Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

**ORIENTAL ASSURANCE CORPORATION,**
Petitioner,

-versus-

**MANUEL ONG, doing business under the business name of WESTERN PACIFIC TRANSPORT SERVICES AND/OR ASIAN TERMINALS, INC.,**
Respondents.

**G.R. No. 189524**

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES,* and
GESMUNDO, *JJ.*

**Promulgated:**
October 11, 2017

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**DECISION**

**LEONEN, *J.*:**

The consignee's claim letter that was received by the arrastre operator two (2) days after complete delivery of the cargo constitutes substantial compliance with the time limitation for filing claims under the Gate Pass and the Management Contract. However, the arrastre operator's liability for damage to the cargo is limited to ₱5,000.00 per package in accordance with the Management Contract.

This Rule 45 Petition for Review on Certiorari[1] seeks a review of the

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* On official leave.
1 *Rollo*, pp. 9–31.

February 19, 2009 Decision[2] and August 25, 2009 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 89311. The Court of Appeals affirmed the Regional Trial Court's dismissal of the complaint on the ground that the claim of petitioner Oriental Assurance Corporation (Oriental) had already prescribed.

JEA Steel Industries, Inc. (JEA Steel) imported from South Korea 72 aluminum-zinc-alloy-coated steel sheets in coils. These steel sheets were transported to Manila on board the vessel M/V Dooyang Glory as evidenced by Bill of Lading No. HDMUBSOML-214s011.[4]

Upon arrival of the vessel at the Manila South Harbor on June 10, 2002, the 72 coils were discharged and stored in Pier 9 under the custody of the arrastre contractor, Asian Terminals, Inc. (Asian Terminals).[5]

From the storage compound of Asian Terminals, the coils were loaded on the trucks of Manuel Ong (Ong) and delivered to JEA Steel's plant in Barangay Lapidario, Trece Martirez, Cavite on June 14, 2002[6] and June 17, 2002.[7] Eleven of these coils "were found to be in damaged condition, dented or their normal round shape deformed."[8]

JEA Steel filed a claim with Oriental for the value of the 11 damaged coils, pursuant to Marine Insurance Policy No. OAC/M-12292.[9]

Oriental paid JEA Steel the sum of ₱521,530.16 and subsequently demanded indemnity from Ong and Asian Terminals (respondents), but they refused to pay.[10]

On May 19, 2003, Oriental filed a Complaint[11] before the Regional Trial Court of Manila for sum of money against respondents.[12]

Ong countered that the 11 coils were already damaged when they were

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2 Id. at 32–50. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. of the Fifth Division, Court of Appeals, Manila.

3 Id. at 51–54. The Resolution was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. of the Former Fifth Division, Court of Appeals, Manila.

4 Id. at 15.

5 Id.

6 Id. at 91, Asian Terminal Inc.'s Comment.

7 Id. at 33.

8 Id.

9 Id. at 16.

10 Id.

11 RTC Records, pp. 2–5.

12 Docketed as Civil Case No. 03-106578.

loaded on board his trucks and transported to the consignee.[13]

For its part, Asian Terminals claimed that it exercised due diligence in handling the cargo, that the cargo was released to the consignee's representative in the same condition as when received from the vessel, and that the damages were sustained while in the custody of the vessel or the customs broker.[14]

Asian Terminals further argued that Oriental's claim was barred for the latter's failure to file a notice of claim within the 15-day period provided in the Gate Pass and in Article VII, Section 7.01 of the Contract for Cargo Handling Services (Management Contract) between the Philippine Ports Authority and Asian Terminals.[15] The Gate Pass was signed by the consignee's representative to acknowledge the delivery and receipt of the shipment.[16] The dorsal side of this Gate Pass stated:

PROVISIONS

> Issuance of this Gate Pass constitutes delivery to and receipt by the consignee of the goods as described above in good order and condition unless an accompanying B.O. certificate duly signed and noted on the fact (sic) of this Gate Pass appears.
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> This Gate Pass is subject to all terms and conditions defined in the Management Contract between the Philippine Ports Authority and Asian Terminals, Inc. and amendment and alterations thereof particularly but not limited to the Article VI thereof, limiting the contractor's liability to P5,000 per package unless the transportation is otherwise specified or manifested or communicated in writing together with the invoice value and supported by a certified packing list to the contractor by the interested party or parties before the discharge of the goods and corresponding arrastre charges have been paid providing exception or restriction from liability among others, unless a formal claim with the required annexes shall have been filed with the contractor within fifteen (15) days from date of issuance by the contractor's certificate of loss, damage, injury or certificate of non-delivery.[17]

