

**N. O. BEHN, MEYER & CO., PLAINTIFF-APPELLEE, VS.
HONGKONG & SHANGHAI BANKING CORPORATION,
DEFENDANT-APPELLANT.**

G.R. No. L-5537. May 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila which orders the defendant to pay the plaintiff the sum of P2,701.22, with legal interest thereon from the date of the filing of the complaint, and the costs.

The facts of this case, which are not disputed, are correctly stated in the brief for appellant as follows:

"The plaintiff-appellee, N. V. Behn, Meyer & Co., H. Mij., is a foreign corporation duly organized and registered under the laws of Java, and duly authorized to do business in the Philippines, with office in the City of Manila; the defendant-appellant, Hongkong & Shanghai Banking Corporation, is a banking corporation duly organized and registered under the laws of the British Colony of Hongkong, and duly authorized to do business in the Philippines, and with the office in the City of Manila; and 'N.V. Arnold & Otto Meyer' is a foreign corporation duly organized and registered under the laws of Holland, with its principal office and place of business at Amsterdam, Holland.

"By reason of various exchange transactions between plaintiff-appellee and defendant-appellant, prior to the immediate facts which gave rise to the present controversy between plaintiff-appellee and defendant-appellant, and which had no relation thereto, other than with reference to the balance of the account resulting therefrom, there was due, as of September 27, 1939, from defendant-appellant to plaintiff-appellee, the sum of P5,581.80.

"The plaintiff-appellee, for sometime prior to December 31, 1939, had maintained a current account deposit with the defendant-appellant Bank, and on December 31, 1939, the plaintiff-appellee justly owed to the defendant-appellant, by way of overdraft in said current account, the sum of P2,880.58, Philippine Currency.

"Offsetting the amount of P5,581.80 due from defendant-appellant to plaintiff-appellee with the amount of P2,880.58, owing by plaintiff-appellee to defendant-appellant by way of overdraft in plaintiff-appellee's current account with the defendant-appellant mentioned in the next preceding paragraph hereof, there was left a balance justly due and owing from defendant-appellant to plaintiff-appellee under the aforementioned exchange contracts, as of December 31, 1939, in the sum of P2,701.22, unless lawfully compensated or offset by some subsequent transactions.

"Plaintiff-appellee, prior to the bringing of this action, made demand upon the defendant-appellant for the payment of said sum of P2,701.22 referred to in the last preceding paragraph, but defendant-appellant refused to pay the same by reason of a non-accepted draft plaintiff-appellee had negotiated with it, as hereinafter more particularly set forth, and, as a result of such offsetting indebtedness, it alleged that she said sum of P2,701.22 had been compensated leaving a balance owing by the plaintiff-appellee to defendant-appellant in the amount of P4,150.21, for which a statement was submitted to plaintiff-appellee by defendant-appellant accompanied

by a demand for payment of said balance, which plaintiff-appellee refused to pay.

"The plaintiff-appellee is, and was during all the time mentioned in the complaint, the duly authorized agent and representative in the Philippines of N. V. Arnold Otto Meyer. There was organized in the year 1938 a corporation by the name of 'German Steamship Agencies (P. I.) (formerly Behn, Meyer & Co., and Zuellig & Von Knobelsdorff) Inc.,' a corporation organized and registered under the laws of the Philippines, with its principal office in the City of Manila. During all the time mentioned in the complaint said corporation was and is the representative in the Philippine of the Hamburg-Amerikanische Packetfahrt Actien Gesellschaft, sometimes known as Humburg-Amerika Linie, the owner of the S.S. 'Naumburg,' a vessel of German registry, hereinafter mentioned. F. Danielsen, who is the Manager of the plaintiff-appellee company, was also one of the incorporators, and during all of said time was the managing director of said 'German Steamship Agencies (P. I.) (formerly Behn, Meyer & Co., and Zuellig & Von Knobelsdorff) Inc.' The plaintiff-appellee and the latter companies are managed by the same officials and office staff and have the same office at 506 Insular Life Building, Binondo, Manila, and should be considered as one. (See *People v. Padilla*, G. R. No. 47027, promulgated February 4, 1941.)

"On or about August 16, 1939, the plaintiff-appellee shipped on the S.S. 'Naumburg' 200 tons of Philippine Hydraulic Pressed Copra Cake consigned to Arnold Otto Meyer, of Hamburg, Germany, and for which shipment the corresponding bills of lading, in triplicate, were issued.

