

JEAN V. PLUMELET, PETITIONER AND APPELLANT, VS. MORALES SHIPPING CO., INC., RESPONDENT AND APPELLEE.

G.R. No. L-7767. October 26, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

Review on certiorari of the Court of Appeals' decision affirming the award of P14,200 with legal interest, made by the Manila court of first instance in favor of herein respondent and against Jean V. Plumelet.

According to the appellate court,

On May 31, 1948 the Morales Shipping Co., Inc., a corporation engaged in coastwise shipping employed Jean V. Plumelet as an agent to secure cargo for its vessels, "upon condition that the bills Of lading were to be in the name of appellee as carrier. On or about June 11 of the same year appellant informed the manager of appellee that he had secured cargo from the Bureau of Public Works, consigned to the district engineer of Marinduque, at Boac, to be loaded on board the MV San Vicente. Pursuant to his request, the said vessel was docked alongside Muelle de la Industria on the following day, at 7:00 a.m., and was actually loaded with cargo consisting of bridge spans and parts, the loading of which was accomplished within the agreed period of 24 hours. The stipulated freight was the sum of P4,500. The evidence discloses that appellant made the contract with the Bureau of Public Works in his own name, without disclosing his principal nor the fact that the vessel on which the cargo was to be loaded belonged to appellant. It also appears that the corresponding bill of lading issued in the name of appellant made it appear that the latter was the owner of the vessel on which the cargo was to be loaded. Due to these circumstances, appellee demanded from appellant, as a measure of self-protection, that the freight be paid in advance, that is, before the sailing of the vessel. Appellant, however, was unable to make payment as demanded and asked that he be given time to raise the necessary money. For this reason the cargo in question remained on board from June 12, 1948 to July 21, of the same year, during which time appellant unsuccessfully tried to raise the needed money. He finally gave up and was constrained to unload the cargo from the vessel on the last mentioned date."

The record shows that on June 17, 1948 the respondent wrote herein petitioner demanding payment of the freight plus demurrage for four days, and indicating its unwillingness to unload the cargo unless payment was made. (Annex B of complaint.) It also shows that on June 18, 1948 respondent wrote to the Bureau of Public Works, the letter Exhibit I saying partly:

"The vessel San Vicente has been alongside the Muelle de la Industria, since 8:00 a.m. on Friday the 12th of June, and was completely loaded by you by Monday evening June 14, but has been delayed until now pending some sensible agreement between the Bureau and ourselves. Unfortunately, in the meantime we will have to retain a lien upon this cargo."

On July 1, 1948, said shipping corporation filed its complaint which, as amended, sought to recover from Plumelet on three causes of action: (a) value of freightage, P4,500; (b) demurrage for delaying the ship's departure

at the rate of P400 per day, or a total of P14,200 and (c) damages in the amount of P12,000 for its inability to accept cargo for shipment offered by the Atlantic Gulf & Refining Co.

After due hearing, the Manila court found the first and third claims to be unjustified, and dismissed the same. However, on the second cause of action, demurrage, it rendered judgment for the plaintiff for the amount demanded, with legal interest from July 1, 1948.

Plumelet appealed to the Court of Appeals; the Morales Shipping Co., Inc. did not; wherefore only one question was submitted to the appellate Court: Plumelet's liability for demurrage.

Articles 652, 656, 689 and 691 of the Code of Commerce speak of demurrage: an amount stipulated in the charter party to be paid to the shipowner for any delay in the sailing of his ship. It is payable by the charterer or shipper.

But Plumelet was not the charterer nor shipper. He was an agent of the shipowner, as was expressly found by the Court of Appeals. Hence, demurrage is not by law chargeable to him.

It is alleged however that being responsible for the delay of the vessel's departure, he is liable for damages. Admitting for the moment, that he must pay damages, such damages have to be proven.

"Except where the law authorizes the imposition of punitive or exemplary damages, a party claiming damages must establish by competent evidence the amount of such damages, and courts cannot give judgment for a greater amount than that actually proven." (Marker vs. Garcia, 5 Phil., 657; Sanz vs. Lavin, 6 Phil., 299; Rubio vs. Rivera, 41 Phil., 39.)

"The Civil Code has made no provision for nominal nor punitive damages." (Algarra vs. Sandejas, 27 Phil., 284.)

The amount of demurrage stipulated or supposed to be stipulated between shipowner and shipper may not be legally charged to Plumelet, for the simple reason that he had not agreed to pay it. The courts below held erroneously that such rate of demurrage was chargeable to him.

But, was he responsible for the delay? As stated at the beginning, because the freightage had not been paid in advance, Plumelet was given by the shipowner time to raise the necessary money. There is no finding that Plumelet, as agent, had been instructed previously by his principal to collect the freight charges in advance.[1] In fact the Court of Appeals impliedly found that no such instruction had been given, when it said "if such agreement was not a part of the original contract, appellant accepted the condition when the demand therefor was made * * * and then asked for time to look for money". Now, supposing this acceptance (by petitioner) was a question of fact[2] on which we are concluded by the appellate court's statement, still we find it difficult to conclude that he also agreed that in case he failed to get money, he would pay damages—and at the rate of demurrage at that. And as no period was fixed within which Plumelet should produce the money (and the freight kept aboard pending production of the money), when he finally gave up, it was a case of damages without legal wrong, loss without injury.[3] Damages both to the shipowner and to Plumelet (who lost his commission) for which no recovery can be had by either. Morales Shipping Co. can allege no wrong, because it had agreed to give Plumelet time to look for money— and the latter looked for it. In fact as petitioner contends, it "assumed the risks of petitioner failing to raise money for advance freightage."

