

CHUA NGO, PLAINTIFF AND APPELLEE, VS. UNIVERSAL TRADING CO., INC., DEFENDANT AND APPELLANT.

G.R. No. L-2870. September 19, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

Chua Ngo delivered, in Manila, to the Universal Trading Company, Inc., a local corporation, the price of 300 boxes of Sunkist oranges to be gotten from the United States. The latter ordered the said boxes from Gabuardi Company of San Francisco, and in due course, the goods were shipped from that port to Manila "F. O. B. San Francisco." One hundred eighty boxes were lost in transit, and were never delivered to Chua Ngo.

This suit by Chua Ngo is to recover the corresponding price he had paid in advance.

Universal Trading Company refused to pay, alleging it merely acted as agent of Chua Ngo in purchasing the oranges. Chua Ngo maintains he bought the oranges from Universal Trading Company, and, therefore, is entitled to the return of the price corresponding to the undelivered fruit.

From a judgment for plaintiff, the defendant appealed

It appears that on January 14, 1946, the herein litigants signed the document Exhibit 1, which reads as follows:

UNIVERSAL TRADING COMPANY, INC.

Far Eastern Division

R-236-238 Ayala Building

Juan Luna, Manila

Contract No. 632 14 January 1946

Agreement is hereby made between Messrs. Chua Ngp of 753 Folgueras, Manila, and the Universal Trading Company, Inc., Manila, for order.as follows and under the following terms:

Quality

:Merchandise and description

Unit

Unit price

Amount

300

Sunkist oranges, wrapped

Grade No. 1

Navel, 200 to case

Case

\$6.30

\$1,890.00

300

Onions, Australian

Browns, 90, lbs. to case

Case

\$6.82

\$2,046.00

We are advised by the supplier that the charges to bring these goods to Manila are:

Oranges

\$3.06 per case

Onions

1.83 per case

Deposit of 40% of the contract price plus the above charges to be payable immediately upon receipt of telegraphic confirmation. Balance payable upon arrival of goods in Manila. If balance is not paid within 46 hours of notification merchandise may be resold by Universal Trading Co., Inc. and the deposit forfeited.

NOTE:—

Onions cancelled by supplier.

(Initialed) R.E.H.

Total amount of order

\$3,936

Agreed and accepted:

(Sgd.) Chua Ngo

Confirmed and approved:

(Sgd.) Ralph E. Holmes

Sales manager

Universal Trading Company Inc.

(See terms of agreement on reverse side.)

On the same date, the defendant forwarded an order to Gabuardi Company of San Francisco, U.S.A., which in part says;

ORDER No. 707

To Gabuardi Company of California

258 Market Street

San Francisco, California

Please send for our account, subject to conditions on the back of this order, the following merchandise enumerated below:

Shipping instructions

Via San Francisco, California . San Francisco

Terms: F. O. B.

San Francisco

Quality

Articles

Unit

Unit price

Total price

300

Sunkist oranges wrapped

Grade No. 1

Navel, 200 to case

Case

\$6.00

\$1,800.00

* * * * *

On January 16 and January 19, 1946, the Universal Trading Co., Inc., wrote Chua Ngo two letters informing him that the contract for oranges (and onions) had been confirmed by the supplier—i. e., could be fulfilled—and asking for deposit of 65% of the price and certain additional charges.

On January 21, 1946, Chua Ngo deposited with the defendant, on account of the Sunkist oranges, the amount of P3,650, and later (March 9, 1946), delivered the additional sum of P2,822.43 to complete the price, as follows:

300 cases of oranges at \$9.36

P6,616.00

Bank charges

196.56

Customs charges, etc.

