

**FILIPINO MERCHANTS INSURANCE COMPANY, INC., PETITIONER, VS.
HONORABLE JOSE ALEJANDRO, PRESIDING JUDGE OF BRANCH
XXVI OF THE COURT OF FIRST INSTANCE OF MANILA AND FROTA
OCEANICA ...**

G.R. No. 54140. October 14, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

These consolidated petitions raise the issue of whether or not the one-year period within which to file a suit against the carrier and the ship, in case of damage or loss as provided for in the Carriage of Goods by Sea Act applies to the insurer of the goods.

On August 3, 1977, plaintiff Choa Tiek Seng filed a complaint, docketed as Civil Case No. 109911, against the petitioner before the then Court of First Instance of Manila for recovery of a sum of money under the marine insurance policy on cargo. Mr. Choa alleged that the goods he insured with the petitioner sustained loss and damage in the amount of P35,987.26. The vessel SS Frotario which was owned and operated by private respondent Frota Oceanica Brasileira, (Frota) discharged the goods at the port of Manila on December 13, 1976. The said goods were delivered to the arrastre operator E. Razon, Inc., on December 17, 1976 and on the same date were received by the consignee-plaintiff.

On December 19, 1977, the petitioner filed its amended answer disclaiming liability, imputing against the plaintiff the commission of fraud and counterclaiming for damages.

On January 9, 1978, the petitioner filed a third-party complaint against the carrier, private respondent Frota and the arrastre contractor, E. Razon, Inc. for indemnity, subrogation, or reimbursement in the event that it is held liable to the plaintiff.

Meanwhile, on August 10, 1977, Joseph Benzon Chua filed a similar complaint against the petitioner which was docketed as Civil Case No. 110061, for recovery under the marine insurance policy for cargo alleging that the goods insured with the petitioner sustained loss and damage in the sum of P55,996.49.

The goods were delivered to the plaintiff-consignee on or about January 25-28, 1977.

On May 31, 1978, the petitioner filed its answer. On September 28, 1978, it filed an amended third-party complaint against respondent carrier, the Australia-West Pacific Line (Australia-West).

In both cases, the private respondents filed their respective answers and subsequently filed a motion for preliminary hearing on their affirmative defense of prescription. The private respondents alleged in their separate answers that the petitioner is already barred from filing a claim because under the Carriage of Goods by Sea Act, the suit against the carrier must be filed "within one year after delivery of the goods or the date when the goods should have been delivered. x x x."

The petitioner contended that the provision relied upon by the respondents applies only to the shipper and not to the insurer of the goods.

On April 30, 1980, the respondent judge in Civil Case No. 109911, upheld respondent Frota and dismissed the petitioner's third-party complaint. Likewise, on August 31, 1982, the respondent judge in Civil Case No. 110061 dismissed the petitioner's third-party complaint against respondent Australia-West on the ground that the same was filed beyond the prescriptive period provided in Section 3(6) of the Carriage of Goods by Sea Act of 1936. In both cases, the petitioner appealed to us on a pure question of law, raising the issue of whether or not the prescriptive period of one year under the said Act also applies to an insurer such as herein petitioner.

The petitioner maintains that the one-year prescriptive period cannot cover an insurer which has not settled the claim of its insured because it cannot be considered as the person referred to in the applicable provision of the said Act that has the duty or right to give notice of loss or damage to the carrier or to sue such carrier within the period of one year and that where an insurer does not settle the claim of its insured it cannot be considered as subrogated to the rights of said insured that would then authorize it to sue the carrier within the time-bar of one year. The petitioner further contends that the period for the filing of a third-party complaint must be reckoned from the date when the principal action was filed, that is, from the time the insured filed a suit against the petitioner, because the third-party complaint is merely an incident of the main action.

On the other hand, the respondents argue that the one-year prescriptive period within which to file a claim against the carrier also applies to a claim filed by an insurer who stands as a subrogee to the insured and that the third-party complaint filed by the petitioner cannot be reckoned from the filing of the main action because such complaint is independent of, and separate and distinct from the insured's action against the petitioner.

The lower courts did not err.

Section 3(b) of the Carriage of Goods by Sea Act provides:

(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

"Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

"The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

"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: Provided, that if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring the suit within one year after the delivery of the goods or the date when the goods should have been delivered.

"In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods. (Underscoring supplied) Philippine Permanent and General Statutes (Revised Edition, Vol. I, pp. 663-666).

