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**FIRST DIVISION**

[G.R. No. L-25488. September 28, 1979]

**ESSO STANDARD EASTERN, INC.,** *plaintiff-appellee, vs.* **MANILA RAILROAD CO. (Philippine National Railways) and MANILA PORT SERVICE,** *defendants-appellants.*

**SYLLABUS**

**CIVIL LAW; PRESCRIPTION OF ACTIONS; RULE IN CASE OF ACTION FOR RECOVERY OF SUM OF MONEY FOR LOSS AND DAMAGE CAUSED TO SHIPMENT OF GOODS.**— In *Delgado Brothers, Inc., et al. v. Manila Port Service, et al.*, L-21781, June 30, 1966; 17 SCRA 471, where herein defendants-appellants insisted therein that "while there are two periods provided for in the contract, in any event the suit must be filed within one year from the date of arrival of the goods," We rejected the same, holding that "[t]o uphold this contention would [be] unfair to the consignee, for all that the arrastre contractor would [do would] be to assure the [former] that his claim is under consideration and that he would be informed of its decision in due time; wait for one year; and then send notice that the claim has prescribed." We have, thus, adopted the rule that in cases where the arrastre contractor does not act on the claim one way or the other within the period of one year from the date of discharge of the last package, the claim should be deemed constructively denied or rejected upon the expiration of one year therefrom. As earlier pointed out, the dates of discharge from the vessels "Genevieve Lykes," "Pioneer Moor," and "Pioneer Main" are May 10, 1962, May 7, 1962, and May 30, 1962, respectively; that provisional claims therefor have all been seasonably filed but that the same have not been acted upon by defendants-appellants. Applying the above-stated rule, said claims are then deemed constructively denied upon the expiration of one year from May 10, 1962, May 7, 1962, and May 30, 1962 or more exactly on May 10, 1963, May 7, 1963, and May 30, 1963, respectively. Counting from these dates the one-year period within which action may be filed, We find that this suit which has been filed on February 1, 1964 has not yet been barred by prescription.

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**APPEARANCES OF COUNSEL**

*D.F. Macaranas & J. Mate Engage* for plaintiff-appellee.
*Bengson, Villegas & Zarraga* for defendants-appellants.

**D E C I S I O N**

**DE CASTRO, *J.*:**

On February 1, 1964, plaintiff-appellee filed in the City Court of Manila, Branch III, a complaint for the recovery of the sum of ₱2,691.18 for loss and damage caused to four shipments of goods consigned to it which arrived from abroad on four different occasions in the year 1962 and which were handled by defendants-appellants as arrastre operators for the port of Manila. Almost a year later, on January 7, 1965, the said City Court rendered, on the basis of the stipulation of facts (p. 32, Original CFI Records) entered into on November 20, 1964 by both parties and of the annexes thereto, a decision dismissing the complaint. A motion for reconsideration of this decision was denied.

Thereafter, plaintiff-appellee appealed to the Court of First Instance of Manila, Branch V. On the basis of another stipulation of facts (p. 69, *id.*) entered into on September 2, 1965 by both parties and of the annexes of the stipulation of facts submitted before the City Court of Manila which were adopted by them as part of their respective evidence before the Court of First Instance of Manila, said Court of First Instance rendered on September 23, 1965 a decision reversing that of the City Court of Manila. Hence, this appeal.

The basic issue in this appeal in whether plaintiff-appellee's right to bring this action has already prescribed, the same having been brought beyond one (1) year from the dates of discharge of the shipments in question. Necessarily involved in this issue is the determination of whether the provisional claims herein involved (Exhibits A, D and G, pp. 1, 6 and 12, respectively, Folder of Exhibits) satisfy the condition set forth in Section 15 of the Management Contract (pp. 24-25, Folder of Exhibits) that the "claim for the value" should be filed within fifteen

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(15) days from the date of discharge of the last package of the said shipments.

Defendants-appellants contend that the said provisional claims are not in compliance with Section 15 of the Management Contract because the latter requires the filing not merely of a "provisional claim" but of a "claim for the value" (p. 12, Appellants' Brief). This argument lays much stress on the terminological difference between a "provisional claim" and a "claim for the value," which distinction is, in our opinion, of no consequential import. The test in determining whether the said section of the Management Contract has been complied with is whether a claim, be it called a "provisional claim" or a "claim for the value," has served the purpose of giving the arrastre operator(s) 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 *(Consunji v. Manila Port Service*, L-15551, November 29, 1960, 110 Phil. 231). Upon perusal of the said provisional claims, We find that they contain descriptions of the shipments in question sufficient to have allowed defendants-appellants to make a reasonable verification, consistent with our ruling in a long line of cases[1] involving this same argument. Accordingly, We hold that the filing of the said provisional claims is a sufficient compliance with the requirement of said section of the Management Contract.

