100 Phil. 337

[G.R. No. L-8717. November 20, 1956]

GENERAL FOODS CORPORATION, PLAINTIFF AND APPELLANT, VS. NATIONAL COCONUT CORPORATION, DEFENDANT AND APPELLEE.

D E C I S I O N

REYES, J.B.L., J.:

Appellant General Foods Corporation is a foreign corporation organized under the laws of the State of Delaware, U. S. A., and licensed to do business in the Philippines; while appellee National Coconut Corporation (otherwise called NACOCO), was, on the date of the transaction in question, a corporation created by Commonwealth Act No. 518, but later abolished and place in liquidation by Executive Order No. 3727 dated November 24, 1950.

On September 23, 1947, appellee sold to appellant 1,500 (later reduced to 1,000) long tons, of copra, at $164 (later reduced to $163) per ton of 2,000 pounds, under the following terms and conditions:

> "Contract No. RH-3551
> Franklin Baker Division of General Foods Corporation
> 15th & Bloomfield Streets
> Hoboken, New Jersey
>
> WE CONFIRM HAVING PURCHASED FOR YOU TODAY from Messrs. National Coconut Corporation, Manila, Philippine Islands, through Mercantile, Inc., Manila, P. I.
>
> COMMODITY: COPRA—Fair Merchantable Quality, Basis 6% F. F. A. Quality: As per rule 100 of National Institute of Oilseeds Products.
>
> QUANTITY: Fifteen Hundred (1500) tons of 2,240 pounds each. Seller

has the option of delivering 5 per cent more or less of the contracted quantity, such surplus or deficiency to be settled as follows: On the basis of the delivered weight up to 3 per cent at the contract price and any excess or deficiency beyond this 3 per cent at the market price of the day of arrival at port of discharge, this market price to be fixed by the Executive Committee of the National Institute of Oilseeds Products. Each shipment to be treated as a separate contract.

PACKING: In bulk.

SHIPMENT: November, 1947, earlier if possible, from Philippine Islands.

PRICE: One hundred and sixty-four dollars ($164) per ton of 2,000 pounds, CIF New York.

PAYMENT: Buyers to open immediately by cable in favor of Sellers Irrevocable Letter of Credit through the Philippine National Bank for 95 per cent of invoice value based on shipping weight in exchange for the following documents:

1. Provisional Invoice.

2. Full set of negotiable ocean bills of lading, freight charges fully prepaid and showing the material on board.

3. Weight Certificate confirming quantity shown on invoice and bill of lading.

4. Consular invoice or certificate of origin in duplicate.

5. Loading survey report and weight certificate of Super-intendence Corporation.

6. Consular form No. 197 (Pure Food & Drug Certificate) Balance due to be paid promptly upon ascertainment and based upon outturn weights and quality at port of discharge.

WEIGHTS: Net landed weights.

SAMPLING: As per Rule 101 of National “Institute of Oilseeds Products.

INSPRANCE: Buyer to provide valid insurance for Marine and War risks for 110 per cent of CIF contract value. Seller to allow buyer from the CIF price an amount equivalent to the current rate of insurance prevailing on the date of shipment, in lieu of sellers covering usual marine insurance themselves.

CLAUSE PARAMOUNT: This contract is subject to published rules of the National Institute of Oilseeds Products adopted and now in force, which are hereby made a part.hereof. Any dispute arising under this contract shall be settled by a Board of Arbitrators selected by the Chairman of the Foreign Commerce Association of the San Francisco Chamber of Commerce and to be judged according to the rules of the National Institute of Oilseeds Products and the findings of said Board will be final and binding upon all the signatories hereto, providing such rules are not in conflict with existing Government regulations.

The above shipment to be made under Franklin Baker’s license No. 26429. This contract covers the sale made by the Nacoco thru the Mercantile, Inc. dated September 9, 1947 in the Philippines.” (Exhibit “A”).

