

103 Phil. 345

[ G. R. Nos. L-6106-07. April 18, 1958 ]

**MADRIGAL, TIANGCO & CO., PLAINTIFF AND APPELLANT, VS. HANSON, ORTH & STEVENSON, INC., DEFENDANT AND APPELLEE. MADRIGAL, TIANGCO & CO., ET AL., PLAINTIFFS AND APPELLANTS, VS. ROMAN MABANTA, DEFENDANT AND APPELLANT. REHABILITATION FINANCE CORPORATION, INTERVENOR.**

## **D E C I S I O N**

### **PADILLA, J.:**

On 6 January 1948, for and in consideration of the sum of P1,750 to be paid monthly as rental, a motor launch named "Isla Verde" owned by the plaintiffs was chartered by the defendant for six months from the date of actual delivery and acceptance, under and by virtue of a contract which, among other terms, required delivery thereof on 20 January 1948, in seaworthy condition together with the necessary documents to enable her to navigate. Delivery of the motor launch was not made as agreed upon, because it was on 12 January 1948 only that the motor launch was drydocked at Malabon to undergo repairs; and on 28 January 1948 she was transferred to the dock of the defendant near the Hospicio de San Jose of the Isla Convalesencia and there some additional improvements were made on the motor launch. On the 29th, manned by a complement engaged by the defendant, the motor launch was put to sea and at 5:00 o'clock a.m. of the following day she sank off the coast of Limay, province of Bataan, becoming a total loss. To recover P50,000, the estimated value of the motor launch with all equipment and tackle and a monthly rental of P1,750, the plaintiffs brought this action. The Rehabilitation Finance Corporation, successor to the Agricultural & Industrial Bank, was allowed to intervene to recover P10,745.06, together with a daily interest thereon of P1.77 from 18 January 1950 until the date of payment thereof, from the plaintiffs, should they be successful in their claim against either the defendant or the insurance company, against which an action was also brought by the plaintiff to recover the amount for which the motor launch was insured under a policy issued by the insurance company. As the intervenor has not appealed from the judgment dismissing its complaint, the same is no longer involved in these appeals.

The defendant in his answer denies liability for the sinking of the motor launch and claims in a counterclaim P5,000 for unrealized profits; P2,500 for equipment and fishing tackle; P1,086.16 for the cost of repairs of four sets of nets and the value of the new ropes; and P1,485.28 for the value of 5 blocks of ice, 2,754 gallons of crude oil, 3 drums of motor oil and 300 fish boxes.

After hearing the Court rendered judgment dismissing the complaint without pronouncement as to costs, on the ground that although it found that there had been delivery of the motor launch to the defendant, yet she was unseaworthy. For the same reason the action against Hanson, Orth & Stevenson, Inc. to recover the amount for which the motor launch was insured under a policy issued by it was dismissed with costs against the plaintiff. From the judgment rendered in civil case No. 4616 of the Court of First Instance of Manila, both the plaintiffs and the defendant have appealed (G. R. No. L-6107) ; and from that rendered in civil case No. 5756 of the same Court the plaintiff also has appealed (G. R. No. L-6106).

The plaintiffs contend that, as found by the trial court, there was delivery of the motor launch to the defendant and that this finding not having been appealed by the defendant is now final. On the other hand, the defendant claims that the sinking of the motor launch off the coast of Limay, Bataan, was due to her unseaworthiness and not to the incompetence or negligence of the complement engaged by him (the defendant) to man her.