In furtherance of their stance that the provisional claims herein involved fall short of the claims for the value contemplated and required by the said section of the Management Contract, defendants-appellants contend that the said provisional claims do not claim for actual and itemized goods lost or damaged

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[1] To mention a few: *State Bonding Insurance Co., Inc. v. Manila Port Service, et al.*, L-22395, December 17, 1966, (18 SCRA 1139); *Domestic Insurance Co. of the Phil. v. Manila Railroad Co. and Manila Port Service*, L-24066, August 30, 1967, (20 SCRA 1190); *Philippine Education Co. Inc. vs. Manila Port Service and/or Manila Railroad Co.*, L-23521, October 29, 1971; (42 SCRA 31); *Malayan Insurance Co., Inc. v. Manila Port Service and/or Manila Railroad Co.*, L-23128, September 30, 1978. (85 SCRA 320).

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but, instead, merely advise that the entire shipments stated therein have been damaged and/or short-delivered *ex* their respective carriers (p. 13, Appellants' Brief). Stated otherwise, defendants-appellants argue that inasmuch as the provisional claims do not state an itemized specification of the value of the loss or damage suffered by the shipments in question, said provisional claims cannot be categorized as "claims for the value," and, hence, cannot be said to comply with the requirement of the aforesaid section of the Management Contract. We cannot subscribe to this argument. In the first place, it is not necessary that the said provisional claims should state a detailed list of the loss or damage suffered by the said shipments; they only have to meet the test We have earlier mentioned. The reason behind this is that the determination and preparation of the specific amount of damages claimed should be done carefully and without haste, and these can be done practically only in a formal claim which can be filed even long after a provisional claim has been filed. Secondly, Our holding that "[t]he circumstance that the provisional claim did not specify the value of the loss still substantially fulfills the requirement of the contract . . . and is not a defense against the claim of the consignee for recovery after it shall have ascertained later its actual loss or damage"[2] is clearly applicable to this case where plaintiff-appellee, at first, filed provisional claims advising defendants-appellants that the shipments stated therein have been damaged and/or shortdelivered, then followed the same with formal claims (Exhibits B, E and H, pp. 2, 7 and 13, respectively, Folder of Exhibits) specifying the value of the loss or damage suffered by the said shipments (Stipulation of Facts, p. 69 ff., Original CFI Records).

Lastly, defendants-appellants, relying on the statement in the provisional claims that the shipments stated therein have been damaged and/or shortdelivered *ex* their respective carriers, argue that they cannot be held liable by the said provisional

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[2] *Domestic Insurance Co. of the Phil. v. Manila Railroad Co.*, 20 SCRA 1190, 1194 citing *State Bonding & Insurance Co., Inc. v. Manila Port Service and/or Manila Railroad Co.*, L-25833, February 28, 1966, (16 SCRA 324).

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claims inasmuch as being arrastre operators, they are not responsible for loss or damage aboard, or under the control of the said carriers. This argument is belied by the Stipulation of Facts (*supra*) submitted before the Court of First Instance of Manila. Stipulation Nos. 2, 3, and 4 categorically state that the shipments therein stated have all been discharged in good order unto the custody of defendant-appellant Manila Port Service, implying thereby that the loss or damage to said shipments occurred only when they were already within its safekeeping.

The foregoing discussion next brings up the question of whether the said provisional claims have been seasonably filed. Upon examination of the aforementioned Stipulation of Facts, We find that the dates of last discharge from the vessels "Genevieve Lykes," "Pioneer Moor," and "Pioneer Main" are May 10, 1962, May 7, 1962, and May 30, 1962, and that the provisional claims therefor have been filed on May 14, 1962 and May 30, 1962, respectively. It is obvious, then, that the said provisional claims have all been filed within the requisite 15-day period.

We now discuss the basic issue We have earlier adverted to.

Defendants-appellants claim that "it is illegal to shift to [them] the duty of proving [plaintiff-appellee's] case, *i.e.*, to show that claims for the value were rejected or denied so as to extend further the running of the prescriptive period."[3] It is apparent from this argument that defendants-appellants invoke prescription in their favor but would rather have placed on plaintiff-appellee the burden of proving that the suit has not yet prescribed. The claim that the suit has prescribed is an affirmative allegation. According to Rule 131, Section 1 of the Revised Rules of Court, "Each party must prove his own affirmative allegation," and evidence need not be given in support of a negative allegation. Hence, the defendants-appellants have the burden of proving that the suit has prescribed.[4]

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[3] p. 8, Appellants' Brief.

[4] *Bollozos v. Court of Tax Appeals*, L-16441, March 31, 1965; (13 SCRA 469, 475).

