

[G.R. No. 3308. January 19, 1907]

**FAUSTINO LICHAUCO, PLAINTIFF AND APPELLEE, VS. FIGUERAS HERMANOS,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

This is an appeal from a judgment in favor of the plaintiff who brought an action to recover the hire for two *lorchas* called the *Chata* and the *Lolin* for the month of August, 1905. The defendants admitted their responsibility for the rental of these *lorchas* for the days of that month upon which they were in actual use—that is, for twenty-three and twenty-seven days, respectively—and on demand made formal tender of the amount of the rental claimed for those days; but they deny their responsibility for those days of the month during which they did not make use of the *lorchas* and left them at the disposal of the plaintiff.

The Quartermaster's Department of the Army of the United States advertises semiannually for proposals to furnish lighterage for its use in the port of Manila. The service required is divided into two classes, regular and emergency, the former including the tonnage for which the department has continuous need the year round, and the latter the tonnage which the contractor obligates himself to furnish on demand, when the necessity therefor arises. The price paid for emergency service is naturally higher than that paid for regular service wherein the *lorchas* are steadily employed for the entire contract period of six months.

The aggregate tonnage required by the department is so great that no single *lorcha* owner could fill the entire contract without the aid of other owners, and the defendants, who had at that time a contract with the department and were anticipating making a bid for the contract for the semiannual period from July 1 to December 31, 1905, entered into the following contract with the plaintiff on the 20th of April, 1905:

“El Sr. Faustino Lichauco declara ser dueño de las siguientes embarcaciones

Chata, Lolin, Cornelia, y Alejandro, y por la presente se compromete a entregar a los Sres. Figueras Hermanos, las citadas embarcaciones en consignacion durante los meses de Junio, Julio, y Agosto del presente año, dando a dichos Sres. Figueras Hermanos amplias facultades para administrar las mismas durante dichos meses sin que por ningun motivo pueda el Sr. Lichauco hacer contrato ni fletamento de dichas embarcaciones sin la previa venia de los Sres. Figueras Hermanos consignatarios de las mismas. Podran sin embargo disponer de ellas para trabajos propios o particulares.

“En el caso de venta de cualquiera de las arriba citadas embarcaciones durante ese plazo, obligaran al comprador a respetar el presente contrato en todas sus partes, en sus mismos derechos y obligaciones.

“La falta de cumplimiento de este convenio de cualquiera de las partes contratantes obligara a la otra al pago de una indemnizacion que se deja a la resolucion de las demas casas que han firmado igual convenio con los Sres. Figueras Hermanos, resolucion que sera firme o inapelable.

“Los Sres. Figueras Hermanos se comprometen a su vez en el caso de ser los contratistas del Q. M. para el suministro de embarcaciones, a emplear en dicha contrata una parte proporcional de dichas embarcaciones con relacion a la lista que se acompaña, todas sujetas a igual convenio.

“Podra sin embargo el Sr. Lichauco disponer el no ingreso de sus embarcaciones para el servicio del Q. M. si los precios a que los dichos Sres. Figueras Hermanos tomaran la contrata no le convinieran, pero quedaran siempre dichas lorchas no sujetas a todo lo estipulado en el presente convenio.

“Los Sres. Figueras Hermanos quedan autorizados para cobrarse el 10 por ciento de comision de todos los fletes proporcionados por ellos ya sean del Q. M. ya de particulares.

“Se comprometen los Sres. Figueras Hermanos a rendir cuentas mensualmente, asi como a pagar los fletes devengados tan pronto efectuen el cobro.

“Se comprometen asimismo en caso de averias o demoras o de cualquier reclamacion que haya que hacer por las mencionadas lorchas, a hacer todas las gestiones necesarias sin remuneracion de ninguna clase.

“En caso de desavenencia por razon de este contrato, se solucionara el asunto por amigables componedores, cuyo nombramiento tendra que recaer precisamente en personas que esten sujetas a convenio igual al presente. Manila 20 de Abril de 1905.”

Thereafter on the 29th of April, 1905, they entered into the following contract:

“Los Sres. Figueras Hermanos y Faustino Lichauco se han convenido en modificar parte de la contrata firmada por ambos el 20 de Abril del presente mes en la forma siguiente:

“1. Que si en la subasta de suministro de lorchas al Quartermaster que tendra lugar el 2 de Mayo del presente año los Sres. Figueras se quedasen con la contrata estos se obligan a pagar al Sr. Lichauco como flete de las lorchas *Chata* y *Lolin* el tipo mas alto en que se ha quedado la contrata deduciendo solamente el 10 por ciento de comision.