The preponderance of evidence leans towards the conclusion that there was no deliver of the motor launch in accordance with the terms of the contract, because there was no license issued by the Bureau of Customs, the license of the motor launch having expired on 6 June 1947 (Exhibit E) and the special permit, on 15 December 1947 (Exhibits F and 12); there was no license issued by the Bureau of Fisheries authorizing the motor launch to engage in deep sea fishing; and the defendant refused to sign a document, dated 28 January 1948 purporting to acknowledge receipt or acceptance of the motor launch and to waive the delivery thereof on 20 January 1948 (Exhibit 3) in accordance with the terms of the contract (Exhibit A). Nevertheless, even if the motor launch was not delivered on the date agreed upon, the fact that the defendant took possession thereof when she was put to sea on 29 January 1948; and that if on that trip the motor launch sank due to the negligence or incompetence of the *patron*, engineer, or crew engaged by the defendant to man her, provided that she was seaworthy, the defendant would still be responsible for the sinking of the motor launch, because he has to answer for the negligent acts of his agents. Hence whether there was actual delivery or it was merely a trial run becomes unimportant if the

motor launch was unseaworthy. Again the preponderance of evidence leans toward the conclusion that the motor launch was unseaworthy. And this conclusion is supported by the fact that there was no typhoon; that the waves were those that were caused by the monsoon winds of the season (Exhibit 13-E); and that the motor launch did not touch bottom or hit anything during her cruise in the bay (Exhibit 13-C). The claim of the plaintiffs that the big waves of the sea filled the engine room with water, one and one-half or two feet high, as a result of which the engine stopped, and that the water could not be pumped out by the bilge pump, cannot be believed, because according to Pedro Ala and Eugenio Maraginat they saw the water bubbling in the engine room (pp. 738, 808, t.s.n.) and this testimony is corroborated by Zoilo Belale, the *patron*, who said that he thought the water entered the engine room through the tail shaft but that he was wondering why it was filled with water so soon (Exhibit 13-B, p. 3). This was also found by the board of inquiry of the Bureau of Customs that investigated the sinking of the motor launch with a view to finding the responsibility of the *patron*. For that reason the board exonerated the *patron* from any negligence arising from the sinking of the motor launch (Exhibit 13-C). The plaintiffs argue and contend that the board did not have jurisdiction to make such finding and that it was a mere conjecture. The cause of the sinking of the motor launch was connected with the responsibility of the *patron* for the sinking thereof. It is true that nobody saw the underneath plankings give way; but this fact may be inferred from the established facts that there was no typhoon; that there were no big waves; that the motor launch did not touch bottom or hit anything before she sank; and that the water was bubbling in the engine room.

The plaintiffs further contend that the motor launch was put to sea on 29 January 1948 an uneven keel; that she was not properly loaded, because the oil weighing 11 tons and water weighing 1 or 2 tons were placed at the astern, whereas only a few blocks of ice weighing 1,500 pounds were at the prow of the motor launch; that this unbalanced loading became worse because of the fishing nets attached to the rear of the motor launch, of the weight of the chain which was 140 kilos, of the stones which was 40 kilos and of the *aldake* which could be carried only by four persons if not wet and by six if wet. They conclude that the uneven keel of the motor launch constitutes negligence on the part of the complement and the direct cause of the sinking thereof. The fact that the motor launch was run and operated for 17 hours in the bay without mishap is strong proof that the cause of the sinking was not the uneven keel. It was a different cause which as above stated is inferred from established facts which need not be restated.

Another contention is that that the motor launch was thoroughly repaired and overhauled. But such repair did not include the hull. If only water entered the engine room through the

tail shaft, it would not have been bubbling and could have been pumped out easily.

As to the claim of the defendant in his counterclaim, the trial court made the following pronouncements.

With respect to the counterclaim of the defendant, the Court agrees with the plaintiffs that the amount of P5,000 cannot be recovered for being speculative. As to the amount of P2,500, the evidence disclosed that it represents the purchase price of the equipment sold and delivered by the plaintiffs to the defendant. Under the contract of charter the defendant is not entitled to the refund of said amount. As to the repairs made on old equipment and the acquisition of new ones, the charter party being silent about the same, the defendant cannot recover their cost from the plaintiffs.

We agree to this pronouncement of the trial court.

The finding that the motor launch was unseaworthy at the time she sank precludes recovery by the plaintiffs of the amount for which the motor launch was insured under the policy issued by the insurance company (paragraph 7 of the Marine Hull Policy, Annex A to the complaint filed in civil case No. 5756). The judgments appealed from are affirmed, without pronouncement as to costs.

*Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

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