Asian Terminals added that its liability, if any, should not exceed ₱5,000.00, pursuant to said Section 7.01.[18]

After trial, Branch 39, Regional Trial Court, Manila rendered its Decision[19] on August 9, 2006 dismissing the complaint. It found no

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13 *Rollo*, p. 57.
14 Id. at 35.
15 Id. at 93 (Asian Terminal Inc.'s Comment) and 58 (RTC Decision).
16 Id. at 92.
17 Id.
18 Id. at 58.
19 Id. at 55–73. The Decision was written by Presiding Judge Noli C. Diaz.

preponderance of evidence to establish that respondents were the ones responsible for the damage to the 11 coils.[20] Oriental's Motion for Reconsideration was likewise denied by the Regional Trial Court in its Resolution[21] dated June 6, 2007.

The Court of Appeals dismissed Oriental's appeal on the ground that its claim had already prescribed.[22] The Court of Appeals found that 11 of the coils were already damaged before they were loaded in Ong's trucks.[23] Hence, the legal presumption of negligence applies against Asian Terminals unless it is able to prove that it exercised extraordinary diligence in the handling of the cargo.[24] The Court of Appeals held that as an arrastre operator, Asian Terminals was bound to observe the same degree of care required of common carriers.[25] The Court of Appeals further ruled that while Asian Terminals failed to rebut the presumption of negligence against it, it cannot be held liable to pay the value of the damaged coils because Oriental's claim was filed beyond the 15-day prescriptive period stated in the Gate Pass. According to the Court of Appeals, it can resolve the issue of prescription despite not being assigned as an error on appeal as it was already raised, although not tackled, in the lower court. The Court of Appeals also denied petitioner's subsequent motion for reconsideration.[26]

Hence, this petition was filed before this Court. Respondents filed their respective Comments,[27] and Oriental filed its Motion to Admit Consolidated Reply[28] together with its Consolidated Reply.[29]

In compliance with this Court's January 18, 2012 Resolution,[30] Asian Terminals[31] and Oriental[32] filed their respective memoranda. Ong filed a Manifestation,[33] adopting the arguments contained in the Memorandum of Asian Terminals.

The issues for this Court's resolution are:

First, whether or not the Court of Appeals gravely erred in passing upon the issue of prescription even though it was not an assigned error in the appeal;

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20 Id. at 70.
21 Id. at 74–75.
22 Id. at 49.
23 Id. at 45.
24 Id. at 44–45.
25 Id. at 43.
26 Id. at 51–54.
27 Id. at 90–108, Asian Terminals' Comment and *rollo*, pp. 110–113, Ong's Comment.
28 Id. at 117–118.
29 Id. at 119–128.
30 Id. at 131-A–131-B.
31 Id. at 137–155.
32 Id. at 159–188.
33 Id. at 156–158.

Second, whether or not the claim against Asian Terminals, Inc. is barred by prescription; and

Finally, whether or not the Court of Appeals gravely erred in ruling that Manuel Ong is not liable for the damage of the cargo.[34]

I

Oriental submits that the "Court of Appeals cannot rule on the issue of prescription as this was not included in the assignment of errors . . . nor was this properly argued by any of the parties in their respective briefs filed before the Court of Appeals."[35]

On the other hand, Asian Terminals counters that the Court of Appeals properly reviewed the issue of prescription even though it was not raised in Oriental's appeal brief. This issue is closely related to the liability of Asian Terminals for the damaged shipment, the first error in Oriental's appeal. Moreover, Asian Terminals asserts that it raised the issue of prescription before the trial court, although it was not resolved.[36]

This Court agrees with Asian Terminals. The Court of Appeals properly passed upon the issue of prescription.

Rule 51, Section 8 of the Rules of Court provides:

> Section 8. *Questions that may be decided.* No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

An assignment of error is generally required for appellate review.[37] Section 8 provides that only errors which have been stated in the assignment of errors and properly argued in the brief will be considered by the appellate court. The exceptions to this rule are errors affecting jurisdiction over the subject matter as well as plain and clerical errors.[38]

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34 Id. at 17.
35 Id. at 180–181.
36 Id. at 145.
37 *Enriquez v. Court of Appeals*, 444 Phil. 419, 429 (2003) [Per J. Quisumbing, Second Division].
38 *Abejaron v. Court of Appeals*, 284-A Phil. 416 (1992) [Per J. Cruz, First Division] *citing Vda. De Javellana v. Court of Appeals*, 208 Phil. 706 (1983) [Per J. Concepcion, Jr., Second Division].

