

COMPANIA MARITIMA, PLAINTIFF-APPELLANT, VS. JOSE C. LIMSON, DEFENDANT-APPELLANT.

G.R. No. L-27134. February 28, 1986

Ponente: PATAJO, J.

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PATAJO, J.:

This is an appeal from a decision of the Court of First Instance of Manila[1] holding plaintiff Compania Maritima liable to defendant in the amount of P441,339.01 representing the difference between the claim of plaintiff for unpaid passage and freight charges for shipments of hogs and cattle on plaintiff's vessels for the period from October 1957 to February 1961 and the claim of defendant for the purchase price of foodstuffs sold by defendant to plaintiff, payments on account of freight not accounted for by plaintiff and rebate to which defendant was entitled on the aforesaid freight charges.

On October 8, 1962, plaintiff Compania Maritima filed a complaint against defendant Jose C. Limson for collection of the sum of P44,701.54 representing the balance of defendant's unpaid accounts for passage and freight on shipments of hogs, cattle and carabaos aboard plaintiff's vessel from various ports of Visayas and Mindanao for the period from October 1957 to February 1961. Attached to said complaint was the statement of account supporting plaintiff's claim for unpaid passage and freight. Defendant filed a motion for bill of particulars asking that plaintiff attach to the complaint the bills of lading referred to in said statement of account in order to enable defendant to answer plaintiff's complaint. Plaintiff opposed said motion. The Court however ordered plaintiff to attach photostat copies of the bills of lading upon which the statement of account was based. Plaintiff's motion for reconsideration of said order was denied by the Court but upon motion of plaintiff said order was modified to allow plaintiff to attach duplicate originals of the bills of lading instead of photostat copies thereof.

On July 16, 1963, defendant filed his answer to the complaint denying any liability to plaintiff. Defendant alleged that he had already fully paid for all the shipments he made and that a number of the bills of lading submitted by plaintiff as basis of its claim are not properly chargeable to defendant since he was not the shipper nor had he authorized said shipments which were made by parties other than those for whom defendant is liable or who had been duly authorized by defendant to make said shipments. Defendant further set up a counterclaim for the refund of the rebate to which he was entitled to pursuant to an agreement that he had with plaintiff for shipments made by him from Davao, Cotabato, Dadiangas, Iligan and Masbate and for cost of foodstuffs sold or delivered to plaintiff in the total amount of P411,477.45.

Since the case involved primarily questions of accounting, upon motion of plaintiff, without the opposition of defendant, the Court appointed a commissioner to examine the accounts involved before the Court proceed with the hearing of the case. Anselmo T. del Rosario, a certified public accountant, was thus appointed by the Court.

On October 29, 1963, Mr. del Rosario submitted his report to the Court. The salient points in said report showed that with respect to the claim of defendant against plaintiff, the same was in the total amount of P676,416.05 broken down as follows:

For purchases of foodstuffs P433,237.75

Freight adjustments 8,170.45

Cash payments made by defendant. . . . 235,007.85

P 676,416.05

On the other hand, the claim of the plaintiff totalled P545,394.24 based on 1,521 bills of lading examined by him of which 267 were signed by defendant totaling P67,061.66; 3 bills signed by representative of defendant totaling P1,148.10; 91 bills signed by a certain "Perry" with Jose Limson, the defendant, as shipper and consignee totaling P61,981.00; 149 bills signed by said "Perry" for others as shippers and consignees totaling P46,869.60; 16 bills signed by others totaling P5,180.70; 662 bills unsigned totaling P260,170.23 and 333 bills missing totaling P102,982.46. According to the Commissioner defendant can be held liable only for the 267 bills signed by him and the 3 bills signed by his representative in the total amount of P68,209.79.

The bills examined by the Commissioner had been classified and regrouped by him into (1) original bills of lading signed by defendant or his agent; (2) original bills of lading without signature of defendant or his agent; and (3) charges with no original bills of lading, to wit:

(1) Original bills of lading duly signed by defendant or his agent

P68,209.76

(2) Original bills of lading without the signature of defendant

310,317.21

(3) No original bills of lading

166,867.28

Said Commissioner recommended that only the amount of P68,209.76 supported by original bills of lading signed by defendant or his agent is properly chargeable to defendant.