Chua Kuy v. Everett Steamship Corporation (93 Phil. 207, 213-214), expounds on the extent of the applicability of the aforementioned provision. We ruled:

"Neither do we find tenable the claim that the prescriptive period contained in said act can only be invoked by the shipper, excluding all other parties to the transaction. While apparently the proviso contained in the portion of section 3(6) of the act we have quoted gives the impression that the right to file suit within one year after delivery of the goods applies to the shipper alone, however, reading the proviso in conjunction with the rest of section 3(6), it at once becomes apparent that the conclusion drawn by petitioner is unwarranted. In the first place, said section provides that the notice of loss or damage for which a claim for indemnity may be made should be given in writing to the carrier at the port of discharge before or at the time of the removal of the goods, and if the loss or damage is not apparent said notice should be given 'within three days on delivery.' From the language of this section, it seems clear that the notice of loss or damage is required to be filed not necessarily by the shipper but also by the consignee or any legal holder of the bill of lading. In fact, said section requires that the notice be given at the port of discharge and the most logical party to file the notice is either the consignee or the endorsee of the bill of lading. In the second place, a study of the historical background of this particular provision will show that although the word shipper is used in the proviso referred to by the petitioner, the intention of the law was not to exclude the consignee or endorsee of the bill of lading from bringing the action but merely to limit the filing of the same within one year after the delivery of the goods at the port of discharge. [The Southern Cross, 1940, A. M. C. 59 (SDNY); Lindgren v. Farley, 1938 A. M. C. 805 (SDNY)].

"Arnold W. Knauth, an eminent authority on admiralty, commenting on this proviso, says:

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"It seems evident that this language does not alter the sense of the text of the Hague Rules; it merely reiterates in another form the rule already laid down. Curiously, the proviso seems limited to the rights of shippers, and might strictly be construed not to give any rights to consignees, representatives, or subrogated parties; whereas the Hague Rules phraseology is broader. As the Act contains both phrases, it would seem to be as broad as the broader of the two forms of words.' (Ocean Bills of Lading, by Knauth, p. 229)."

Clearly, the coverage of the Act includes the insurer of the goods. Otherwise, what the Act intends to prohibit after the lapse of the one-year prescriptive period can be done indirectly by the shipper or owner of the goods by simply filing a claim against the insurer even after the lapse of one year. This would be the result if we follow the petitioner's argument that the insurer can, at any time, proceed against the carrier and the ship since it is not bound by the time-bar provision. In this situation, the one-year limitation will be practically useless. This could not have been the intention of the law which has also for its purpose the protection of the carrier and the ship from fraudulent claims by having "matters affecting transportation of goods by sea be decided in as short a time as possible" and by avoiding incidents which would "unnecessarily extend the period and permit delays in the settlement of questions affecting the transportation". (See *The Yek Tong Fire and Marine Insurance Co., Ltd., v. American President Lines, Inc.*, 103 Phil. 1125-1126).

In the case of *Aetna Insurance Co. v. Luzon Stevedoring Corporation* (62 SCRA 11, 15), we denied the appeal of an insurance company which filed a suit against the carrier after the lapse of one year. We ruled:

"There is no merit in the appeal. The trial court correctly held that the one-year statutory and contractual prescriptive period had already expired when appellant company filed on April 7, 1965 its action against Barber Line Far East Service. The one-year period commenced on February 25, 1964 when the damaged cargo was delivered to the consignee. (See *Chua Kuy v. Everett Steamship Corporation*, 93 Phil. 207; *Yek Tong Fire & Marine Insurance Co., Ltd. v. American President Lines, Inc.*, 103 Phil. 1125)."

We likewise agree with the respondents that the third-party complaint of the petitioner cannot be considered to have been filed upon the filing of the main action because although it can be said that a third-party complaint is but ancillary to the main action (*Eastern Assurance and Surety Corporation v. Cui*, 105 SCRA 622), it cannot

abridge, enlarge, nor modify the substantive rights of any litigant. It creates no substantive rights. Thus, unless there is some substantive basis for the third-party plaintiff's claim, he cannot utilize the filing of such action to acquire any right of action against the third-party defendant. (See also Francisco, *The Revised Rules of Court in the Philippines*, Vol. 1, 1973 Ed., p. 507). The petitioner can only rightfully file a third-party complaint against the respondents if, in the first place, it can still validly maintain an action against the latter.

In the case at bar, the petitioner's action has prescribed under the provisions of the Carriage of Goods by Sea Act. Hence, whether it files a third-party complaint or chooses to maintain an independent action against herein respondents is of no moment. Had the plaintiffs in the civil cases below filed an action against the petitioner after the one-year prescriptive period, then the latter could have successfully denied liability on the ground that by their own doing, the plaintiffs had prevented the petitioner from being subrogated to their respective rights against the herein respondents by filing a suit after the one-year prescriptive period. The situation, however, does not obtain in the present case. The plaintiffs in the civil cases below gave extra-judicial notice to their respective carriers and filed suit against the petitioner well within one year from their receipt of the goods. The petitioner had plenty of time within which to act. In Civil Case No. 109911, the petitioner had more than four months to file a third-party complaint while in Civil Case No. 110061, it had more than five months to do so. In both instances, however, the petitioner failed to file the appropriate action.

WHEREFORE, IN VIEW OF THE FOREGOING, the petitions in G.R. No. 54140 and G.R. No. 62001 are hereby DISMISSED for lack of merit. Costs against the petitioner.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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