However, in a number of cases,[39] this Court recognized the appellate courts' ample authority to consider errors that were not assigned. This is in accord with the liberal spirit of the Rules of Court with a view to securing a "just, speedy and inexpensive disposition" of every case.[40] In *Mendoza v. Bautista*:[41]

> [A]n appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[42]

Exceptions (d) and (e) apply in this case.

The issue of whether or not Oriental's claim has prescribed was raised in the Regional Trial Court and evidence was presented by Asian Terminals.[43] However, this matter was no longer discussed by the Regional Trial Court in its decision in view of its finding that Oriental failed to clearly establish that respondents were responsible for the damaged coils.[44]

Moreover, it was Oriental that appealed to the Court of Appeals. It is comprehensible that respondents failed to discuss the issue since the arguments in their briefs were limited to refuting the matters raised by petitioner.

Oriental assigned the following as errors in its appeal to the Court of Appeals:

> The trial court erred when it declared that [respondents] are not liable for

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39 *See Ang v. Associated Bank,* 559 Phil. 29 (2007) [Per J. Azcuna, First Division]; *Servicewide Specialists, Inc. v. Court of Appeals,* 327 Phil. 431 (1996) [Per J. Puno, Second Division]; *Abejaron v. Court of Appeals,* 284-A Phil. 416 (1992) [Per J. Cruz, First Division]; *Tan v. Court of Appeals,* 245 Phil. 212 (1988) [Per J. Feliciano, Third Division].

40 RULES OF COURT, Rule 1, sec. 6 provides:
Section 6. *Construction.* – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.
*See Diamante v. Court of Appeals,* 282 Phil. 955 (1992) [Per J. Davide, Jr., Third Division].

41 493 Phil. 804 (2005) [Per J. Austria-Martinez, Second Division].

42 Id. at 813–814.

43 *Rollo*, pp. 58 and 66–67.

44 Id. at 70 and 72.

> the loss and damage of the goods.
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> . . . .
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> The trial court erred in dismissing [Oriental's] complaint and in refusing to grant the reliefs prayed for[.][45]

The issue of prescription is closely related to, and determinant of, the propriety of the lower court's ruling, absolving respondents from liability for the damaged goods and dismissing Oriental's complaint. Thus, this Court finds no error on the part of the Court of Appeals in passing upon this issue.

## II.A

Going to the substantive issue, Oriental contends that it was not aware of the provisions[46] of the Gate Pass or the Management Contract, neither of which it was a party to.[47] Consequently, it cannot be bound by the stipulation limiting the liability of Asian Terminals.[48]

Asian Terminals counters that "[t]he provisions of the Management Contract and the Gate Pass are binding on Oriental as insurer-subrogee and successor-in-interest of the consignee."[49]

This Court finds for Asian Terminals. This issue on whether or not petitioner, who was not a party to the Gate Pass or Management Contract, is bound by the 15-day prescriptive period fixed in them to file a claim against the arrastre operator is not new. This has long been settled by this Court.

In *Government Service Insurance System v. Manila Railroad Company*,[50] this Court held that the provisions of a gate pass or of an arrastre management contract are binding on an insurer-subrogee even if the latter is not a party to it, *viz*:

> The question whether plaintiff is bound by the stipulation in the Management Contract, Exhibit 1, requiring the filing of a claim within 15 days from discharge of the goods, as a condition precedent to the accrual of a cause of action against the defendants, has already been settled in Northern Motors, Inc. *vs.* Prince Line et al, 107 Phil., 253, Mendoza *vs.* Phil. Air Lines, Inc., (9 Phil., 836), and Freixas & Co. *vs.* Pacific Mail Steamship Co. (42 Phil., 199), adversely to plaintiff's pretense. We have repeatedly held that, by availing himself of the services of the arrastre

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45 Id. at 41.
46 Id. at 183.
47 Id. at 181.
48 Id. at 184.
49 Id. at 146.
50 111 Phil. 154 (1961) [Per J. Concepcion, En Banc].