After hearing the lower Court rendered judgment based principally on the report of the Commissioner. The Court, however, held that defendant was liable for the bills of lading without originals involving a total of P166,867.26 but not liable on the bills of lading which had not been signed by him or his authorized representative. The Court sustained defendant's claim that "Perry" was not his authorized representative. Thus the lower Court rendered judgment sentencing plaintiff to pay defendant the sum of P441,339.01 with interest thereon at the legal rate from the date of the filing of the counter-claim plus P5,000.00 as attorney's fees. The amount of P441,339.01 is computed as follows:

Amount to defendant:

Freight adjustments.....

P 8,170.45

Cash payments.....

235,007.85

Foodstuffs and supplies delivered.....

433,237.75

Total

P676,416.05

Deduct amount to plaintiff on
bills of lading signed by
defendant or his authorized
representative

68,209.76

Bills of lading without originals but supported by
other copies of said bills
of lading.....

166,867.28

Total

235,077.04

Balance due defendant

P441,339.01

From said decision both plaintiff and defendant appealed to this Court, plaintiff assigning six assignment of errors, to wit:

"I

"The Trial Court erred in finding that the report of the Commissioner is fully supported by the documentary evidence presented in this case.

"II

"The Trial Court erred in concurring with the Commissioner that without the supporting original documents, the customer's subsidiary ledger cards are not sufficient and reliable.

"III

"The Trial Court erred in holding that the Commissioner is right in disallowing bills of lading not signed either by defendant or his authorized representatives, instead of holding that the corresponding freight charges for said bills of lading were probably debited in defendant's charge account.

"IV

"The Trial Court erred in finding that the fact that no periodic statements of account furnished, Limson was kept in the dark as to the true status of his account with plaintiff.

"V

"The Trial Court erred in finding that there is a balance of P441,339.01 due the defendant, said sum with interest thereon from the date of the filing of the counterclaim plus P5,000.00 as attorney's fees and costs.

"VI

"The Trial Court erred in dismissing the complaint and in not sentencing the defendant to pay the plaintiff the sum of P44,701.54 representing the unpaid balance of defendant's charge account with plaintiff plus legal interest thereon from the filing of the complaint, and the sum of P2,000.00 and P1,000.00 as attorney's fees and expenses of litigation respectively incurred by the plaintiff."

while defendant assigned one sole assignment of error:

"I

"The Trial Court erred in declaring appellant Limson liable in the amount of P166,867.28 for freighters and in deducting the same from his claim against Maritima."

We find that the Court a quo erred in rejecting the bills of lading signed by "Perry" where defendant appeared shipper or consignee, those signed by "Perry" where persons other than defendant-appellant as shipper and the bills of lading unsigned by defendant.

With regards to the 91 controverted bills of lading signed by "Perry" with Limson as shipper or consignee in the total amount of P61,981.50, witness Cabling testified that the signatures therein are those of Cipriano Magtibay alias "Perry" who took delivery of the cargoes stated therein after signing the delivery receipts. He testified thus:

"These are all the signatures of Perry. I know it to be his because oftentimes he goes there to get the delivery orders and he signed as "Perry" in my presence. His real name is Cipriano Magtibay. I allowed delivery of the cargoes to him because he was the regular representative of Mr. Limson." (t.s.n. pp. 12-13, Nov. 19, 1964)

On the other hand, Nolasco Cruz Ilagan, delivery order clerk of Compania Maritima, testified to this wise:

"In issuing these delivery orders, I get the data from the manifests or from the bills of lading. I know the defendant Limson in this case. He is now in the Court room. I knew him since the middle of 1956 up to 1961 when I was assigned in the Terminal Office of Maritima. I came to know him because Mr. Cabling introduced to us that he is a regular shipper of hogs, cattles, carabaos coming from the southern ports. As a clerk, I prepared the delivery orders for these cargoes to be delivered to Mr. Limson or his authorized representatives. I will mention some of his representatives: For hog the authorized representative is Cipriano Magtibay or Perry; and for cattles, carabaos and cows, is Eye, Mario, Mr. Marcelino Tinoco and others whom I don't remember the names. When these representatives of Mr. Limson take delivery of the shipments, I let them sign the delivery orders. I prepared the de-livery orders as soon as Mr. Limson himself or his authorized representative go to our office and present the bills of lading. In case where there is no original bill of lading, delivery order is effected also only when authorized by Mr. Cabling, basing on the manifests. The boat gives us the manifest as soon as it arrives. (t.s.n. 255-256, Mar. 10/65 & 256-260, Mar. 10/65. Even though the name of the shipper is not Mr. Limson or the consignee is not Mr. Limson, I prepared delivery orders by authorization of Mr. Cabling. (pp. 260-261 Id). The authorized representative to receive for hogs was Mr. Cipriano Magtibay alias "Perry". He signs the delivery orders by the name of "Perry". (p. 261 Id.)

