

94 Phil. 784

[G.R. No. L-5897. April 23, 1954]

KING MAU WU, PLAINTIFF AND APPELLEE, VS. FRANCISCO SYCIP, DEFENDANT AND APPELLANT.

D E C I S I O N

PADILLA, J.:

This is an action to collect P59,082.92, together with lawful interests from 14 October 1947, the date of the written demand for payment, and costs. The claim arises out of a shipment of 1,000 tons of coconut oil emulsion sold by the plaintiff, as agent of the defendant, to Jas. Maxwell Fassett, who in turn assigned it to Fortrade Corporation. Under an agency agreement set forth in a letter dated 7 November 1946 in New York addressed to the defendant and accepted by the latter on the 22nd day of the same month, the plaintiff was made the exclusive agent of the defendant in the sale of Philippine coconut oil and its derivatives outside the Philippines and was to be paid 2 1/2 per cent on the total actual sale price of sales obtained through his efforts and in addition thereto 50 per cent of the difference between the authorized sale price and the actual sale price.

After trial where the depositions of the plaintiff and of Jas. Maxwell Fassett and several letters in connection therewith were introduced and the testimony of the defendant was heard, the Court rendered judgment as prayed for in the complaint. A motion for reconsideration was denied. A motion for new trial was filed, supported by the defendant's affidavit, based on newly discovered evidence which consists of a duplicate original of a letter dated 16 October 1946 covering the sale of 1,000 tons of coconut oil soap emulsion signed by Jas. Maxwell Fassett to the defendant; the letter of credit No. 20122

of the Chemical Bank & Trust Company in favor of Jas. Maxwell Fassett assigned by the latter to the defendant; and a letter dated 16 December 1946 by the Fortrade Corporation to Jas. Maxwell Fassett whereby the corporation placed a firm order of 1,000 metric tons of coconut oil soap emulsion and Jas. Maxwell Fassett accepted it on 24 December 1946, all of which documents, according to the defendant, could not be produced at the trial, despite the use of reasonable diligence, and if produced they would alter the result of the controversy. The motion for new trial was denied. The defendant is appealing from said judgment.

Both parties are agreed that the only transaction or sale made by the plaintiff, as agent of the defendant, was that of 1,000 metric tons of coconut oil emulsion f.o.b. in Manila, Philippines, to Jas. Maxwell Fassett, in whose favor letter of credit No. 20112 of the Chemical Bank & Trust Company for a sum not to exceed \$400,000 was established and who assigned to Fortrade Corporation his right to the 1,000 metric tons of coconut oil emulsion and in the defendant the letter of credit referred to for a sum not to exceed \$400,000.

The plaintiff claims that for that sale he is entitled under the agency contract dated 7 November 1946 and accepted by the defendant on 22 November of the same year to a commission of 2 1/2 per cent on the total actual sale price of 1,000 tons of coconut oil emulsion, part of which has already been paid by the defendant, there being only a balance of \$3,794.94 for commission due and unpaid on the last shipment of 379.494 tons and 50 per cent of the difference between the authorized sale price of \$350 per ton and the actual selling price of \$400 per ton, which amounts to \$25,000 due and unpaid, and \$746.52 for interest from 14 October 1947, the date of the written demand.

The defendant, on the other hand, contends that the transaction for the sale of 1,000 metric tons of coconut oil emulsion was not covered by the agency contract of 22 November 1946 because it was agreed upon on 16 October 1946; that it was an independent and separate transaction for which the plaintiff has been duly compensated. The contention is not borne out by the evidence. The plaintiff and his witness depose

that there were several drafts of documents or letters prepared by Jas. Maxwell Fassett preparatory or leading to the execution of the agency agreement of 7 November 1946, which was accepted by the defendant on 22 November 1946, and that the letter, on which the defendant bases his contention that the transaction on the 1,000 metric tons of coconut oil emulsion was not covered by the agency agreement, was one of those letters. That is believable. The letter upon which defendant relies for his defense does not stipulate on the commission to be paid to the plaintiff as agent, and yet if he paid the plaintiff a 2 1/2 per cent commission on the first three coconut oil emulsion shipments, there is no reason why he should not pay him the same commission on the last shipment amounting to \$3,794.94. There can be no doubt that the sale of 1,000 metric tons of coconut oil emulsion was not a separate and independent contract from that of the agency agreement of 7 November and accepted on 22 November 1946 by the defendant, because in a letter dated 2 January 1947 addressed to the plaintiff, referring to the transaction of 1,000 metric tons of coconut oil emulsion, the defendant says—

*** I am doing everything possible to fulfill these 1,000 tons of emulsion, and until such time that we completed this order I do not feel it very sensible on my part to accept more orders. I want to prove to Fortrade, yourself and other people that we deliver our goods. Regarding your commission, it is understood to be 2% per cent of all prices quoted by me plus 50-50 on over price. (Schedule B.)

In another letter dated 16 January 1947 to the plaintiff, speaking of the same transaction, the defendant says—

As per our understanding when I was in the States the overprice is subject to any increase in the cost of production. I am not trying to make things difficult for you and I shall give you your 2 1/2 per cent commission plus our overprice provided you can give me substantial order in order for me to amortize my loss on this first

deal. Unless such could be arranged I shall remit to you for the present your commission upon collection from the bank. (Schedule C.)

In a telegram sent by the defendant to the plaintiff the former says:

* * * Your money pending stop understand you authorized some local attorneys and my relatives to intervene your behalf. (Schedule D.)

The defendant's claim that the agreement for the sale of 1,000 metric tons of coconut oil emulsion was agreed upon in a document, referring to the letter of 16 October 1946, is again disproved by his letter dated 2 December 1946 to Fortrade Corporation where he says:

The purpose of this letter is to confirm in final form the *oral agreement* which we have heretofore reached, as between ourselves, during the course of various conversations between us and our respective representatives upon the subject matter of this letter.

It is understood that

I am to sell to you, and you are to purchase from me, 1,000 tons of coconut oil soap emulsion at a price of \$400 per metric ton, i. e., 2,204.6 pounds, F.O.B. shipboard, Manila, P. I. (Exhibit S, Special. Italics supplied.)

The contention that as the contract was executed in New York, the Court of First Instance of Manila has no jurisdiction over this case, is without merit, because a non-resident may sue a resident in the courts of this country^[1] where the defendant may be summoned and his property leviable upon execution in case of a favorable, final and executory judgment. It is a personal action for the collection of a sum of money which the Courts of First Instance have jurisdiction to try and decide. There is no conflict of laws involved in the case, because it is only a question of enforcing

an obligation created by or arising from contract; and unless the enforcement of the contract be against public policy of the forum, it must be enforced.

The plaintiff is entitled to collect P7,589.88 for commission and P50,000 for one-half of the overprice, or a total of P57,589.88, lawful interests thereon from the date of the filing of the complaint, and costs in both instances.

As thus modified the judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, and Concepcion, JJ., concur.

^[1] Marshall-Wells Co. vs. Henry W. Elser & Co., 46 Phil., 70; Western Equipment and Supply Co. vs. Reyes, 51 Phil., 115.