From, November 14 to December 3,1947, appellee shipped 1054.6278 short tons of copra to appellant on board the S. S. “Mindoro”. The weighing of the cargo was done by the Luzon Brokerage Co., in its capacity as agent of the General Superintendence Co., Ltd., of Geneva, Switzerland, by taking the individual weight of each bag of copra and summing up the total gross weight of the shipment, then Weighing a certain number of empty bags to determine the average tare of the empty bags, which was subtracted from the gross weight of the shipment to determine the net weight of the cargo. On the strength of the net weigh thus found, appellee prepared and remitted to appellant the corresponding bills of lading and other documents, and withdrew from the latter’s letter of credit 95 per cent of the invoice

value of the shipment, or a total of $136,686.95.

Upon arrival in New York, the net cargo was reweighed by appellant and was found to weigh only 898.792 short tons. Deducting from the value of the shortage the sum of |8,092.02 received by appellant from the insurer for 58.25 long tons lost or destroyed even before the copra was loaded on board the vessel, appellant demanded from appellee the refund of the amount of $24,154.59. Sometime after the receipt of appellant's demand, the appellee, through its officers-in-charge Jose Nieva, Sr., acknowledged in a letter liability for the deficiency in the outturn weights of the copra and promised payment thereof as soon as funds were available (Exhibit "B"). Then appellee was, as already stated, abolished and went into liquidation. Appellant submitted its claim to the Board of Liquidators, which refused to pay the same; wherefore, it filed the present action in the Court of First Instance of Manila to recover from defendant-appellee the amount of $24,154.49 and the 17 per cent exchange tax thereon which, under the provisions of Republic Act 529, had to be paid in order to remit said amount to the United States, plus attorney's fees and costs. The Court a quo found for the defendant and dismissed the complaint ; hence, this appeal by plaintiff.

Plaintiff-appellant's theory is that although the sale between the parties quoted a CIF New York price, the agreement contemplated the payment of the price according to the weight and quality of the cargo upon arrival in New York, the port of destination, and that therefore, the risk of the shipment was upon the seller. Defendant-appellee, on the other hand, insists that the contract in question was an ordinary C. I. F. agreement wherein delivery to the carrier is delivery to the buyer, and that the shipment having been delivered to the buyer and the latter having paid its price, the sale was consummated.

There is no question that under an ordinary C.I.F. agreement, delivery to the buyer is complete upon delivery of the goods to the carrier and tender of the shipping and other documents required by the contract and the insurance policy taken in the buyer's behalf (77 C. J. S. 983; 46 Am. Jur. 313; II Williston on Sales, 103—1(W). There is equally no question that the parties may, by express stipulation or impliedly (by making the buyer's obligation depend on arrival and inspection of the goods), modify a CIF contract and throw the risk upon the seller until arrival in the port of destination (77 CJS 983-984; Williston, supra, 116; also Willits *vs*. Abekobei, 189 NYS 525; National Wholesale Grocery Co. *vs*. Mann. 146 NE 791, Klipstein *vs*. Dilsizian, 273 F 473).

In the transaction now in question, despite the quoted price of CIF New York, and the right of the seller to withdraw 95 per cent of the invoice price from the buyer's letter of credit

upon tender of the shipping and other documents required by the contract, the express agreement that the "Net *Landed* Weights" were to govern, and the provision that the balance of the price was to be ascertained on the basis of *outturn* weights and quality of the cargo *at the port of discharge*, indicate an intention that the precise amount to be paid by the buyer depended upon the ascertainment of the exact net weight of the cargo at the port of destination. That is furthermore shown by the provision that the seller could deliver 5 per cent more or less than the contracted quantity, such surplus or deficiency to be paid "on the basis of the *delivered* weight".