"We were also the ones who put on the delivery orders the statement "account Limson". We put that to indicate the cargo is chargeable to Mr. Limson, so that the accounting department would know that the shipment is chargeable to Mr. Limson." (pp. 263-265 Id.)

"I am familiar with the signature of Perry. In these two bunches of delivery orders, I find that the signature appearing therein is that of Perry, the authorized representative of Limson, These delivery orders were signed by Perry in my presence. I know that Mr. Perry or Magtibay is the authorized representative of Mr. Limson because he was introduced to us by Limson himself that he is the one authorized by him to get his cargoes. He was authorized only to sign delivery orders for hogs. I also knew that Tinoco, Eye, Mario and other were also authorized by Limson to receive shipment for him (pp. 265-270 Id). These other persons who were authorized representatives to receive big cattles signed delivery orders in my presence. The delivery orders were requested

by Eye, Mario, and Tinoco, the authorized representatives. I know personally that these men are the authorized representatives for Limson." (pp. 270-275 Id.) (Plaintiff's brief, pp. 35-37).

Regarding the 16 controverted bills of lading signed by persons other than "Perry" with freight charges totaling P5,180.70, Ilagan testified that the representatives that signed the delivery receipts and took delivery of the cargoes thereof were Limson's agents. Ilagan testified thus:

"As clerk, I prepared the delivery orders for those cargoes to be delivered to Mr. Limson or his authorized representatives. For hogs the authorized representative was Cipriano Magtibay; and for cattle, carabaos and cows the authorized representatives were Eye, Mario, Tinoco and others who I cannot recall the names." (t.s.n. pp. 260-261, Nov. 1/65).

"These other persons who were authorized representatives to receive cattle signed delivery receipts in my presence. The delivery orders were requested by Eye, Mario and Tinoco, the authorized representatives. I know personally that these men are the authorized representative for Limson." (pp. 27-275, Id.). (underscoring supplied).

With respect to the 662 unsigned bills of lading with freight charges totaling P260,170.23, delivery receipts were issued upon delivery of the shipments. Cabling and Ilagan who were presented to the plaintiff as witnesses testified that the ordinary procedure at plaintiff's terminal office was to require the surrender of the original bill of lading, but when the bill of lading cannot be surrendered because it had not arrived or received by the consignee or assignee, the delivery of the cargo was authorized just the same, and the delivery receipt was prepared based on the ship's cargo manifests or ship's copy of the bill of lading. This accommodation was specially given to Limson, because defendant was a regular shipper and ship chandler of plaintiff, and was a compadre of Cabling. Besides, said hogs and cattle had to be unloaded and released from the pier for they cannot be kept there long, after having been on board for several days because they might die. (t.s.n. pp. 320-323, March 10, 1965).

Regarding the 149 controverted bills of lading in the name of other persons as shippers or consignees and signed by Perry in the total amount of P46,869.60, it was established that said bills of lading were for cattle and hogs purchased by the defendant from his "viajeros" in Manila which were delivered to and received by defendant, and for which he had to pay the freight charges, where in turn, he deducted from the purchase price the corresponding cost of freight; or were for cattle or hogs that belonged to Marcelino Tinoco from whom defendant had made arrangements for paying the purchase price of said Tinoco's cargo partly with the freight costs for which defendant agreed to be debited in his charge account with Maritima. These facts were admitted by the defendant himself when he testified on direct and cross-examination, *supra*. This was also confirmed by the testimony of Cabling. And now, corroborating the above facts as testified, Pagkalinawan, another witness for the plaintiff, testified thus:

"I know Mr. Limson, He is also a meat dealer. As ship's chandler he supplies foodstuffs, meat, to Maritima ships. I came to know Mr. Limson when Mr. Tinoco introduced me to him. Mr. Limson was getting meat from Mr. Tinoco at that time. It was cow and carabao meat. These cow and carabao meat which Mr. Limson used to get from Tinoco came from the Visayas to Manila. They were brought by the Maritima ships and those were the cows and carabaos that I took delivery at that time. I do not pay the freight for the delivery of these cows and carabaos. I was allowed by the Compania Maritima to take delivery of these cows and carabaos of Mr. Tinoco without paying the freight because the freights will be charged to Mr. Limson. These freight charges that I did not pay for the shipment of cows and carabaos of Mr. Tinoco were charged against Mr. Limson. These freight charges that were charged against Mr. Limson in his account in the Maritima were credited as payment of Mr. Limson to the meat that he gets from Mr. Tinoco. (t.s.n. pp. 6-14, April 20, 1966). I am not the only one who received the cows and carabaos of Mr. Tinoco at the Maritima. There were many more, Mario Valencia, Remy and one whom I know only as Ben Negro. (t.s.n. pp. 14-15, April 30, 1966). Sometimes

