

DOLE PHILIPPINES, INC., PLAINTIFF-APPELLANT, VS. MARITIME COMPANY OF THE PHILIPPINES, DEFENDANT-APPELLEE.

G.R. No. 61352. February 27, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

This appeal, which was certified to the Court by the Court of Appeals as involving only questions of law,[1] relates to a claim for loss and/or damage to a shipment of machine parts sought to be enforced by the consignee, appellant Dole Philippines, Inc. (hereinafter called Dole) against the carrier, Maritime Company of the Philippines (hereinafter called Maritime), under the provisions of the Carriage of Goods by Sea Act.[2]

The basic facts are succinctly stated in the order of the Trial Court [3] dated March 16, 1977, the relevant portion of which reads:

“ ***

Before the plaintiff started presenting evidence at today's trial, at the instance of the Court the lawyers entered into the following stipulation of facts:

- The cargo subject of the instant case was discharged in Dadiangas unto the custody of the consignee on December 18, 1971;

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The corresponding claim for the damages sustained by the cargo was filed by the plaintiff with the defendant vessel on May 4, 1972;

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On June 11, 1973 the plaintiff filed a complaint in the Court of First Instance of Manila, docketed therein as Civil Case No. 91043, embodying three (3) causes of action involving three (3) separate and different shipments. The third cause of action therein involved the cargo now subject of this present litigation;"

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On December 11, 1974, Judge Serafin Cuevas issued an Order in Civil Case No. 91043 dismissing the first two causes of action in the aforesaid case with prejudice and without pronouncement as to costs because the parties had settled or compromised the claims involved therein. The third cause of action which covered the cargo subject of this case now was likewise dismissed but without prejudice as it was not covered by the settlement. The dismissal of that complaint containing the three causes of action was upon a joint motion to dismiss filed by the

parties;

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Because of the dismissal of the complaint in Civil Case No. 91043 with respect to the third cause of action without prejudice, plaintiff instituted this present complaint on January 6, 1975.

***."[4]

To the complaint in the subsequent action Maritime filed an answer pleading inter alia the affirmative defense of prescription under the provisions of the Carriage of Goods by Sea Act,[5] and following pre-trial, moved for a preliminary hearing on said defense.[6] The Trial Court granted the motion, scheduling the preliminary hearing on April 27, 1977.[7] The record before the Court does not show whether or not that hearing was held, but under date of May 6, 1977, Maritime filed a formal motion to dismiss invoking once more the ground of prescription.[8] The motion was opposed by Dole[9] and the Trial Court, after due consideration, resolved the matter in favor of Maritime and dismissed the complaint.[10] Dole sought a reconsideration, which was denied,[11] and thereafter took the present appeal from the order of dismissal.

The pivotal issue is whether or not Article 1155 of the Civil Code providing that the prescription of actions is interrupted by the making of an extrajudicial written demand by the creditor is applicable to actions brought under the Carriage of Goods by Sea Act which, in its Section 3, paragraph 6, provides that:

**** 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 conceded, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

***."

Dole concedes that its action is subject to the one-year period of limitation prescribed in the above-cited provision.[12] The substance of its argument is that since the provisions of the Civil Code are, by express mandate of said Code, suppletory of deficiencies in the Code of Commerce and special laws in matters governed by the latter,[13] and there being "**** a patent deficiency **** with respect to the tolling of the prescriptive period ****" provided for in the Carriage of Goods by Sea Act,[14] prescription under said Act is subject to the provisions of Article 1155 of the Civil Code on tolling; and because Dole's claim for loss or damage made on May 4, 1972 amounted to a written extrajudicial demand which would toll or interrupt prescription under Article 1155, it operated to toll prescription also in actions under the Carriage of Goods by Sea Act. To much the same effect is the further argument based on Article 1176 of the Civil Code which provides that the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws in all matters not regulated by the Civil Code.

These arguments might merit weightier consideration were it not for the fact that the question has already

received a definitive answer, adverse to the position taken by Dole, in *The Yek Tong Lin Fire & Marine Insurance Co., Ltd. vs. American President Lines, Inc.*[15] There, in a parallel factual situation, where suit to recover for damage to cargo shipped by vessel from Tokyo to Manila was filed more than two years after the consignee's receipt of the cargo, this Court rejected the contention that an extrajudicial demand tolled the prescriptive period provided for in the Carriage of Goods by Sea Act, viz:

"In the second assignment of error plaintiff-appellant argues that it was error for the court a quo not to have considered the action of plaintiff-appellant suspended by the extrajudicial demand which took place, according to defendant's own motion to dismiss, on August 22, 1952. We notice that while plaintiff avoids stating any date when the goods arrived in Manila, it relies upon the allegation made in the motion to dismiss that a protest was filed on August 22, 1952 -- which goes to show that plaintiff-appellant's counsel has not been laying the facts squarely before the court for the consideration of the merits of the case. We have already decided that in a case governed by the Carriage of Goods by Sea Act, the general provisions of the Code of Civil Procedure on prescription should not be made to apply. (*Chua Kuy vs. Everett Steamship Corp.*, G.R. No. L-5554, May 27, 1953.) Similarly, we now hold that in such a case the general provisions of the new Civil Code (Art. 1155) cannot be made to apply, as such application would have the effect of extending the one-year period of prescription fixed in the law. It is desirable that matters affecting transportation of goods by sea be decided in as short a time as possible; the application of the provisions of Article 1155 of the new Civil Code would unnecessarily extend the period and permit delays in the settlement of questions affecting transportation, contrary to the clear intent and purpose of the law. ***"

Moreover, no different result would obtain even if the Court were to accept the proposition that a written extrajudicial demand does toll prescription under the Carriage of Goods by Sea Act. The demand in this instance would be the claim for damage filed by Dole with Maritime on May 4, 1972. The effect of that demand would have been to renew the one-year prescriptive period from the date of its making. Stated otherwise, under Dole's theory, when its claim was received by Maritime, the one-year prescriptive period was interrupted — "tolled" would be the more precise term — and began to run anew from May 4, 1972, affording Dole another period of one (1) year counted from that date within which to institute action on its claim for damage. Unfortunately, Dole let the new period lapse without filing action. It instituted Civil Case No. 91043 only on June 11, 1973, more than one month after that period had expired and its right of action had prescribed.

Dole's contention that the prescriptive period "**** remained tolled as of May 4, 1972 *** (and that) in legal contemplation *** (the) case (Civil Case No. 96353) was filed on January 6, 1975 *** well within the one-year prescriptive period in Sec. 3(6) of the Carriage of Goods by Sea Act,"[16] equates tolling with indefinite suspension. It is clearly fallacious and merits no consideration.

WHEREFORE, the order of dismissal appealed from is affirmed, with costs against the appellant, Dole Philippines, Inc.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Rollo, pp. 32-34.

[2] U.S. Public Act No. 521 which was made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by Commonwealth Act No. 65 approved October 22, 1936.

[3] In Civil Case No. 96353, CFI of Manila.

- [4] Record on Appeal, pp. 22-23.
- [5] Id., pp. 14-16.
- [6] Id., pp. 24-25.
- [7] Id., pp. 25-26.
- [8] Id., pp. 29-33.
- [9] Id., pp. 34-39.
- [10] Id., pp. 39-44.
- [11] Id., pp. 65-66.
- [12] Appellant's Brief, p. 11.
- [13] Art. 18, Civil Code.
- [14] Appellant's Brief, p. 12.
- [15] No. L-11081, April 30, 1958; 103 Phil. 1125 (unrep.).
- [16] Appellant's Brief, p. 18.

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