

MOLLERS' (HONGKONG) LTD., PLAINTIFF-APPELLANT, VS. DIOSCORO F. SARILE, ET AL., DEFENDANTS-APPELLANTS*G.R. No. L-7038 & L-7039. August 31, 1955*

Ponente: REYES, J.B.L., J.

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MOLLERS' (HONGKONG) LTD., PLAINTIFF-APPELLANT, VS. DIOSCORO F. SARILE, ET AL., DEFENDANTS-APPELLANTS

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All parties have appealed directly to this Court from a decision of the Court of First Instance of Manila, dismissing plaintiff-appellant's claims for damages and lost profits, and sentencing defendants-appellants, Dioscoro Sarile and Philippine Scrappers Inc., in case No. 9441 (here L-7038), to solidarily pay plaintiff P158,816.00 and costs; and in case No. 9442 (here L-7039), sentencing defendants-appellants Somera, Potenciano Ilusorio and Dioscoro Sarile jointly, and Philippine Scrappers Inc., solidarily with the others, to pay P48,686.75, and costs; the amounts awarded to earn legal interest from the filing of the complaint until payment.

The suit arose from two contracts entered into on August and September of 1948, by and between plaintiff's assignor, Charles Choy (Phil.) Inc., and the individual defendants. In the first contract (Exh. A), confirmed ten days later (Exh. 3), Dioscoro Sarile gave Choy, for and in consideration of an advance of P202,950 (P50,000 paid Sarile, and a Check for P172,950 (Exh. H-1) paid in his behalf to the Surplus Property Commission), an option to purchase all the contents of the Cavite Naval Base (later estimated at 6,000 long tons of scrap metal) for delivery f.o.b. in 90 days, at \$22.00 per long ton. In the second contract (Exh. T), Dioscoro Sarile, Guillermo Somera and Potenciano Ilusorio sold to the same buyer scrap metal and other items from the San Fernando Naval Base (Base N) at varying prices, against an advance of P50,000, and a further \$51,500 payable according to deliveries.

The individual defendants has purchased the property from the Surplus Property Commission, and had used the advances of the purchaser Charles Choy (Phil.) Inc., to pay therefor. The buyer in turn obtained its funds from the plaintiff-appellant, Mollers' (Hongkong) Ltd., who acted as financial backer of, and joint co-adventurer with, the buyer Charles Choy (Phil.) Inc. From defendant's sworn answers (Rec. App. pp. 15 and 49), the individual defendants knew all the time that Choy (Phil.) Inc., and plaintiff were partners or co-adventurers in the transactions herein involved, and dealt with either or both as a partnership.

Shortly after the contracts were entered into, Sarile transferred the properties in the Cavite Naval base to the corporation Philippine Scrappers Inc., whose president was defendant Somera (Exh. 5) subject to the contract Exh. A. The defendants apparently did the same with reference to the San Fernando base, the Philippine Scrappers Inc. undertaking to discharge their obligations under the second Choy contract (Exh. T). The record indicates, however, that the transferee corporation was a mere "business conduit" of the individual defendants, who

controlled and disposed of its properties for their individual benefit and purposes (Exh. DD).

Lack of sufficient capital dogged the sellers from the very start, to the extent that the buyers even had to provide some of the cutting equipment; and deliveries fell behind schedule, notwithstanding extensions granted by the buyer. The latter finally had to agree to take deliveries in Cavite in lieu of San Fernando under its contract Exhibit T (Exhs K, K-1), but even so, the sellers were unable to meet their commitments. A proposal to turn over the entire Cavite base to the buyer was not accepted by the latter (Exh. 0-1), and other attempts to settle the differences between the parties proved unavailing, partly because, unknown to the buyer, the sellers disposed of scrap to other parties (John Lowe, Testa, Pugh, etc.) while defaulting on their contracts Exhs. A and T.

By private writing executed on April 21st, 1949, Charles Choy (Phil.) Inc., assigned and transferred to plaintiff-appellant Mollers' (Hongkong) Ltd., various properties, including all its title and interest in the contracts with defendants.

Then appellant Mollers' (Hongkong) Ltd. filed these suits, claiming that defendants had breached the contract by failure to deliver metal scrap (beyond 1,557 long tons worth P56,052.00) against its advances of P214,868.00 on the Cavite contract, and P50,000 more on the San Fernando contract; and that by their failure to deliver, defendants had caused plaintiff to default on its own contract to sell and deliver the same material to George Cohen Sons & Co. Ltd. at P17.00 per ton F.A.S. Manila, and prayed for rescission and damages. Defendants answered denying noncompliance, and counterclaimed for several amounts due for material delivered and unpaid, allegedly offsetting all balances claimed by plaintiff. All defenses were overruled by the trial Court, and its ruling is now the burden of defendants' appeal.

Since defendants' claims, if successful, would preclude recovery by plaintiff, and in such event, no damages would lie, it is proper that we should examine first the contentions of defendants.