“2. Los Sres. Figueras se comprometen a pagar este flete por termino de 6 meses o sea desde el 1.º de Julio hasta el 31 de Diciembre venidero.

“3. Si cualquiera de las dos lorchas mencionadas necesitase alguna reparacion el Sr. Lichauco se obliga a efectuarlo inmediatamente sin que los Sres. Figueras tuviesen obligacion de pagar flete por los dias que ha durado dicha reparacion.

“Y para la seguridad de ambos contratantes firman el presente contrato en dos ejemplares en Manila a 29 de Abril de 1905.”

The defendants submitted a bid for the quartermaster’s contract for lighterage for the semiannual period from the 1st of July to the 31st of December, 1905, but when the proposals were opened on the 2d of May, 1905, their bid and all others were rejected. On the 16th of May, 1905, the letting of the contract was again advertised, and the defendants and others submitted new proposals which were opened on the 27th of May, 1905, and on this occasion the contract was divided and the defendants’ bid for the emergency service was accepted, while a third party was awarded the contract for the regular service.

So far as appears from the record before us, there were no new negotiations entered into

between the plaintiff and the defendants after the failure of defendants to secure the contract at the opening of the bids on May 2, 1905, but on the 1st of July the plaintiff's *lorchas Chata* and *Lolin* were furnished to the quartermaster under the defendants' contract for the emergency service, and were thus employed in that service for the first twenty-three and twenty-seven days of August, when they were released by the quartermaster, and the plaintiff immediately notified by the defendants that they were at his disposal.

Plaintiff claims that defendants made use of these *lorchas* under the terms of the above set out contract of April 20, as amended by the contract of April 29, and therefore that defendants are responsible to him for hire of the *lorchas* for every day of the month at the per diem emergency rate paid by the quartermaster on the days when the boat was in use.

We do not think that the plaintiff, on whom rests the burden of proof, succeeded in establishing this contention. The amendment to the contract between the plaintiff and defendants was expressly conditioned on defendants' being the successful bidders at the letting of May 2, 1905, and it can not be doubted that that amendment became of no force or effect when the result of the letting was announced, for it is manifest that thereafter neither party could base a claim against the other on a failure to execute its terms, unless it was given new life by a new agreement, either express or implied.

And even if it were possible to construe the terms of the amendment so as to make it applicable to the second letting on May 27, we think that it was plainly conditioned upon the defendants' securing the entire contract for lightering and not upon their securing a part thereof. There is nothing in the contract between the parties to indicate that either one had in mind the division of the lightering contract and indeed the language of the entire amendment suggests that both parties had in contemplation no other thing than the complete success or the complete failure of defendants to secure the lightering contract with the Government.

It is easy to understand how the defendants might venture to obligate themselves to pay the emergency rate for the entire period of the contract even though they might anticipate a lack of continuous employment for these boats in the emergency service throughout the entire term, provided they were certain of employment in the regular service on the days when the quartermaster had no use for them in the better-paid emergency service; because the possible loss under such circumstances could only affect the size of their profits, whereas if they failed to secure the contract for the regular service, together with the emergency service they would be exposed to a loss of the total hire of the *lorchas* on the

days when the quartermaster did not call for them.

“In conditional obligations, the acquisition of rights, as well as the extinction or loss of those already acquired, shall depend upon the event constituting the condition.” (Art. 1114 of the Civil Code.)

It is said, however, that even though the obligation of the conditional amendment was extinguished by defendants' failure to secure the entire lighterage contract or to secure it at the time specified in the condition, nevertheless the defendants, by taking and using these *lorchas* for the purpose of carrying out their contract with the quartermaster without any new agreement with the plaintiffs, impliedly and tacitly assumed the obligation of the original contract together with the amendment, so that their use of the *lorchas* was subject to its terms. We do not think we are entitled to draw such an inference from the use of these boats in the months of July and August. An examination of the original contract between the parties which was not affected by the failure of the defendants to secure the lighterage contract shows that it was a contract of agency (*consignacion*), by the terms of which the defendants were fully authorized to make use of these *lorchas* during the months of June, July, and August, 1905, in the manner and form in which they did, in fact, make use of them. They required no new contract with the plaintiff, express or implied, to authorize them to do so, and no sufficient reason has been suggested to justify the inference that they assumed an oppressive and dangerous risk when all that they did was in exact compliance with a written contract securing to them the right to use these *lorchas* on favorable and reasonable terms.

The judgment of the trial court should be and is hereby reversed, without special condemnation of costs in this instance, and after the expiration of twenty days the cause will be returned to the trial court wherein it originated, where judgment will be entered for the amount tendered by the defendants with legal interest from the date of such judgment, and with the costs in the first instance in favor of the defendants. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