> operator and taking delivery therefrom in pursuance of a permit and a pass issued by the latter, which were "subject to all the terms and conditions" of said management contract, including, *inter alia,* the requirement thereof that "a claim is filed with the Company within 15 days from the date of arrival of the goods", the consignee — and, hence, the insurer, or plaintiff herein, as successor to the rights of the consignee — became bound by the provisions of said contract. The second assignment of error is, therefore, untenable.[51]

This doctrine was reiterated in the later case of *Summa Insurance Corporation v. Court of Appeals*:[52]

> In the performance of its job, an arrastre operator is bound by the management contract it had executed with the Bureau of Customs. However, a management contract, which is a sort of a stipulation *pour autrui* within the meaning of Article 1311 of the Civil Code, is also binding on a consignee because it is incorporated in the gate pass and delivery receipt which must be presented by the consignee before delivery can be effected to it. The insurer, as successor-in-interest of the consignee, is likewise bound by the management contract. Indeed, upon taking delivery of the cargo, a consignee (and necessarily its successor-in-interest) tacitly accepts the provisions of the management contract, including those which are intended to limit the liability of one of the contracting parties, the arrastre operator.[53] (Citations omitted)

The fact that Oriental is not a party to the Gate Pass and the Management Contract does not mean that it cannot be bound by their provisions. Oriental is subrogated to the rights of the consignee simply upon its payment of the insurance claim.

Article 2207 of the Civil Code provides:

> Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, *the insurance company shall be subrogated to the rights of the insured* against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Emphasis added)

This Court explained the principle of subrogation in insurance contracts:

> Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged

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51 Id. at 157–158.

52 323 Phil. 214 (1996) [Per J. Panganiban, Third Division].

53 Id. at 223–224.

> through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay. Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer[.][54]

As subrogee, petitioner merely stepped into the shoes of the consignee and may only exercise those rights that the consignee may have against the wrongdoer who caused the damage.[55] "It can recover only the amount that is recoverable by the assured."[56] And since the right of action of the consignee is subject to a precedent condition stipulated in the Gate Pass, which includes by reference the terms of the Management Contract, necessarily a suit by the insurer is subject to the same precedent condition.[57]

Petitioner's assertion that the 15-day prescriptive period could not be enforced upon it to defeat its claim since the Gate Pass was pro forma and it was not given notice of the Management Contract[58] is untenable.

As stated earlier, the dorsal side of the Gate Pass signed by the consignee's representative upon receipt of the cargo expressly refers to the Management Contract between the Philippine Ports Authority and Asian Terminals. Hence, the consignee and its subrogee, petitioner insurance company, are deemed to have notice of this Management Contract.[59]

**II.B**

Petitioner asserts that under the Gate Pass, the 15-day period was to be reckoned from the "date of issuance by the contractor's certificate of loss, damage, injury or certificate of non-delivery." Since Asian Terminals did not issue any certificate of damage, then the 15-day period did not begin to

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54 *Pan Malayan Insurance Corp. v. Court of Appeals*, 262 Phil. 919, 923 (1990) [Per J. Cortes, Third Division] *citing Compania Maritima v. Insurance Company of North America*, 120 Phil. 998 (1964) [Per J. Bautista Angelo, En Banc], *Fireman's Fund Insurance Company v. Jamilla & Company, Inc.*, 162 Phil. 421 (1976) [Per J. Aquino, Second Division].

55 *Sulpicio Lines Inc. v. First Lepanto-Taisho Insurance Corp.*, 500 Phil. 514, 525 (2005) [Per J. Chico-Nazario, Second Division]; *Lorenzo Shipping Corp. v. Chubb and Sons, Inc.*, 475 Phil. 169, 181–182 (2004) [Per J. Puno, Second Division].

56 *National Union Fire Insurance Company of Pittsburg v. Stolt-Nielsen Philippines, Inc.*, 263 Phil. 634 (1990) [Per J. Melencio-Herrera, Second Division].

57 *See American Insurance Co. of Newark v. Manila Port Service*, 164 Phil. 17 (1976) [Per J. Aquino, Second Division].

58 *Rollo*, pp. 22–23.

59 *See American Insurance Co. of Newark v. Manila Port Service*, 164 Phil. 17 (1976) [Per J. Aquino, Second Division].

run.[60]

In both its Comment on the Petition and Memorandum, respondent Asian Terminals no longer raised as an issue the matter regarding its *responsibility* for the 11 damaged coils. However, respondent Asian Terminals maintains its refusal of liability for such loss, solely on the basis of petitioner's alleged failure to file a formal claim within 15 days from the date of last delivery of the steel sheet coils to the consignee's warehouse, in accordance with the Management Contract.