Marcelino Tinoco himself takes the cargo, I used to accompany him, and I am the one signing the delivery permit. Sometimes he does too. He does not pay the freight because it is charged against the account of Mr. Limson. (t.s.n. pp. 15-20, April 20, 1966). I have occasions taking delivery of the cows and carabaos of Mr. Tinoco even if there was no original bill of lading and the freight of which were charged against Mr. Limson. The office makes true copies of the bills of lading for the originals which could not be produced. Just the same I could take delivery of the said cows and carabaos. (t.s.n. pp. 20-21- Id).

"In all occasions that I withdrew the cows and carabaos of Mr. Tinoco for which I signed the delivery receipts there were corresponding original bills of lading or copies of the bills of lading which were made even if the original bills could not be produced (t.s.n. pp. 2-3, May 6, 1966). Mr. Limson signed these bills of lading that I have presented to him. Those that were not, I was the one who signed it. When the unloading takes place at nights I just call him up by te-lephone. (t.s.n., p. 3, Id).

"For the shipments of Mr. Marcelino Tinoco, I was the one who gets the delivery order. But if I am not around, my companions get them. However, if he is there at the pier, he himself receives his shipments. (t.s.n. pp. 9-11, Id.) All shipments of Mr. Tinoco are vales of Mr. Limson. If I do not have the bills of lading, that were signed by Mr. Limson, I can still get the delivery in this manner. If the shipments takes place at night and I could not get the signature of Mr. Limson, I simply call him up thru the telephone who in turn directs me to call on Mr. Cabling and Mr. Cabling used to tell me to sign the bills of lading because he and Mr. Limson had already an arrangement." (t.s.n. pp. 17-18 Id.)

Plaintiff also presented Exhibits B-276 to 1018 in the total amount of P81,462.92, bills of lading not in the name of defendant Limson, but which Limson himself signed, thereby proving that defendant took delivery of shipments in the names of others, shipper or consignee, and which the corresponding charges were debited to his account.

The simpler way to determine how much is the total claim of plaintiff against defendant is to compute the amount of the freight on the face of the bills of lading supporting the statement of account attached to the complaint and deducting therefrom the rebates to which defendant is entitled to under the special arrangement made between defendant and Mr. F.J. Garay of Compania Maritima dated March 27, 1957. According to the statement of account submitted by plaintiff and attached to the complaint, the total of freight charges due from defendant is P698,159.14 (Annex "A" Complaint).

This is the amount due based on what is charged in the bills of lading. It did not reflect the rebates because said bills of lading were prepared in the field offices of plaintiff where the special arrangement entitling defendant to rebate had not been transmitted.

According to the report of the Commissioner, the total rebate to which defendant will be entitled to is P127,418.89 (Supplementary Report dated January 27, 1964, Exhibit 7-B). According to said Commissioner, he arrived at such amount in the following manner:

"I selected the freightage from Davao comprised of 340 shipments from October 15, 1957, up to February 11, 1961. 340 shipments, and I used P4.50 as the freightage from Davao to Manila. Now I used the P5.00 as you requested, and that is the difference."

In other words, the Commissioner summed up the total number of hogs involved in the 340 shipments from Davao which must be some 50,692 hogs. The difference was arrived at, thus -

50,692 hogs multiplied by P5.00 per head = P253,460.00

less : 50,692 hogs multiplied by 4.50 per head = P228,114.00

P 25,346.00

The difference, (P25,346.00) subtracted from the original computation of P152,764.89 resulted to the reduced rebate of P127,418.89 (Supplementary Report, *supra*).

However, instead of merely verifying the accuracy of the above-stated computation, the special rates, *supra*, accorded Limson was individually applied in computing the freightage due from Limson's shipments, as itemized in the "Spread of Charges made to Limson's account" (Commissioner's report, Exh. "7"), and arrived at the following:

Total freight charges (special rates used for shipments from ports as provided for in the Agreement)

P517,842.30

Total freight charges (Limson's shipments (rates used as computed in port of origin) from ports other than those stated in the Agreement

69,025.66

Total charges to Limson's Account

P 586,867.96

In other words, the total freight over-charges which may be due Limson is (P698,159.14 less P586,867.96) P111,291.18 and not P127,418.91 as reported by the Commissioner.

