

7 Phil. 461

[G.R. No. 3246. February 09, 1907]

CADWALLADER & COMPANY, PLAINTIFF AND APPELLANT, VS. SMITH, BELL & COMPANY AND HENRY W. PEABODY & COMPANY, DEFENDANTS AND APPELLEES.

D E C I S I O N

TRACEY, J.:

In this action the plaintiff, as assignee of the Pacific Export Lumber Company, sues for \$3,486, United States currency, the difference between the amount turned over to the company on account of a cargo of cedar piles consigned to the defendants as its agent and afterwards bought by them, and the amount actually received by them on the subsequent sale thereof. The defendants were allowed by the court below a counterclaim of \$6,993.80, United States currency, from which was deducted \$2,063.16 for the plaintiff's claim, leaving a balance in favor of the defendants of \$4,930.64, for the equivalent of which, to wit, 9,861.28 pesos, judgment was entered. The defendants have not appealed. The plaintiff took several exceptions, but on the argument its counsel stated that its contention was confined to the allowance by the trial court of the commissions of the defendants on selling the piling.

In May 1902, the Pacific Export Lumber Company of Portland shipped upon the steamer *Quito* five hundred and eighty-one (581) piles to the defendant, Henry W. Peabody & Company, at Manila, on the sale of which before storage the consignees were to receive a commission of one-half of whatever sum was obtained over \$15 for each pile and 5 per cent of the price of the piles sold after storage. After the arrival of the steamer on August 2, Peabody & Company wrote the agent of the Pacific Company at Shanghai that for lack of a demand the piles would have to be sold at considerably less than \$15 apiece; whereupon the company's agent directed them to make the best possible offer for the piles, in response to which on August 5 they telegraphed him an offer of \$12 apiece. It was accepted by him on August 6, in consequence of which the defendant paid the Pacific Company \$6,972.

It afterwards appeared that on July 9 Peabody & Company had entered into negotiations

with the Insular Purchasing Agent for the sale of the piles at \$20 apiece, resulting on August 4 in the sale to the Government of two hundred and thirteen (213) piles at \$19 each. More of them were afterwards sold to the Government at the same figure and the remainder to other parties at varying prices, the whole realizing to the defendants \$10,417.66, amounting to \$3,445.66 above the amount paid by the defendants to the plaintiff therefor. Thus it is clear that at the time when the agents were buying from their principal these piles at \$12 apiece on the strength of their representation that no better price was obtainable, they had already sold a substantial part of them at \$19. In these transactions the defendants, Smith, Bell & Company, were associated with the defendants, Henry W. Peabody & Company, who conducted the negotiations, and are consequently accountable with them.

It is plain that in concealing from their principal the negotiations with the Government, resulting in a sale of the piles at \$19 apiece and in misrepresenting the condition of the market, the agents committed a breach of duty from which they should not benefit. The contract of sale to themselves thereby induced was founded on their fraud and was subject to annulment by the aggrieved party. (Civil Code, articles 1265 and 1269.) Upon annulment the parties should be restored to their original position by mutual restitution. (Articles 1303 and 1306.) Therefore the defendants are not entitled to retain their commission realized upon the piles included under the contract so annulled. In respect of the 213 piles, which at the time of the making of this contract on August 5 they had already sold under the original agency, their commission should be allowed.

The court below found the net amount due from the defendants to the plaintiff for the *Quito* piles, after deducting the expense of landing the same and \$543.10 commission, was \$1,760.88, on which it allowed interest at the rate of 6 per cent from March 1, 1903. This amount should be increased by the addition thereto of the amount of the commissions disallowed, to wit, \$331.17, giving \$2,092.05. Interest computed on this sum to the date of the entry of judgment below amounts to \$359.77, which added to the principal sum makes \$2,451.82, the amount of plaintiff's claim, which is to be deducted from defendants' counterclaim of \$6,993.80, leaving a balance of \$4,541.98, equivalent to 9,083.96 pesos, the amount for which judgment below should have been entered in favor of the defendants.

Let the judgment of the Court of First Instance be modified accordingly, without costs to either party.

After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

Date created: June 09, 2014