

**NEW HAMPSHIRE INSURANCE COMPANY and
J. C. TENORIO ENTERPRISES, Plaintiffs**

v.

SAIPAN SHIPPING COMPANY, INC.,

Defendant

Civil Actions Nos. 382-385, 388, 389, 392, 393, 395

Trial Division of the High Court

Mariana Islands District

June 22, 1971

Motion for summary judgment based on limitation of actions provision set out in bill of lading. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that where the action dealt with a disputed claim under a bill of lading rather than a liquidated debt, a waiver or agreement to extend that time must be executed before the bar of the limitation and where this had not been done the action would be barred.

Motion granted.

1. Judgments—Summary Judgment

Summary judgment is appropriate only where there remains no real issue of fact to be litigated on trial.

2. Judgments—Summary Judgment

One resisting summary judgment may not hold back evidence until time for trial.

N. H. INS. CO. v. SAIPAN SHIP. CO., INC.

3. Judgments—Summary Judgment

Mere formal denials or general allegations which do not show the facts in detail and with precision are insufficient to prevent the award of summary judgment.

4. Carriers—Bills of Lading—Limitation of Actions

Where action dealt with a disputed claim under a bill of lading rather than a liquidated debt, a waiver or agreement to extend the period of limitation must be made before the bar of limitations becomes available.

Counsel for Plaintiff:
Counsel for Defendant:

ROBERT K. SHOECRAFT, ESQ.
JOSE A. TENORIO, ESQ.

BURNETT, *Chief Justice*

Each of the captioned actions were brought to recover for loss of goods shipped under standard form bills of lading issued by defendant and consigned to J. C. Tenorio Enterprises. Originally brought by New Hampshire, Tenorio was added as a party plaintiff on ex parte motion.

Defendant moved for Summary Judgment, contending that all actions are time barred since not brought within the one year period of limitation set out in the bill of lading. Plaintiff countered by affidavit, stating that an extension of time within which to file suit had been granted in each case, with copy attached of one such document, "representative of all of said documents, differing only as to details concerning each claim. . . ." The document of extension, attached as "Exhibit A" to the affidavit, refers to the claim filed in Civil Action 392, and would extend the time to May 8, 1970. It is dated February 11, 1970. Suit was filed on May 5, 1970.

It is clear that the one year period of limitation had run prior to February 11, 1970, when plaintiff's "extension" of time was executed. The limitation, contained in Section 19 of the bill of lading, provides that suit must be brought "within one year, after delivery of the goods, or the date when the goods should have been delivered." The goods

were shipped under bill of lading No. 2063 on voyage No. 153-N of the S.S. Ran Annim, which arrived in Saipan on September 8, 1968. The one year period would then expire on September 8, 1969, or within a few days thereafter, at most.

There is no longer any question that the parties can, by agreement, impose a shorter period of limitation than would otherwise apply under statute. *Guerrero Family, Inc. v. Micronesian Line, Inc.*, 5 T.T.R. 87. Nor is there any doubt that the one year period can be waived by timely agreement. *United Fruit Co. v. J. A. Folger and Co.*, C.A.L.A. 1959, 270 F.2d 666, cert. den. 80 S.Ct. 682.

Our question here is whether a claim once time barred, can be revived by a document "extending" time for suit, thus precluding defendant from relying on the bar.

[1] Summary judgment is appropriate, of course, only where there remains no real issue of fact to be litigated on trial. Plaintiff urges that execution of an extension, even though admittedly after expiration of the period of limitation, presents an issue of fact as to consideration for the extension which can be determined only on trial. He shows nothing to establish what, if any, consideration might exist, while defendant contends that such an extension, executed after the time had run, is without consideration and cannot stand as a matter of law.

[2, 3] I conclude that the issue is one of law, not of fact, and that summary judgment is appropriate, particularly where plaintiff is able only to say that there may be facts which would establish consideration and support revival of the cause of action. One resisting summary judgment may not hold back evidence until time for trial.

"We have often held that mere formal denials or general allegations which do not show the facts in detail and with precision are insufficient to prevent the award of summary

judgment.” *Robin Construction Co. v. United States*, 345 F.2d 610, 613 (3 C.A. 1965).

[4] Few cases deal with the specific question. Where waiver, executed after the cause has been barred, has been held effective, claim has been generally based on a negotiable instrument. Certainly logic there supports such a conclusion; since acknowledgment of the debt or a new promise to pay permits enforcement, a waiver should be effective to accomplish the same purpose, whether executed before or after the bar. In the situation now before us, however, which deals with a disputed claim rather than a liquidated debt, I hold that such waiver or agreement must be made before the bar of limitations becomes available. *Slade v. Horn*, 208 Ark. 202; 185 S.W.2d 924, 1 A.L.R.2d 1445, 1452.

It follows therefore that defendant’s motion must be granted. While we do not have before us the documents executed in the claims other than C.A. No. 392, plaintiff represents that the one is representative of all. If this is not the case, there is ample opportunity for plaintiff to make appropriate showing and obtain relief from judgment if the facts so warrant.

Defendant’s Motion for Summary Judgment must be, and hereby is granted.