The principal defense is that plaintiff can not sue as assignee of Charles Choy (Philippines) Inc., because (a) the assignment in its favor is conditional and (b) it is void and ineffectual against defendants, not being embodied in a public document.

The claim of conditionality of the assignment is belied by the documents. The deed of transfer and assignment, Exh. Q, covers two distinct groups of properties transferred: physical (schedules A, B, C and D) and incorporeal (accounts receivable and interest in various contracts, including the two celebrated with defendants herein). The alleged condition "subject to the fulfillment of Mollers' (HK) LTD., advancing us or our assignee the sum of P100,000 mentioned in clause 4 of Agreement of February 25th 1949" was inserted by Choy in the part referring to the transfer of physical assets, and therefore did not affect the assignment of the defendants' contracts, which was unqualified. In addition, the insertion does not speak of a condition precedent, or suspensive of the effects of the assignment; as written, it merely describes additional price or consideration for the transfer and defendants can not invoke it, since they are not parties to the agreement.

As to the absence of a public document of assignment, defendants improperly invoke Arts. 1526, 1218, 1227 and 1280, (p. 6) of the Civil Code of 1889, averring that under said articles, an assignment must be recorded or else be in public document to affect third person. The contention has no merit, because the debtor of an assigned credit is not a third person within the meaning of Art. 1526 (Supreme Court of Spain Sent. 14 Dec. 1897). The debtor is governed by the principle that he may oppose to the assignee all defenses he could have set up against the assignor before he learned of the assignment. This is the rule underlying Arts. 1527 and 1198 of the old Civil Code (Arts. 1626, 1285 of the new Civil Code):

"ART. 1527. Any debtor who pays his creditor, before having knowledge of the transfer, shall be released from the obligation."

"ART. 1198. A debtor who has consented to the assignment of rights made by his creditor in favor of a third person cannot avail himself as against the assignee of any defense of compensation which he might have had against the assignor.

If the creditor gave him notice of the assignment and the debtor did not consent thereto, he may oppose the defense of compensation as to prior debts, but not as to subsequent ones.

If the assignment is made without knowledge of the debtor, he may oppose the defense of compensation as to prior credits, and also as to subsequent ones contracted before he had knowledge of the assignment."

These articles reveal that the discharge of the debtor depends upon his knowledge of the assignment, not upon the form in which the assignment is made; and this is logical, since Art. 1280 of the old Civil Code (Art. 1358 of the new) while requiring assignments of credits to appear in a public instrument, does not declare them invalid should they not so appear. Hence, regardless of the manner how he obtains information about the assignment, the debtor is obligated to pay the assignee, and is bound by the assignment, from the time he learns of it.

Commenting Art. 1527 of the Code of 1889, Manresa (Vol. X, 5th Edition, pp. 411-412) says:

"x x x y refiriendose este (the Code) solamente al conocimiento del deudor sin determinar el medio por el cual haya podido llegar a el es evidente que cualquiera que sea este medio, siempre que el conocimiento del hecho de la cesion se de en el deudor, se esta fuera del supuesto legal, y, por lo tanto, no quedara libre el expresado deudor. De donde se deduce que no habiendose estinguido la obligacion legalmente, es ineludible el page." (Emphasis supplied)

Similarly, Puig Peña (Der. Civil, Tomo IV, Vol. 1, p. 146) commenting on the same topic, observes:

" a) Modo de obtener el conocimiento del deudor.-- No cabe duda que, en principio, el medio mas perfecto y solemne de obtener el conocimiento de la cesion por parte del deudor es la denuntiatio o notificacion formal que de la misma se haga a aquel. Pero nuestro Derecho no habla expresamente de la notificacion, sino del hecho de que el deudor tenga conocimiento de la cesion, lo cual, logicamente, puede obtenerse por otros procedimientos. Confirmando este criterio, ya la sentencia de 5 de mayo de 1885 declaro que 'basta que se demuestra que el deudor tuvo conocimiento del hecho de la cesion, para que esta produzca efectos respecto de el, aunque no se hubiera efectuado la notificacion'".

" b) Significado de la 'denuntiatio'.-- Es pues, requisito indispensable para el perfeccionamiento de la cesion la notificacion de la misma al deudor? Sobre este particular han existido en las legislaciones tres sistemas diferentes. En el primera, que es el propio del Derecho romano e incluso de parte del Derecho intermedio, la denuntiatio era absolutamente indispensable para que la cesion del credito se reputase realizada. Tenia, pues, un valor constitutivo. En el segundo, que es el que siguen los Codigos frances (articulo 1690) e italiano (art. 1539), la denuntiatio solo es necesario para las relaciones con los terceros, por la cual, aunque en principio tiene solo un valor declarativo, sin embargo, es de una eficacia particularmente robustecedora del hecho de la cesion. Finalmente, en el tercer sistema, que es el que siguen los Codigos aleman y español, es solo el instrumento tecnico que tiene por objeto vincular al deudor con el nuevo acreedor. Este criterio fue ya recogido en la sentencia de 27 de febrero de 1891, al declarar que ' la cesion de creditos puede hacerse validamente sin conocimiento previo del deudor y aun contra su voluntad, sin que la notificacion al mismo tenga otro alcance que el de obligarle con el nuevo acreedor, no reputando pago legitimo, desde aquel acto, el hecho a favor del cedente'". (Emphasis Supplied)

Since the defendants do not deny that they were made aware of the assignment, they can not now evade responsibility to the plaintiff as assignee. This Court has ruled that where an assignable credit has been transferred before action is brought, the proceeding ought to be instituted in the name of the assignee, as the real party in interest (*Oria Hnos. vs. Gutierrez Hnos.*, 52 Phil. 163).