With regard to the reckoning of the 15-day prescriptive period, Asian Terminals posits that "the fifteen-day limit should be counted from the date consignee obtains knowledge of the loss, damage or misdelivery of the shipment."[61] The contractor's issuance of a certificate of loss, damage, or non-delivery is not an indispensable condition for the period to run.[62] Asian Terminals adds that the consignee is presumed to have learned of the damage on June 17, 2002, the date of complete delivery of the shipment to the consignee's plant, since there was no showing that the consignee learned of the damage later than this date.[63] Thus, counting 15 days, Oriental had until July 2, 2002 to file its claim.[64] Asian Terminals received Oriental's claim only on July 4, 2002; hence, the claim was barred by prescription.[65]

**II.C**

Again, the dorsal side of the Gate Pass states:

PROVISIONS

> Issuance of this Gate Pass constitutes delivery to and receipt by the consignee of the goods as described above in good order and condition unless an accompanying B.O. certificate duly issued and noted on the fact (sic) of this Gate Pass appears.
>
> *This Gate Pass is subject to all terms and conditions defined in the Management Contract between the Philippine Ports Authority and Asian Terminals, Inc.* and amendment and alterations thereof particularly but not limited to the Article VI thereof, limiting the contractor's liability to P5,000 per package unless the transportation is otherwise specified or manifested or communicated in writing together with the invoice value and supported by a certified packing list to the contractor by the interested party or parties before the discharge of the goods and corresponding arrastre charges have been paid providing exception or restriction from liability among others, *unless a formal claim with the required annexes*

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60 *Rollo*, p. 24.
61 Id. at 152.
62 Id. at 151.
63 Id. at 152.
64 Id.
65 Id. at 152–153.

> *shall have been filed with the contractor within fifteen (15) days from date of issuance by the contractor's certificate of loss, damage, injury or liability or certificate of non-delivery.*[66] (Emphasis supplied)

Section 7.01 of the Contract for Cargo Handling Services[67] dated March 17, 1992 between Philippine Ports Authority and then Marina Port Services, Inc., now Asian Terminals, provides:

> Section 7.01 Responsibility and Liability for Losses and Damages; Exceptions. — The CONTRACTOR shall, at its own expense, handle all merchandise in all work undertaken by it hereunder, diligently and in a skillful, workman-like and efficient manner. The CONTRACTOR shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (P5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods. This amount of Five Thousand Pesos (P5,000.00) per package may be reviewed and adjusted by the AUTHORITY from time to time. THE CONTRACTOR shall not be responsible for the condition or the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by *force majeure* or other causes beyond the CONTRACTOR's control or capacity to prevent or remedy; **PROVIDED, that a *formal claim* together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and Computation arrived at covering the loss, injury or damage or non-delivery of such goods *shall have been filed with the CONTRACTOR within fifteen (15) days from day of issuance by the CONTRACTOR of a certificate of non-delivery*; PROVIDED, however, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) day period within which to file the claim commences; *PROVIDED, finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the package to the consignee.***[68] (Emphasis supplied)

The issuance of a certificate is not an indispensable condition for the 15-day limit to run. The Management Contract expressly states that upon the contractor's failure to issue a certification within 15 days from receipt of a consignee or his duly authorized representative or any interested party's

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66 Id. at 92.

67 RTC records, pp. 206–238.

68 RTC Records, pp. 226–227.

written request, this certification "*shall be deemed to have been issued*, and thereafter, the fifteen (15) day period within which to file the claim commences." Further, neither petitioner alleges nor the facts of this case show that a request for a certificate of loss or damage was made by the consignee. Hence, the arrastre operator could not be expected to issue one.

Based on the Management Contract, the consignee has a period of 30 days from the date of delivery of the package to the consignee within which to request a certificate of loss from the arrastre operator. From the date of the request for a certificate of loss, the arrastre operator has a period of 15 days within which to issue a certificate of non-delivery or loss, either actually or constructively. Moreover, from the date of issuance of a certificate of non-delivery or loss, the consignee has 15 days within which to file a formal claim covering the loss, injury, damage, or non-delivery of such goods with all accompanying documentation against the arrastre operator.

This Court has ruled that the purpose of the time limitation for filing claims is "to apprise the arrastre operator of the existence of a claim and enable it to check on the validity of the claimant's demand while the facts are still fresh for recollection of the persons who took part in the undertaking and the pertinent papers are still available."[69] Despite the changes introduced in the Management Contract on filing claims, the purpose is still the same.