The resultant juridical situation is the same as if Plumelet, having previously been instructed to require freight in advance, found no shippers willing to advance. Obviously the agent on commission basis will not be responsible to his principal for damages if he fails to find business for such principal.

It might be argued that as the period was not fixed (for producing the money), a reasonable time must be

understood. Granted arguendo. Four days would not be an unreasonable period. At the end of it the shipping company could have unloaded when the freightage was not forthcoming—and then sailed. But it chose to retain the cargo and wait. It even gave notice to Plumelet in its letter Annex B, that it would not unload it, unless demurrage was paid for the four days. Now then, it being clear that said shipping company had no right to damage for the four days (reasonable time to look for money), the retention of the cargo[3a]—and delay of vessel's departure—was no longer imputable to Plumelet, since he had not prevented—could not have prevented—the shipowner from unloading it, and sailing, and such retention took place because the shipowner asserted erroneously[4] that it had a right to demurrage.

Apparently the respondent's case rests on this implicit proposition: had Plumelet not issued the bill of lading in his own name [5]—instead of the shipowner—the Morales Shipping Company would not have demanded payment in advance "as a matter of self-protection", and no delay would have happened. However it may be asked: protection against what? Evidently not against failure or refusal of the Bureau of Public Works to pay the freight. Most probably against the possibility of said Bureau's directly paying to Plumelet, and the latter's pocketing the whole amount. Yet that contingency could easily have been remedied, without advance payment: After ascertaining from the Bureau that the freightage had not been advanced, Morales Shipping Company could have undertaken the trip to Boac, after notifying the Bureau, and the General Auditing Office, in writing that it was transporting the cargo, that it was the owner of the vessel, that Plumelet was merely its agent and that payment should be made directly to it—and not to Plumelet. Morales Shipping would have run no risk, because the law preserved its lien on the goods loaded and transported; and Morales Shipping Company actually knew that law. (See Annex B of complaint.)

Let it not be argued, in this connection, that inasmuch as Plumelet as agent had not disclosed the principal, the latter had no claim against, and therefore could not have directly addressed the Bureau; because the vessel belonged to Morales Shipping Company and it could claim against the shipper, under article 1717 of the Civil Code, especially after the latter had been advised of such ownership. And in fact said shipping company communicated with the Bureau on the shipment.

Wherefore the shipowner's demand for prepayment seems to be an unwarranted precaution, and the delay should not be chargeable to Plumelet. Unless the latter expressly or impliedly agreed to pay for it—which he did not.

Neither may Plumelet be made responsible on account of his having made the contract in his own name instead of the principal's; because supposing he was actually instructed [6] to make the contract (bill of lading) in the name of the shipping company,[7] the latter waived such irregularity when it agreed to carry the cargo, provided freightage was advanced. Obviously both parties hoped that Plumelet could persuade the shipper to advance the freightage or could secure money somewhere else; but he failed, after trying.[8] *Damnum absque injuria* as explained hereinbefore.

Looking at the matter from the angle most favorable to plaintiff, the most that may be said is that Plumelet promised to produce the money, not only to try; i.e., he made an absolute promise to pay.[9] But then he will be liable for damages only if he defaulted. And he could not have defaulted because no deadline had been fixed. And supposing he defaulted, the only amount of damages recoverable for the delay would be legal interest of P4,500 it being the rule in this jurisdiction that "in the absence of fraud or stipulation, the only damages collectible for non-payment of money are limited to interest—legal interest".[10]

For the reasons herein explained, the decision under review is reversed and the petitioner absolved from liability. So ordered.

Paras, C.J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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- [1] Freightage need not be prepaid, because shipowner may retain cargo at port of destination, until freightage is paid.
- [2] Might be a question of law.
- [3] Damnum absque injuria. See 17 C. J., 1125; *Gilchrist vs. Cuddy*, 29 Phil., 542.
- [3a] Even if Plumelet owed demurrage, cargo could not be legally retained, because he did not own it.
- [4] Not to say, out of cupidity.
- [5] This is debatable, the bill of lading Exhibit G being authority to "L.C.T. San Vicente M, Captain J. V. Plumelet" to transport the goods; and the receipt being signed by "J. Loderico (captain)." Loderico was probably captain of San Vicente, and the bill could be considered issued in the name of the vessel and of shipowner. (Cf. *Wing Kee vs. Monangahela*, 44 Phil., 464.)
- [6] Ordinarily an agent may contract either in his own name or in that of the principal.
- [7] The letter of Annex A, the shipping company authorizing him to look for cargoes did not so specify. True its letter Annex B says "we authorized you to negotiate cargoes * * * in our name". But that letter was issued June 17, after the cargoes had already been loaded (and the contract presumably signed) on June 12.
- [8] It is probable that upon receipt of the shipowner's letter Exhibit I, the Bureau of Public Works became doubly reluctant to advance the freightage to Plumelet.
- [9] He was absolved on the first cause of action to recover this amount, however; and respondent did not appeal.
- [10] *Sun Life vs. Rueda Hermanos*, 37 Phil., 844; *Lopez vs. Del Rosario*, 44 Phil., 98; *Tin Fian vs. Tan*, 14 Phil., 126.

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