"For said shipment of 200 tons of copra cake the plaintiff-appellee on August 16, 1939, drew a bill of exchange at 60 days' sight, documents to be delivered against acceptance, on N. V. Arnold Otto Meyer, of Amsterdam, in favor of the defendant-appellant, the Hongkong & Shanghai Banking Corporation, for the sum of L805 (pounds sterling) equivalent to P7,501.48, Philippine Currency, payable in London, England, a copy of said bill of exchange being attached to the Stipulation of Facts, marked Annex 'A' (the first of exchange) and 'A-1' (the second of exchange), and on the 16th day of August, 1939, the plaintiff-appellee negotiated said bill of exchange at the defendant-appellant bank for the sum of P7,499.96, and at that time credit was duly given to the plaintiff-appellee by said bank for the said sum of P7,499.96, in its current account with the defendant-appellant. A copy of the credit slip for said amount is attached to the Stipulation of Facts, marked Annex 'B'.

"On August 17, 1939, the S.S. 'Naumburg', with said 200 tons of copra cake on board, left Manila for Hamburg, Germany, and other European ports, via Cebu and Java ports, but did not complete the voyage, instead it entered into and took refuge at the Port of Sourabaya, Netherlands East Indies, at the outbreak of the war between Germany and England on or about September 3, 1939, and the boat was still lying in that port at least until the month of May, 1940, a matter over which the defendant-appellant had no control.

"The first available mail transportation from Manila to New York, after August 16, 1939, by which said drafts and shipping documents could have been forwarded to New York, was the German steamship 'Scharnhorst', another vessel of the Hamburg-Amerikanische Packetfahrt Actien Gesellschaft, or Hamburg-Amerika Linie, of which the 'German Steamship Agencies (P.I.) (formerly Behn, Meyer & Co., and Zuellig & Von Knobelsdorff) Inc.,' was also the agent and representative in the Philippines, but due to unsettled conditions, the world then being on the eve of a general war, as the Court will judicially recognize, no mail whatsoever was sent by the defendant-appellant by said steamer. While the said steamer left the Port of Manila on or about August 25, 1939, it was not able to complete its contemplated voyage, as the defendant-appellant had anticipated, and, for reasons beyond the control of the defendant-appellant, took refuge at the Port of Kobe, Japan, at the outbreak of hostilities between Germany and Great Britain which occurred a few days after said steamer had left Manila, and has remained at Kobe, Japan, a refugee ship, up to the present time.

"On August 28, 1939, the defendant-appellant mailed the first of exchange of the bill (Annex 'A' of the Stipulation of Facts) and the original and the duplicate of the bills of lading, the invoices and insurance policies covering the shipment of the said 200 tons of copra cake, to its London office via its New York Office, on the

S.S. 'Empress of Japan', the next available mail transportation, which left Manila on that date for Vancouver, Canada. The S.S. 'Empress of Japan' was for a certain time detained at Shanghai, China, due to unsettled conditions over which the defendant-appellant had no control, but resumed its voyage later on. In the meantime the mail for New York was transferred to an American vessel, and went forward in due course to its destination. (See letter of the Hongkong & Shanghai Banking Corporation to its branch office in New York City dated September 7, 1939, attached to the Stipulation of Facts, marked Annex 'C', and a copy of Form No. 117, used by the defendant-appellant, attached to the Stipulation of Facts, marked Annex 'C-1'.)

"On September 1, 1939, the defendant-appellant mailed the second of exchange of the bill (Annex 'A-1' of the Stipulation of Facts), and the third copy of the bill of lading covering the shipment of 200 tons of copra cake, on the next available mail transportation from Manila, the S.S. 'Saparoa,' addressed to defendant's-appellant's office at London, through its New York office, and this boat reached the West Coast ports of the United States in due course.

"On September 15, 1939, the 'German Steamship Agencies (P.I.) (formerly Behn, Meyer & Co., and Zuellig & Von Knobelsdorff) Inc.,' representing the Hamburg-Amerikanische Packetfahrt Actien Gasellschaft, also known as the Hamburg-Amerika Linie, and other German steamship lines, caused to be issued a circular (a copy of which is attached to the Stipulation of Facts, marked Annex 'D') to the effect that 'the cargo loaded from Manila to Europe, to the U.S.A. and way ports on board Hamburg-Amerika Linie vessels at present lying at ports of refuge may now be delivered provided storage of the cargo should permit such procedure; that 'full sets of original bills of lading must be surrendered' and that 'should delivery be taken after October 10, 1939, owners reserve their rights to collect from consignees, shippers and/or owners of the goods a deposit to cover the expenses incurred by the vessel calling at a port of refuge.' The defendant-appellant was served on or about the same date by the 'German Steamship Agencies (P.I.) formerly Behn, Meyer & Co., and Zuellig & Von Knobelsdorff) Inc.' with a copy of said circular.