270.00

Delivery charges

171.00

3-1/2 percent sales tax

218.00

P6,253.56

Less deposit R. No. 1062

3,650.00

=====

P2,822.43

The 300 cases of oranges ordered by the defendant from Gabuardi Company were loaded in good condition on board the S/S Silversandal in the port of San Francisco, together with other oranges (totalling 6,380 cases) for other customers. They were all marked "UTC Manila" and were consigned to defendant. The Silversandal arrived at the port of Manila on March 7, 1946. And out of the 6,380 boxes of oranges, 607 cases were short landed for causes beyond defendant's control. Consequently, defendant failed to deliver to Chua Ngo 160 cases of the 300 cases contracted for. The total cost of such 180 cases (received by defendant) is admittedly P3,862.60.

The above are the main facts according to the stipulation of the parties. Uncontradicted additional evidence was introduced that the mark "UTC Manila" written on all the boxes means "Universal Trading Company, Manila"; that the defendant paid in its own name to Gabuardi Company the shipment of oranges, and made claims for the lost oranges to the steamship company and the insurance company that insured the shipment; and finally, that in the transaction between plaintiff and defendant, the latter received no commission.

The crucial question is: Did Universal Trading Company merely agree to buy for and on behalf of Chua Ngo the 300 boxes of oranges, or did it agree to sell—and sold—the oranges to Chua Ngo? If the first, the judgment must be reversed; if the latter, it should be affirmed.

In our opinion, the circumstances of record sufficiently indicate a sale. First, no commission was paid. Second, Exhibit 1 says that "if balance is not paid within 48 hours of notification, merchandise may be resold by the Universal Trading Company and the deposit forfeited." "Resold" implies the goods had been sold to Chua Ngo. And forfeiture of the deposit is incompatible with a contract of agency. Third, immediately after executing Exhibit

1 wherein oranges were quoted at \$6.30 per box, Universal Trading placed an order for purchase of the same with Gabuardi Company at \$6.00 per box. If Universal Trading Company was agent of Chua Ngo, it could not properly do that. Inasmuch as good faith is to be presumed, we must hold that Universal Trading acted thus because it was not acting as agent of Chua Ngo, but as independent purchaser from Gabuardi Company. Fourth, the defendant charged the plaintiff the sum of P218.87 for 3-1/2 percent sales tax, thereby implying that their transaction was a sale. Fifth, if the purchase of the oranges had been made on behalf of Chua Ngo, all claims for losses thereof against the insurance company and against the shipping company should have been assigned to Chua Ngo. Instead, the defendant has been pressing such claims for itself.

In our opinion, the arrangement between the parties was this: Chua Ngo purchased from Universal Trading Company, 300 boxes of oranges at \$6.30 plus. In turn, the latter purchased from Gabuardi Company at \$6 plus, sufficient fruit to comply with its contract with Chua Ngo.

Unfortunately, however, part of the orange consignment from San Francisco was lost in transit. Who is to suffer that loss? Naturally, whoever was the owner of the oranges at the time of such loss. It could not be Chua Ngo because the fruit had not been delivered to him. As between Gabuardi and the Universal Trading, inasmuch as the goods had been sold "F. O. B. San Francisco", the loss must be borne by the latter, because under the law, said goods had been delivered to the purchaser at San Francisco on board the vessel *Silversandal*[1]. That is why the Universal has been trying to recover the loss from both the steamship company and the insurer.

Now, as Chua Ngo has paid for 300 boxes and has received 120 boxes only, the price of 180 boxes undelivered must be paid back to him.

It appears that whereas in the lower court defendant sustained the theory that it acted as agent of plaintiff, in this Court the additional theory is advanced that it acted as agent of Gabuardi Company. This obviously has no merit.

As to the contention that defendant incurred no liability because it is admitted that the oranges were lost due to causes beyond the control of the defendant, and the oranges were shipped "F. O. B. San Francisco", the answer is that such contention is based on the assumption—which we reject—that defendant merely acted as agent of plaintiff in the purchase of the oranges from Gabuardi.

In view of the foregoing, the appealed judgment for plaintiff in the sum of P3,882.60 is affirmed, with costs.

Moran, C.J., Ozaeta, Paras, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Behn, Meyer & Co. vs. Yangco, 38 Phil., 602.

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