

**GUERRERO and FAMILY, INC., Plaintiff**

**v.**

**MICRONESIAN LINE, INC., Defendant**

**Civil Action No. 252**

**Trial Division of the High Court**

**Mariana Islands District**

**July 9, 1969**

*Appellate Court Opinion—5 T.T.R. 87*

Action on contract wherein defendant moves for summary judgment because action was not brought within time provided for by contract. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that parties could provide for a shorter period for limitation of actions than that set out by statute and if suit was not brought within that time it would be barred.

Motion granted.

**Carriers—Bills of Lading—Limitation of Actions**

A one year time for suit clause is of the greatest importance, thus the suit must be brought within one year, even if the carrier fails to comply with his obligations under the law and the contract.

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**SHOECRAFT, Chief Justice**

This matter came before the Court on defendant's Motion for Summary Judgment. Oral arguments were not heard, it being stipulated by counsel that the Court should con-

sider the matter upon the written memorandum submitted by each party.

Defendant claims that the instant action is time barred in that it was not brought within the one (1) year period specified in the contract of carriage between the parties. There appears to be no disagreement that the Bill of Lading issued by defendant sets out the terms of the contract between the parties.

Plaintiff claims:—

1. That delivery of only a portion of the cargo specified in the Bill of Lading is not sufficient “delivery” as to bring the time limitation into effect.

2. That the six (6) year statute of limitations (Section 319, Trust Territory Code) applies, although agreeing that “the parties may . . . fix by agreement a shorter time for the bringing of suit on the contract of shipment than that provided by the statute of limitations” so long as the period fixed is reasonable.

3. That defendant by his conduct is estopped from invoking the one-year time limit within which to bring suit.

4. That the Carriage of Goods By Sea Act of the United States [46 U.S.C. §§ 1300–1315] is inapplicable in the Trust Territory of the Pacific Islands.

Plaintiff alleges in its complaint that plaintiff and defendant entered into a contract of affreightment on May 8, 1967, and that in connection therewith defendant delivered to plaintiff a “duly completed and signed Bill of Lading, Number SN/OK-1.” There appears to be no disagreement that the parties intended to be bound by said contract, therefore, we must look to the terms of that contract as set out in the Bill of Lading to determine the rights and duties of the parties. The parties in the Bill of Lading agreed that the Carriage of Goods By Sea Act [46 U.S.C. §§ 1300–1315] would apply to performance of the con-

tract. In paragraph 18 on the reverse side of the Bill of Lading, the parties agreed that unless notice of any loss or damage and the general nature of such loss or damage be given in writing to the carrier, removal of the goods into the hands of the person entitled to delivery would be prima facie evidence of *delivery by the carrier of the goods described in the Bill of Lading*. (Italics supplied.) In paragraph 19, the parties agreed on a one year time for suit limitation.

There is no indication in the pleadings that the parties were not competent to agree on the terms of said contract, the inclusion of the Carriage of Goods By Sea Act [46 U.S.C. §§ 1300-1315] as part of said contract, or that there was any fraud in connection with the execution of it. Conduct of the defendant which might result in application of estoppel is not specified.

As to the reasonableness of the one year time limitation, the complaint, in paragraph 7, indicates that plaintiff since May, 1967 to the date of the complaint made at least one demand upon defendant for completion of the contract or for a refund of prepaid freight, thus indicating knowledge of the plaintiff of a possible cause of action against the defendant. This action was brought on May 28, 1968, one year and ten days from the date of discharge of the cargo at Naha, Okinawa.

Paragraph 19 on the reverse side of the Bill of Lading reads as follows: "In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage (including misdelivery or conversion) unless suit is brought within one year after the delivery of the goods *or the date when the goods should have been delivered*. Suit shall not be deemed brought until jurisdiction shall have been obtained over the Carrier and/or the ship by service of process or by an agreement to appear." (Italics supplied.)

OCHEBIR v. MUNICIPALITY OF ANGAUR

In *Zifferer v. Atlantic Lines, Ltd.*, 278 F.Supp. 736, the Court cites cases in which the validity of a one year period, a six month period, and a three month time-to-suit provision have been found valid. The Court said “the one year time for suit clause is of the greatest importance. The suit must be brought within one year, even if the carrier fails to comply with his obligations under the law and the contract.”

The Motion for Summary Judgment must be and hereby is granted.