"On September 21, 1939, and before the original or duplicate of said draft (Annexes 'A' and 'A-1' of the Stipulation of Facts) with the attached shipping documents, had left the office of the defendant-appellant bank in New York City, the defendant-appellant bank, by reason of the receipt by it of the aforementioned circular of September 15, 1939, cables its New York office to deliver the bills of lading covering said copra cake attached to said draft, to the Hamburg-Amerika Linie, the New York agents of the S.S. 'Naumburg,' of which the 'German Steamship Agencies (P.I.) (formerly Behn, Meyer & Co., and Zuellig & Von Knobelsdorff) Inc.' was the agent and representative in the Philippines, as shown by its cable of that date to its said agents, as follows:

'Our draft 2861 to London original per 'Empress of Japan' duplicate per 'Saparceal' please hand bills of lading to Hamburg-Amerika Linie New York Agents against receipt instructing them to advise their Manila Office by wire.' (Stipulation of Facts, p. 8.)

and or about September 26, 1939, likewise in accordance with the instructions from the defendant-appellant bank, the New York office of said bank detached from said draft and surrendered the original bills of lading covering said 200 tons of copra cake shipped on the S.S. 'Naumburg' to the Hamburg-Amerika Linie, the agents of said vessel in New York City, as shown by the following cable of that date:

'Naumburg' — Hongkong & Shanghai Banking Corporation surrendered to us original bills of lading Manila/Marseilles B/L 1 Manila/Hamburg B/L 1 Cebu/Hamburg BLs No. . . . to . . . 4-9 total 800 tons of 2240 lbs. copra and 200 tons of 2240 lbs. copra cake.' (Stipulation of Facts, p. 8.)

"On September 21, 1939, the defendant-appellant bank wrote its London office (a copy of which letter is attached to the Stipulation of Facts, marked Annex 'E') advising it of the sending of the wire next above quoted and instruction it to 'point out to the drawee that we are taking action in their interests, and obtain their confirmation.'

"On September 23, 1939, the defendant-appellant wrote to the plaintiff-appellee (a copy of which letter is attached to the Stipulation of Facts, marked Annex 'F') requesting instructions as to the disposal of the cargo covered by the draft inasmuch as the steamship 'Naumburg' was still lying in the Port of Sourabaya, and to which letter plaintiff-appellee replied and delivered to defendant-appellant the letter dated September 27, 1939 (a copy of which is attached to the Stipulation of Facts, marked Annex 'G') wherein plaintiff-appellee stated that 'according to cable advice received from the drawee the above draft has not yet been presented for acceptance.'

"The original of said bill exchange, without the accompanying bills of lading and other shipping documents for said 200 tons of copra cake, but with a declaration regarding the delivery to the Steamship Company of the bills of lading in New York, was forwarded to Londo, and on or about October 26, 1939, the said bill of exchange, with the accompanying declaration as to the surrender of the bills of lading in its behalf to the Steamship Company in New York, was presented to the said N. V. Arnold Otto Meyer, 256 Heerengracht, Amsterdam, the drawee, for acceptance, but the said N. V. Arnold Otto Meyer refused to accept said draft on the pretext that the bills of lading and other shipping documents originally attached to said draft and covering the cargo against which the said bill had been drawn were not attached thereto nor delivery thereof made or offered to the said N. V. Arnold Otto Meyer, as shown by the following cablegram received by the defendant-appellant from its London office on October 31, 1939:

'Your Draft 2861 refused acceptance Meyer no Bills of Lading late shipment high refuge charges.' (Stipulation of Facts, p. 10.)

"On November 7, 1939, the plaintiff-appellee wrote the defendant-appellant, a copy of which letter is attached to the Stipulation of Facts, marked Annex 'H', saying in part:

'We shall consider refund to you of the value of the draft only after you return to us the draft with the relative documents attached thereto.'

