

104 Phil. 310

[G. R. No. L-7047. August 21, 1958]

RAYMOND TOMASSI, PLAINTIFF AND APPELLANT, VS. FERNANDO VILLA-ABRILLE, DEFENDANT AND APPELLEE.

D E C I S I O N

PADILLA, J.:

In a replevin action Raymond Tomassi seeks to recover from Fernando Villa-Abrille chattels enumerated and described in paragraphs 6 and 7 of the amended complaint filed in the Court of First Instance of Leyte (civil case No. 769).

On 28 May 1948 Fernando Villa-Abrille purchased from the Surplus Property Commission at a public auction sale—

All movable goods located at CMD—3 Area, Samar Naval Base, Guiuan, Samar, consisting more or less of the following: 21 Revolving Cranes; 75 Caryalls; 30 Generators; 2 Swing cranes; 7 Coater pumps; 6 Electric Welders; 2 Dredges; 6 Road Rollers; 5 Tractors; 455 Trucks Cargo and Dump; 50 Compressors; 20 Weapon Carriers; 30 Trailers, assorted sizes; 3 tons canvass; 20 tons Iron Sheets, 16"/76"; 5 Road rollers (SPC Invoice No. 7770, Appendix A; Exhibits C & 2),

excluding certain articles enumerated therein. Immediately, he took possession of all the properties located within CMD—3 Area. On 6 October 1949 Santiago Gancayco purchased from the Surplus Property Commission at a public auction sale—

1-Lot of surplus property known as Lot No. 1, per Notice of Sale dated August 27, 1949 and Notice of Negotiated Sale of September 17, 1949, ALL AT GUIUAN BASE (SPC Invoice No. 10658, Appendix B, Exhibit Q),

excluding certain articles enumerated therein. On 2 February 1950 Raymond Tomassi acquired by purchase all the rights, share and interest of Santiago Gancayco to the properties mentioned in SPC Invoice No. 10658 (Exhibits P & 1), except those expressly excluded in the deed of sale.

Averring and claiming that by the sale to the plaintiff by Gancayco of the chattels enumerated in paragraphs 6 and 7 of the amended complaint, he became the owner of the said properties; that the defendant is unlawfully withholding and retaining possession of the said chattels; and that in spite of repeated demands for their delivery to him, the defendant has unlawfully refused and continues to refuse to deliver them to him, the plaintiff prays, among others, that he be declared the owner of the said properties and entitled to the possession of the same.

In answer, the defendant sets up the defense that the enumeration of the articles in SPC Invoice No. 7770 (Appendix A, Exhibits C & 2), was not intended to be a complete inventory of the surplus materials sold to him “but merely as a general description listing of the same as may be gleaned from the phrase ‘consisting of more or less of the following’ which immediately precedes the enumeration * * * ;” and that the sale made by the Surplus Property Commission on 6 October 1949 to Santiago Gancayco (SPC Invoice No. 10658, Appendix B, Exhibit Q), did not vest in him ownership of any surplus property in the CMD—3 Area, Guiuan, Samar, except construction materials excluded from the sale of 28 May 1948 made in his (defendant’s) favor (SPC Invoice No. 7770, Appendix A, Exhibits C & 2). By way of counterclaim he prays that the plaintiff be ordered to pay him an amount of not less than P100,000 as damages.

After trial, the Court rendered judgment declaring the defendant owner of and with right to possess the articles in CMD—3 Area, Samar Naval Base, Guiuan, Samar, dismissing the complaint with costs, and ordering the plaintiff Raymond Tomassi and the Manila Fidelity and Surety Company to pay jointly and severally to the defendant the sum of P119,000 for damages. The plaintiff has appealed.

Invoice No. 7770 of the Surplus Property Commission dated 28 May 1948 (Appendix A, Exhibits C & 2), which recites—

SOLD TO: MR. FERNANDO VILLA-ABRILLE

27 Victory, Manila

All movable goods located at CMD—3 Area, Samar Naval Base, Guiuan, Samar, consisting more or less of the following: 21 Revolving Cranes, etc., etc.,

could and can have no other meaning than that “All movable goods located at CMD—3 Area, Samar Naval Base, Guiuan, Samar,” were sold to the appellee Villa-Abrille. The phrase “consisting more or less of the following” followed by an enumeration of articles sold does not mean that whatever excess article or articles not included in the enumeration is not included in the sale to the appellee Villa-Abrille and may be sold to another bidder by the Surplus Property Commission. This interpretation is in consonance with article 6 of the terms and conditions of the sale appearing at the back of SPC Invoice No. 7770, Appendix A, Exhibits C & 2, which reads:

Unless otherwise specified, the quantities of the various items listed are approximate only. Any variations between the quantity stated for any item sold on a per item basis and the quantity of such item actually delivered to the Buyer will be adjusted on the basis of the unit price quoted for such item or items.

On 19 May 1948 the Control Committee of the Government Enterprise Council approved the sale “of all movable goods located at CMD—3 Area, Samar Naval Base, Guiuan, Samar, excluding the items indicated in the letter of this office, dated April 29, 1948,” in favor of the appellee Villa-Abrille (Exhibit 4). As early as 4 August 1948, or long before the sale by the Surplus Property Commission to Santiago Gancayco made on 6 October 1949 of a lot of surplus property (SPC Invoice No. 10658, Appendix B, Exhibit Q), which the appellant acquired by purchase from Santiago Gancayco on 22 February 1950 (Exhibits P and 1), the Board of Liquidators had acknowledged “that the intention of the sale was for all the movable goods for purposes of liquidation less the specified exclusions as indicated in the corresponding Invoice No. 7770 dated May 28, 1948 and the frozen items covered by the freezing order of April 2, 1948 among which is construction materials” (Exhibits 2—C & 7); and that “It is the intention of the sale to include all movable goods located thereat, subject to the specified exclusions and freezing order, for purposes of liquidation.” (Exhibits 2—A & 8.)

What had been sold to the appellee Fernando Villa-Abrille by the Surplus Property Commission apparently was partly sold again to Santiago Gancayco who in turn sold it to the appellant Raymond Tomassi. The transaction between the Surplus Property Commission

and Santiago Gancayco would seem to be a case of double sale, and if that should be the fact it would be governed by paragraph 1, Article 1473 of the old Civil Code,^[1] which provides that—

If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be personal property.

As it was the appellee Fernando Villa-Abrille who in good faith first took possession of the articles in controversy, he has a better right to ownership and possession over them than the appellant Raymond Tomassi.

The trial court found that the appellee suffered damages in the sum of P119,000 and ordered the appellant and the Manila Fidelity and Surety Company jointly and severally to pay it to the appellee. As there is no satisfactory evidence to show such damages, the same being purely speculative, the appellee is not entitled to recover such damages.

The judgment appealed from dismissing the amended complaint is affirmed, and reversed on the award of damages to the appellee, with costs in both instances against the appellant.

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

^[1] Article 1544, new Civil Code.