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Defendants-appellants also contend that Section 15 of the Management Contract should be interpreted to mean that "in cases where there is no denial or rejection of the claim or when the denial or rejection is made after the lapse of one year from the date of discharge of the goods, the prescriptive period shall commence from the date of discharge and not from the date of rejection."[5] We have already had occasion to rule on this point. In *Delgado Brothers, Inc., et al. v. Manila Port Service, et al.*, L-21781, June 30, 1966; 17 SCRA 471, where herein defendants-appellants insisted therein that "while there are two periods provided for in the contract, in any event the suit must be filed within one year from the date of arrival of the goods," We rejected the same, holding that "[t]o uphold this contention would [be] unfair to the consignee, for all that the arrastre contractor would [do would] be to assure the [former] that his claim is under consideration and that he would be informed of its decision in due time; wait for one year; and then send notice that the claim has prescribed."[6] We have, thus, adopted the rule that in cases where the arrastre contractor does not act on the claim one way or the other within the period of one year from the date of discharge of the last package, the claim should be deemed constructively deemed or rejected upon the expiration of one year therefrom.[7]

As earlier pointed out, the dates of discharge from the vessels "Genevieve Lykes," "Pioneer Moor," and "Pioneer Main" are May 10, 1962, May 7, 1962, and May 30, 1962, respectively; that provisional claims therefor have all been seasonably filed but that the same have not been acted upon by defendants-appellants. Applying the above-stated rule, said claims are then

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[5] p. 9, Appellants' Brief.

[6] at p. 473.

[7] *Continental Insurance Co. v. Manila Port Service, et al.*, L-22208, March 30, 1966; (16 SCRA 425); *Delgado Brothers Inc., et al. v. Manila Port Service, et al.*, L-21781, June 30, 1966; (17 SCRA 471); *Philippine Education Co. Inc. v. Manila Port Service*, L-23444, October 29, 1971; (42 SCRA 31).

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deemed constructively denied upon the expiration of one year from May 10, 1962, May 7, 1962, and May 30, 1962 or more exactly on May 10, 1963, May 7, 1963, and May 30, 1963, respectively. Counting from these dates the one-year period within which action may be filed, We find that this suit which has been filed on February 1, 1964 has not yet been barred by prescription.

Defendants also find as error the trial court's adoption of the rates of exchange of the U.S. dollar appearing in the so-called formal claims. They argue that even if the said formal claims have been filed, the facts stated therein, especially with respect to the rates of exchange of the U.S. dollar are not admitted to be true and correct; that while in the stipulation of facts submitted before the City Court of Manila there appeared provisions regarding said rates of exchange (p. 32 ff., Original CFI Records), the same have been discarded or deleted in the stipulation of facts submitted before the Court of First Instance of Manila because there has been no reliable proof to support them; and that as plaintiff-appellee has failed to prove said rates of exchange despite its reservation to do so, the international rate of exchange of ₱2.015 to a dollar should be applied in this case (p. 14 ff., Appellants' Brief).

In an order dated September 2, 1965 of the Court of First Instance of Manila (p. 74, Original CFI Records), this case was submitted for decision on the basis of the stipulation of facts submitted before said court, together with the annexes to the stipulation of facts submitted in the City Court of Manila which have been adopted by the parties as part of their respective evidence. Among these annexes are the so-called formal claims (*supra*) and the Central Bank Release Certificates (Exhibits B-1, E-1, and H-1, pp. 3, 8, & 14 respectively, Folder of Exhibits) wherein are stated the rates of exchange applicable to the value of the shipments therein mentioned. Nowhere in the records can We find anything which supports the contention of defendants-appellants that the rates of exchange stated in said exhibits are not true and correct. Otherwise, defendants-appellants could have easily submitted evidence proving their own version of the true and correct rates of exchange. They

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have not done so. Hence, applying by analogy Section 23, Rule 130 of the Revised Rules of Court, We may say that this seeming silence on their part can only be interpreted as an admission of the truth and correctness of the rates of exchange appearing in the exhibits aforementioned.

The contention that there was no reliable proof to support said rates of exchange because although there appeared provisions on them in the stipulation of facts submitted before the City Court of Manila, the same were later discarded or deleted in the stipulation of facts submitted before the Court of First Instance of Manila is without basis, plaintiff-appellee having submitted the aforesaid Exhibits B, B-1, E, E-1, H and H-1 to prove the said rates of exchange.

It is true that in the stipulation of facts submitted before the Court of First Instance of Manila, plaintiff-appellee made the reservation to prove the rates of exchange applicable to the invoice value of the shipments in question. Contrary to appellants' allegation, plaintiff-appellee has, in fact, submitted exhibits as proof of said rates of exchange, failing perhaps to avail of the reservation to prove rates of exchange greater than those already appearing in the aforesaid exhibits, which is the real import of the reservation made in the stipulation of facts submitted before the Court *a quo*.

**WHEREFORE,** the decision appealed from is hereby affirmed *in toto*.

**SO ORDERED.**

*Teehankee, Acting C.J., (Chairman), Makasiar, Fernandez, Guerrero,* and *Melencio-Herrera, JJ.*, concur.