This Court, in a number of cases,[70] has liberally construed the requirement for filing a formal claim and allowed claims filed even beyond the 15-day prescriptive period after finding that the request for bad order survey or the provisional claim filed by the consignee had sufficiently served the purpose of a formal claim.

In *New Zealand Insurance Co., Ltd. v. Navarro,*[71] 5,974 bags of soybean meal were discharged from the carrying vessel and received by the arrastre operator on June 28, 1974. The arrastre operator completed its delivery of the shipment to the consignee on July 9, 1974. On that same day, a bad order examination of the goods delivered was requested by the consignee and was conducted by the arrastre operator's own inspector, in the presence of representatives of both the Bureau of Customs and the consignee. The inspector's ensuing bad order examination dated July 9, 1974 certified that 173 out of the 5,974 bags of soybean meal shipped to Manila were damaged *in transitu* and an additional 111 bags were damaged

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69 *Manila Port Service v. Fortune Insurance & Surety Co., Inc.*, 150-A Phil. 410, 415 (1972) [Per J. J. B. L. Reyes, Second Division].

70 *See Metro Port Service, Inc. v. Intermediate Appellate Court*, 287 Phil. 1039 (1992) [Per J. Nocon, Second Division]; *Manila Port Service v. Court of Appeals*, 139 Phil. 133 (1969) [Per J. Capistrano, En Banc]; *Yap Teck Suy v. Manila Port Service*, 132 Phil. 409 (1968) [Per J. B. L. Reyes, En Banc]; *Insurance Company of North America v. Maritime Company of the Philippines*, 124 Phil. 328 (1966) [Per J. J. P. Bengzon, En Banc].

71 258-A Phil. 56 (1989) [Per J. Feliciano, Third Division].

after discharge from the vessel and receipt of the arrastre operator. On August 9, 1974, the consignee filed a formal claim with the arrastre operator. New Zealand Insurance Co., Ltd., the insurer of the goods, indemnified the consignee and subsequently filed a complaint against the arrastre operator.

The trial court dismissed the complaint on the ground that the claim was filed with the arrastre operator beyond 15 days from the issuance of the bad order examination report, which the trial court considered as the certificate of loss, damage, and injury referred to in the management contract.

This Court ruled that the *request for, and the result of, the bad order examination*, filed and done on the last day of delivery of the cargo to the consignee served the *purpose* of a formal claim. The arrastre operator had become aware of and had verified the facts giving rise to its liability. Thus, the arrastre operator suffered no prejudice by the lack of literal compliance with the 15-day limitation.

*New Zealand* held:

> We took special note of the above pronouncement six (6) years later in *Fireman's Fund Insurance Co. v. Manila Port Service Co., et al.* . . .
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> > However, *the trial court has overlooked the significance of the request for, and the result of, the bad order examination,* which were filed and done within fifteen days from the haulage of the goods from the vessel. *Said request and result, in effect, served the purpose of a claim*, which is —
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> > > *'to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available.' (Consunji vs. Manila Port Service, L-15551, 29 November 1960)*
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> > Indeed, the examination undertake[n] by the defendant's own inspector not only gave the defendant an opportunity to check the goods but is itself a verification of its own liability . . .
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> In other words, what the Court considered as the crucial factor in declaring the defendant arrastre operator liable for the loss occasioned, in the *Fireman's Fund* case, was the fact that defendant, by virtue of the consignee's request for a bad order examination, had been able formally to verify the existence and extent of its liability within fifteen (15) days from

> the date of discharge of the shipment from the carrying vessel — *i.e.*, *within the same period stipulated under the Management Contract for the consignee to file a formal claim.* That a formal claim had been filed by the consignee beyond the stipulated period of fifteen (15) days neither relieved defendant of liability nor excused payment thereof, the purpose of a formal claim, as contemplated in Consunji, having already been fully served and satisfied by the consignee's timely request for, and the eventual result of, the bad order examination of the nylon merchandise shipped.
>
> Relating the doctrine of *Fireman's Fund* to the case at bar, . . . ***as early as 9 July 1974 (the date of last delivery to the consignee's warehouse), respondent Razon had been able to verify and ascertain for itself not only the existence of its liability to the consignee but, more significantly, the exact amount thereof*** — *i.e.*, P5,746.61, representing the value of 111 bags of soybean meal. We note further that *such verification and ascertainment of liability on the part of respondent Razon, had been accomplished "within thirty (30) days from the date of delivery of last package to the consignee, broker or importer" as well as "within fifteen (15) days from the date of issuance by the Contractor [respondent Razon] of a certificate of loss, damage or injury or certificate of non-delivery"* — the periods prescribed under Article VI, Section 1 of the Management Contract here involved, within which a request for certificate of loss and a formal claim, respectively, must be filed by the consignee or his agent.[72] (Emphasis supplied, citations omitted)