"On November 8 and 9, 1939, the defendant-appellant bank, in accordance with the letter of the plaintiff-appellee dated November 7, 1939, above mentioned (Annex 'H' of the Stipulation of Facts), cabled its New York and London offices to obtain possession of the full set of the bills of lading and other shipping documents covering the said shipping of 200 tons of copra cake which it had originally delivered to the Steamship Company in New York pursuant to the circular of advice received from the 'German Steamship Agencies (P. I.) (formerly Behn, Meyer & Co., and Zuellig & Von Knobeldsdorff) Inc.,' as set out on pages 9 and 10 of this brief, and return same to said bank in Manila by air mail, as shown by the following cablegrams of November 8 and 9, 1939:

'Re our wire of 21st September if possible obtain repossession of full set of Bills of Lading our Draft 2861 to London and send them here by air mail. Wire when sent.'

'Re your wire of 31st Meyer return all documents hereby air mail.' (Stipulation of Facts, p. 11.)

"On November 11, 1939, the defendant-appellant wrote the German Steamship Agencies (P.I.) Inc. a letter (a copy of which is attached to the Stipulation of Facts, marked Annex 'J') asking said company to cable the Hamburg-Amerika Linie, New York instructing them to return the bills of lading to defendant's appellant's New York office.

"Said bills of lading and other shipping documents were returned by Clipper mail to the defendant-appellant bank and were received by it on or about December 11, 1939, and on the same date, December 11, 1939, the defendant-appellant sent to plaintiff-appellee a letter (a copy of which is attached to the Stipulation of Facts, marked Annex 'K') wherein the defendant-appellant informed the plaintiff-appellee that it had received the drafts already and full sets of documents and that the same would be handed over upon payment of the amount of the

draft together with expenses and interest, and to which letter, the plaintiff-appellee replied on December 12, 1939 (copy of which is attached to the Stipulation of Facts, marked Annex 'L'), wherein the plaintiff-appellee called the attention of the defendant-appellant to its letter of November 9, 1939, and saying that, as they had not received any instructions, they recommended the presentation of the draft to the drawee, as requested by the buyers; and on or about December 14, 1939, said bills of lading and other shipping documents were sent by the defendant-appellant bank to its agent in Sourabaya for the purpose of arranging for the disposal of said 200 tons of copra cake.

"On or about March 6, 1940, the second of exchange of said bill of exchange (Annex 'A-1' of the Stipulation of Facts) was returned by defendant-appellant bank to Hope & Co., of Amsterdam, as its agents at said place, and said bill of exchange was again presented for acceptance to the N. V. Arnold Otto Meyer, the drawee of said draft, which wrote on the bank thereof and signed its name underneath said notation, as shown by Annex 'A-1' of the Stipulation of Facts, as of November 6, 1939, the following:

'We refuse acceptance, because: the shipping documents covering the cargo against which this bill of exchange has been drawn, are not attached to the bill of exchange.

Amsterdam, 6th November 1939

N. V. ARNOLD OTTO MEYER

(Sgd.) Illegible

Directeur'

which under applicable Netherlands law is a proper acknowledgment of presentation by reason of the protest in simplified form (a form specifically recognized by said law)."

The central issue to be determined in this appeal, as posed by the parties, is: Should the Court find that defendant did not properly present the bill of exchange for acceptance, and was not legally excused therefrom, said defendant would have no recourse against the drawer, plaintiff herein; on the other hand, should the Court find that the defendant had properly presented said bill of exchange, or is otherwise excused therefrom, then defendant has recourse against plaintiff and is entitled to a judgment in its favor for the balance due.

The facts which in our opinion are necessary to consider in the determination of this issue are: On August 28, 1939, defendant-appellant mailed the first of exchange of the bill, with the original and duplicate of the bills of lading and the insurance policies covering the shipment, to its agent in New York. On September 1, 1939, defendant-appellant mailed the second of exchange of the bill, and the third copy of the bill of lading covering the same shipment, also to its agent in New York. All these documents reached their destination on or before September 21, 1939. On September 15, 1939, the German Steamship Agencies (P.I.) Inc., representative in the Philippines of the owner of the S. S. "Naumburg", issued a circular stating in substance that the cargo from

Manila to Europe and the United States on board said ship at present lying at ports of refuge may be delivered provided the bills of lading are surrendered and should delivery be taken after October 10, 1939, the owner of the ship reserves the right to collect from consignees, shippers or owners of the cargo certain refuge charges. Defendant-appellant was served copy of this circular on the same date. In view of this circular, defendant-appellant instructed its New York office to deliver the bills of lading covering the shipment to the New York agent of the S. S. "Naumburg", which instruction was carried out on September 26, 1939. The first of exchange of the bill, without the bills of lading and other shipping documents, but with a declaration regarding the delivery of the bills of lading to the agent of the ship in New York City, was on October 26, 1939, presented to the drawee, N. V. Arnold Otto Meyer, for acceptance, but the latter refused to accept said draft on the ground that the bills of lading and other shipping documents were not attached thereto.

