping or forwarding vessel or means of transportation not operated by this carrier shall be considered solely the forwarding agent of the shipper and without any other responsibility."

We do not see that the use of the term "forwarding agent of the shipper" is decisive of the issue. According to paragraph 4 of the amended complaint the cargo was loaded on board the "M/S TOREADOR" in New York, "freight prepaid to Cebu City . . . pursuant to the bill of lading No. 13." In other words, the action is based on the contract of carriage up to the final port of destination, which was Cebu City, for which the corresponding freight had been prepaid. The following provisions of the bill of lading are the ones directly in point:

"1. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act (except as may be otherwise specifically provided herein) shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the Carrier. x x x.

"19. In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. x x x"

The transshipment of the cargo from Manila to Cebu was not a separate transaction from that originally entered into by Macondray, as general agent for the "M/S TOREADOR." It was part of Macondray's obligation under the contract of carriage and the fact that the transshipment was made via an inter-island vessel did not operate to remove the transaction from the operation of the Carriage of Goods by Sea Act. (See *Go Chang & Co., Inc. vs. Aboitiz & Co., Inc.*, 98 Phil. 179).

Wherefore, the order appealed from is hereby affirmed, with costs.

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

* Public Act No. 521 of the 74th Congress of the U.S. approved on April 16, 1936, made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade (sec. 1, Com. Act No. 65).

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