To be added to said rebate of P111,291.18 are the cash payment made by defendant of P235,007.85, freight adjustment of P1,138.45 and cost of foodstuffs purchased by plaintiff from defendant of P411,982.35 (from the total of P433,237.75 representing the amount of said purchase deduct P21,255.40 which had been billed twice), all of which would total P759,419.83. Deducting from said amount, the total of freight charges in favor of plaintiff as per the statement of account attached as Annex "A" to the complaint of P698,159.14 would give a balance of P61,260.69 in favor of defendant.

It may be noted that in his answer to the complaint defendant stated that the total of his claim against plaintiff for the cost of foodstuffs delivered is P411,477.45 (par. 22, Answer of Defendant, page 68, Record on Appeal).

Now, turning to defendant's sole assignment of error, namely, that the Trial Court erred in declaring defendant liable in the amount of P166,867.20 representing the amount covered by bills of lading where the originals had been presented.

With respect to defendant's sole assignment of errors, namely, that Court a quo erred in declaring defendant liable in the amount of P166,867.28 which represents charges for freight where the originals of the bills of lading were not submitted, We find merit in the contention of plaintiff that the respondent Court correctly held defendant liable for said amount because the same actually represented freight charges based on the carbon originals of the ship's copy of the bills of lading where Limson appeared as consignee in the amount of P84,529.42 and those

based on the ship's cargo manifests, where defendant appeared as consignee in the amount of P81,874.10. Respondent Court admitted in evidence said copies of the bills of lading which were not considered by the Commissioner because they are not actually the original copy of the bill of lading. The Commissioner accepted only the originals of the bills of lading because he did not consider even duplicate originals duly signed as originals. The ship's copies of the bills of lading and the cargo manifests were substantiated by other supporting documents which were found after the report of the Commissioner from among the records salvaged from the San Nicolas bodega fire or which were found among the records kept at plaintiff's terminal office. Said documents were presented in lieu of corresponding original of the consignee's copy of bill of lading which could not be submitted to the Commissioner nor presented as plaintiff's evidence to the Court because they were lost or destroyed during the re-modelling of plaintiff's office building or during the fire at plaintiff's bodega at San Nicolas where they were brought for safekeeping. All said documents were presented as evidence to prove that all the freight charges for the shipments evidence thereby were duly earned by plaintiff and were properly debited in defendant's charge account. Apparently, the Commissioner rejected plaintiff's claims which were not actually supported by the original of the bills of lading notwithstanding the fact that duplicate original of the said documents and other secondary evidence such as the ship cargo manifests have been presented as evidence. As stated above, witnesses Cabling and Ilagan testified that the practice was that when the originals of the bills of lading could not be surrendered because they have not yet been received by the consignee, the delivery of the cargo was nevertheless authorized and a delivery receipt was prepared on the basis of the ship's cargo manifests or the ship's copy of the bills of lading. This only shows that the ship's cargo manifests or the ship's copy of the bills of lading can be accepted as evidence of shipments made by defendant since he was allowed to accept delivery of said shipments even without presented his copy of the bill of lading.

By way of recapitulation, the total of freight charges due plaintiff based on the freight charges appearing on the face of the bills of lading supporting the statement of account attached to the complaint is P698,159.14. Deduct from said amount the following:

(1) Rebate	P111,291.18
(2) Cash payments made by defendant	235,007.85
(3) Freight adjustment	1,138.45
(4) Cost of foodstuffs purchased from defendant	411,982.35
Total	P759,419.83

would show a balance in favor of defendant of P61,260.69.

Presented otherwise, the total freight charges due plaintiff after deducting the rebate to which defendant is entitled to is P586,867.96. (P698,159.14 minus P111,291.18).

Against said freight charges of P586,867.96 defendant should be credited:

(1) Cash payment.	P235,007.85
(2) Freight adjustment	1,138.45
(3) Cost of foodstuffs	411,982.35
Total	P648,128.65

giving a balance in favor of defendant of P61,260.69.

WHEREFORE, the decision of the Court a quo is hereby MODIFIED and judgment rendered against plaintiff on defendant's counterclaim for the amount of P61,260.69. In all other respects, the appealed decision is hereby

AFFIRMED. No pronouncement as to cost.

SO ORDERED.

Teehankee, (Chairman), Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.
Melencio-Herrera, J., no part.

[1] Before under Republic Act 2613 approved August 1, 1959 appeals from decisions of Court of First Instance where the value of the property in question exceeds P200,000, exclosure of interest and cost was to the Supreme Court.

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