It is clear from these facts that there was an unreasonable delay in the delivery of the bill of exchange to the drawee for acceptance. It appears that the first and second of exchange of the bill, as well as the bills of lading and other shipping documents, reached the New York office of defendant-appellant as early as September 21, 1939, but they were not delivered to the drawee, or at least the bill of exchange until October 26, 1939. The reason advanced for such failure is the circular issued by the owner of the ship relative to the delivery of the cargo and the payment of the refuge charges if not removed on October 10, 1939. But such circular cannot offer any excuse for the non-delivery of the pertinent documents to the drawee because the circular was merely intended to save the cargo from the refuge charges by giving the necessary advice to the owners of the cargo. This matter was not the concern of defendant-appellant, which was merely a holder of the draft, but of the drawee, and enough time there was for defendant-appellant to advise the drawee of the contents of the circular. Defendant-appellant had also enough time to deliver the bill of exchange, with the bills of lading and other shipping documents attached, to the drawee for the deadline fixed in the circular was October 10, 1939. It should be noted that, notwithstanding the declaration of war between England and Germany, the airmail and steamer services between New York, London and Amsterdam, were then in operation. Had the documents been delivered in due course, the drawee could have no excuse for refusing acceptance, and could have taken the steps he may deem proper regarding the disposition of the cargo as contemplated in the circular. Defendant-appellant has assumed the task of taking action on the cargo as called for in the circular and must consequently assume the corresponding risk and responsibility.

Defendant-appellant claims that it should not be blamed for not delivering on time the bills of lading to the drawee because it merely complied with the instructions contained in the circular. And it claims that, for having appellant complied with said instructions, plaintiff-appellee cannot disclaim responsibility under the draft because there are circumstances which seem to indicate that the same was issued with the knowledge and approval of said appellee. Thus, it is claimed, plaintiff-appellee, drawer of the draft in question, is the agent of the drawee in the Philippines. The S.S. "Naumburg" is owned by a corporation of which the representative in the Philippines is the German Steamship Agencies (P.I.) Inc. The latter company is a subsidiary corporation of plaintiff-appellee as evidenced by the fact that its corporate name bears the description "formerly Behn, Meyer & Co.", and plaintiff is one of its incorporators and managing director. And plaintiff-appellee and said companies are managed by the same officials. In other words, the implication is drawn that while the circular adverted to was issued by the owner of the ship, or its representative, it must have been issued with full knowledge of, and in collusion with, plaintiff-appellee considering their close juridical relation.

We do not subscribe to this sweeping implication. While there may be business relations between the drawer, the drawee and the shipping company, there is no evidence whatsoever of any collusion or community of action on their part to cause prejudice to defendant-appellant in this particular transaction. The contrary is true. Thus, it appears that the German Steamship Agencies (P.I.) Inc., is a domestic corporation organized under the laws of the Philippines. The appellee in turn is a corporation organized under the law of Java, whereas the steamer

"Naumburg" is owned by a German corporation known as Humburg-Amerika Linie. The circular was issued by the German Steamship Agencies (P.I.) Inc., whose head office was at Shanghai, merely in compliance with the instruction received from the latter. And the circular was issued not only in contemplation of the cargo in question but with reference to all the shipments that were then loaded on board the ship. These circumstances, in the absence of any clear showing to the contrary, reject any idea of collusion or bad faith on the part of the drawer, drawee and the shipping company.

Another question that should not be overlooked is the failure of defendant-appellant to make the protest required by law when the draft or bill of exchange was refused acceptance by the drawee. Our law requires that when a draft is dishonored by non-acceptance, it should be protested, and if it is not so protested, the drawer and indorsers are discharged. (Section 152, Negotiable Instrument Law). This is an additional reason why appellant has now no recourse against appellee.

The decision appealed from is hereby affirmed, with costs.

Feria, Pablo, Bengzon, Tuason, Montemayor and Labrador, JJ., concur.
Paras, C. J. and Jugo, J., no part.

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