In our opinion, the governing rule may be found in the decision of the Supreme Court of New York in the case of Warner, Barnes & Co. *vs*. Warner Sugar R. Co., 192 NYS 151, cited in appellee's brief (pp. 16-19.) In said case, the parties had expressly agreed that the payment of the price was to be according to "landed weights", and that delivery of the goods shipped from the Philippine Islands to New York was to be in New York ex vessel at wharf; but it was also agreed that the seller had the right, upon presentation of full shipping documents, including full insurance, to draw upon the defendants for 90 per cent of the invoice price evidencing an intent to give the buyers dominion over the goods and to place the risk of loss upon them. The reasonable construction given by the Court to this contract was that:

> "though the seller was required to deliver the goods at1 a customary wharf in New York, and the price could not be finally determined until the goods were landed, yet the property in the goods and the risk of loss was intended to pass when the full shipping documents were presented, including an insurance policy. If the goods were totally lost, then by the express terms of the contract the buyers were to pay the full amount of invoice and *if the goods were partially lost*, then it is fairly inferable that, while payment was to be made according to landed weights, *the seller should not be deprived of the right to show that these landed weights were diminished by loss or damage due to the risk of the voyage.* Any other construction of the contract would require the seller to provide insurance for the buyer for a loss which falls not on the buyer, but on the seller." (Italics supplied.)

The same could be said in the instant case. While the risk of loss was apparently placed on the appellant after delivery of the cargo to the carrier, it was nevertheless agreed that the

payment of the price was to be according to the "net landed weight". The net landed or outturn weight of the cargo, upon arrival in New York, was 898.692 short tons. Although the evidence shows that the estimated weight of the shipment when it left Manila was 1,0546278 tons, the appellee had. the burden of proof to show that the shortage in weight upon arrival in New York was due to risks of the voyage and not the natural drying up of the copra while in transit, or to reasonable allowances for errors in the weighing of the gross cargo and the empty bags in Manila. In the absence of such proof on the part of the shipper-appellee, we are constrained to hold that the net landed weight of the shipment in New York should control, as stipulated in the agreement, and that therefore, the appellee should be held liable for the amount of $24,154.59 which it had overdrawn from appellant's letter of credit

Appellee contends that as it was only the "balance due to be paid" that was to be ascertained and based "upon outturn weights and quality at port of discharge", as provided in the contract, there was no more balance due to be ascertained at the port of discharge because it had already received full payment of the copra it sent to the appellant when it withdrew $136,686.95 from the latter's letter of credit. The argument is untenable. The provision regarding the ascertainment of the balance due based upon outturn weight and quality of the shipment at the port of discharge, should not be construed separately from the stipulation that the "net landed weight" was to control. The manifest intention of the parties was for the total price to be finally ascertained only upon determining the net weight and quality of the goods upon arrival in New York, most likely because the cargo in question, being copra, by nature dries up and diminishes in weight during the voyage; that no bulk weigher was available in Manila so that the best that could be done was to get the gross weight of the shipment and deduct the average tare of the empty bags; and that the buyer in New York had ho agent in Manila to represent it and protect its interest during the weighing of the cargo. The intention of the parties to be bound by the outturn or net landed weight in New York is clearly shown in the letter of appellee's then officer-in-charge Jose Nieva, Sr., acknowledging liability for the deficiency in the outturn weight of the copra (Exhibit "B"). Although this letter may not be considered an admission of liability on the part of appellee in the absence of a showing that Nieva was authorized to admit liability for the corporation, it is nevertheless competent evidence of the intention of the parties, particularly the NACOCO, to be bound by the net landed weight or outturn weight of the copra at the port of discharge.

With respect to appellant's claim for damages equivalent to the 17 per cent excise tax which it has to pay in order to remit the sum of $24,154.59 to the United States, such excise tax is

no longer imposed in view of the trade (Laurel-Langley) agreement, so that it need not be taken into account.

Wherefore, the judgment appealed from is reversed and the appellee National Coconut Corporation is ordered to pay the appellant General Foods Corporation the equivalent in Philippine currency of the amount of $24,154.59, with legal interest from the time of the filing of the complaint.   No pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and *Felix, JJ.,* concur.

Date created: October 13, 2014