The same doctrine was adopted in *Insurance Co. of North America v. Asian Terminals, Inc.*[73] This Court ruled that the Request for Bad Order Survey and the ensuing examination report satisfied the purpose of a formal claim, as respondent was made aware of and was able to verify that five (5) skids were damaged or in bad order while in its custody before the last withdrawal of the shipment. Hence, even if the formal claim was filed beyond the 15-day period stipulated in the Contract, respondent was not prejudiced by it, since it already knew of the number of skids damaged in its possession per the examination report on the request for bad order survey.

Thus, in the foregoing cases, "substantial compliance with the 15-day time limitation is allowed provided that the consignee has made a provisional claim thru a request for bad order survey or examination report."[74]

**II.D**

However, this case presents a new situation in that unlike the previous cases, the facts do not show that a provisional claim or a request for bad order survey was made by the consignee. Instead, what was only established

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72 Id. at 62–65.

73 682 Phil. 213 (2012) [Per J. Peralta, Third Division].

74 *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corp.*, 736 Phil. 373, 395 (2014) [Per J. Reyes, First Division].

is that the consignee's claim letter dated July 2, 2002 was received by respondent on July 4, 2002, or 17 days from last delivery of the coils to the consignee.

Even so, this Court adopts a reasonable interpretation of the stipulations in the Management Contract and hold that petitioner's complaint is not time-barred.

First, under the express terms of the Management Contract, the consignee had *thirty (30) days from receipt of the cargo to request for a certificate of loss* from the arrastre operator. Upon receipt of such request, the arrastre operator would have 15 days to issue a certificate of loss, either actually or constructively. *From the date of issuance of the certificate of loss* or where no certificate was issued, from the expiration of the 15-day period, the consignee has 15 days within which to file a formal claim with the arrastre operator.

In other words, the consignee had *45 to 60 days from the date of last delivery of the goods* within which to submit a formal claim to the arrastre operator.

The consignee's claim letter was received by respondent on July 4, 2002,[75] or 17 days from the last delivery of the goods, still within the prescribed 30-day period to request a certificate of loss, damage, or injury from the arrastre operator.

This Court finds that whether the consignee files a claim letter or requests for a certificate of loss or bad order examination, the effect would be the same, in that either would afford the arrastre contractor knowledge that the shipment has been damaged and an opportunity to examine the nature and extent of the injury. Under the Management Contract, the 30-day period is considered reasonable for the contractor to make an investigation of a claim.

Hence, the consignee's claim letter is regarded as substantial compliance with the condition precedent set forth in the Management Contract to hold the arrastre operator liable.

In *New Zealand Insurance Co., Ltd. v. Navarro,*[76] this Court stressed that an arrastre operator, like respondent, is a public utility, discharging functions which are heavily invested with public interest.

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[75] *Rollo*, p. 191.

[76] 258-A Phil. 56 (1989) [Per J. Feliciano, Third Division].

> Provisions limiting the liability of a public utility operator through the imposition of multiple prescriptive periods for the filing of claims by members of the general public who must deal with the public utility operator, must be carefully scrutinized and reasonably construed so as to protect the legitimate interest of the public which the utility must serve.[77]

Second, evidence shows that upon Asian Terminals' request, Ultraphil Marine and Cargo Survey Corporation[78] conducted two (2) surveys.[79] These were:

1. On June 17, 2002 at Pier 9, South Harbor,[80] where it was observed that 11 of the coils were damaged before the shipment was loaded on Ong's truck;[81] and

2. On June 27, 2002, at the warehouse of the consignee in Trece Martires, Cavite, where the same quantity of damaged coils was observed.[82]

The surveyor prepared and submitted to Asian Terminals a Final Report dated June 29, 2002.[83]

Although its representative was not present during the inspections,[84] the fact that Asian Terminals requested for the cargo survey shows that it had knowledge of the damage of the shipment while in its possession and that the survey was sought specifically to ascertain the nature and extent of the damage. Thus, respondent cannot escape liability for the damaged coils, simply by its own act of not sending a representative, after it had contracted for the survey of the shipment.

**II.E**

As to the extent of Asian Terminals' liability, Section 7.01 of the Management Contract provides that its liability is limited to the actual invoice value of each package which should not be more than ₱5,000.00 each. The exception to this limitation on liability is:

> [U]nless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the

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77 Id. at 67.
78 TSN, June 3, 2004, p. 13.
79 TSN, June 3, 2004, pp. 15–16.
80 TSN, August 24, 2004, p. 5 and *rollo*, p. 36.
81 TSN, June 3, 2004, pp. 17 & 29.
82 *Rollo*, pp. 36 & 45.
83 Id. at 36–37.
84 TSN dated August 24, 2004, p. 6.

> CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods.[85]

In this case, the records do not show that the value of the shipment was specified or manifested to Asian Terminals before discharge from the vessel. There was no evidence proving the amount of arrastre fees paid by the consignee to Asian Terminals so as to put the latter on notice of the value of the cargo or that the invoice, packing list, and other shipping documents were presented to the Bureau of Customs and to Asian Terminals for the proper assessment of the arrastre charges and other fees. The Cargo Gate Passes[86] issued by Asian Terminals do not indicate the value of the cargo.

Accordingly, Asian Terminals' liability should be limited to the maximum recoverable value of ₱5,000.00 per package or coil, the customary freight unit. Hence, the total recoverable amount is ₱55,000.00 for the 11 damaged coils. This amount shall earn a legal interest at the rate of 6% per annum from the date of finality of this judgment until its full satisfaction pursuant to *Nacar v. Gallery Frames*.[87]

## III

Both the Court of Appeals and the Regional Trial Court found that the 11 coils were already damaged before the coils were loaded on Ong's truck. Hence, Ong could not be responsible for the damaged shipment.

However, petitioner asserts that Ong should be held solidarily liable with Asian Terminals for acting in bad faith when it did not apprise the consignee or Asian Terminals about the damaged coils. This Court finds this contention untenable.

This issue was never raised by petitioner in the lower courts. In fact, Ong and Asian Terminals "[were] sued in the alternative because [petitioner was] uncertain against whom it [was] entitled for relief."[88] The rule is well-settled that no question will be considered by the appellate court which has not been raised in the lower court.[89]

> [A] party cannot change his theory of the case or his cause of action on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court. The defenses not pleaded in the answer cannot, on appeal, change

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85 RTC Records, p. 226.
86 Id. at 192–195.
87 716 Phil. 267 (2013) [Per J. Peralta, En Banc].
88 *Rollo*, p. 56.
89 *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, 662 Phil. 473 (2011) [Per J. Del Castillo, First Division];

> fundamentally the nature of the issue in the case. To do so would be unfair to the adverse party, who had no opportunity to present evidence in connection with the new theory; this would offend the basic rules of due process and fair play.[90]

Furthermore, there was no proof of Ong's bad faith. Mere allegation cannot take the place of evidence. Besides, Ong's assertion that the loading of the cargo on the trucks was undertaken by Asian Terminals and the unloading of the same cargo was undertaken by the consignee at its warehouse[91] remains unrebutted. In fact, Asian Terminals caused the inspection of the shipment before they were loaded on Ong's trucks on June 17, 2002.[92] Moreover, at the consignee's warehouse, the inspection was done in the presence of the consignee's authorized representative.[93] Thus, Ong is not obliged to inform the consignee or Asian Terminals about the damaged coils as they would have presumably known about them.

**WHEREFORE**, the Petition for Review is **GRANTED**. The February 19, 2009 Decision and August 25, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 89311 are **SET ASIDE**. Respondent Asian Terminals, Inc. is **ORDERED** to pay petitioner Oriental Assurance Corporation the amount of ₱55,000.00, with interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

**SO ORDERED.**

**MARVIC M.V.F. LEONEN**
Associate Justice

WE CONCUR:

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

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90 *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corp.*, 736 Phil. 373, 390–391 (2014) [Per J. Reyes, First Division] *citing Jose v. Alfuerto*, 699 Phil. 307 (2012) [Per J. Brion, Second Division].

91 RTC Records, p. 12.

92 *Rollo*, pp. 60–62.

93 RTC Records, p. 17.

**LUCAS P. BERSAMIN**
Associate Justice

On official leave
**SAMUEL R. MARTIRES**
Associate Justice

**ALEXANDER G. GESMUNDO**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JAN 15 2018