The argument that plaintiff has privity of contract with defendants herein nor advanced any money to them, is belied by their own answers to the complaint, wherein (as previously noted) the defendants expressly admitted under oath that they "always acted on the belief that plaintiff and Charles Choy (Phil.), Inc. are partners in their business operations on the Philippines and defendants have dealt with either one or both of them in the belief that they are dealing with the partnership." (R. App. pp. 15, 49). This sworn admission is of course conclusive on defendants, and is further supported by check signed jointly by plaintiff Mollers' (Hongkong) Ltd., and Charles Choy and paid to the Surplus Property Commission in defendant's own behalf (Exh. H-1); as well as by various letters of the defendants addressed to J.R.E. Harrison "for and on behalf of Charles Choy (Phil.), Inc. and Mollers' (Hongkong), Ltd." (Exhs. F-1 and I-2), and the letters sent by Harrison "for and in behalf of Charles Choy (Philippines) Inc. and Mollers' (Hongkong) Ltd." addressed to defendants and received by them without protest or comment (Exhs. F and I).

With regard to the claim of defendants that they did not violate the contract and that they delivered scrap of a value practically equal to plaintiff's advances, except for P3,959.21 which claim to be more than offset by the damages suffered by them on account of the attachment obtained by the plaintiff, we are of the opinion that the lower Court committed no error in disallowing such defenses and counterclaims.

Defendants' refusal to recognize that, in addition to the check Exh. H for P152,950.00, plaintiff and his assignor advanced an additional P50,000 on account of the Cavite contract, was properly discounted, because this advance was recognized by defendant Sarile in the letter contract Exh. A; in the confirmatory letter Exh. 3 of September 14, 1948; and in the draft of a revised contract (Exh. M-3) prepared by defendants and signed by Somera as President of Philippine Scrappers' Inc., of which Sarile was the manager. In addition, the defendants repeatedly failed to object to the inclusion of the disputed advance in the statements of account sent them by plaintiff (Exhs. G, I-1, and P), although they did object to some of the other items stated therein. Such silence and inaction is corroborative of their other admissions, and estops them from belatedly claiming that the P50,000 were not received.

The excuse is advanced by defendants that Sarile acknowledged having received P50,000 in Exh. A, because of the assurance of Charles Choy's that said letter was needed to reassure his Hongkong partners who would advance the amount, and that the same was never really paid, as acknowledged in Choy's letter Exh. I. This excuse was properly rejected. Obviously, a party can not be allowed to plead his own deceitful act to the detriment of those who relied upon it (Civ. Code, Art. 1431).

With reference to the other counterclaims, we agree with the lower Court that the preponderance of the evidence sustains the finding that, as against a total advance of P224,868, defendants only managed to deliver 1557 long tons of steel scrap (ex SS "Muncaster Castle", "Benmacdhui" and "Eurypylus") out of the 6000 tons committed under the Cavite contract (Exh. A) and that for such deliveries plaintiff properly credited defendants with P56,012.00 since the original contract price of \$22.00 f.o.b. per ton was subsequently reduced by common agreement to P36.00 per ton "f.o.b. barge," as testified to by Sarile himself (t.s.n. pp. 197-198). No deliveries were made on the San Fernando contract (Exh. 7), so much so that the parties finally agreed that the deliveries thereunder would be made from Cavite instead (Exh. K-1); however, the trial court allowed a credit of P1,313.25 for material used to redeck the San Fernando pier, against the P50,000 advanced to the defendants on account of this contract, and the deduction is not now contested. Thus, the sum of P48,686.75 remains due from defendants on this count.

The other deliveries alleged by defendants were properly rejected, since the documents and testimony show that either they were not actually delivered (Exh. M-3) or else (as in the case of the Lorain, Bucyrus and P.H. cranes and the "Angusdale" shipment), they were separately paid for (Exhs. G and 24). It is significant that defendants

never brought up these counterclaims to the attention of plaintiff prior to the suit, nor objected to the omission of the corresponding items in the plaintiff's periodical statements of account submitted to them (Exhs. G, I-1, P). Moreover, the defendants repeatedly failed to submit the detailed accounting demanded by plaintiff concerning these claims (Exh. K). Even more significant is the fact that the items covered in these counterclaims (like the brass shipment and the shipment on the SS. "Angusdale") are only detailed in a "confidential" correspondence between defendants and Charles Choy in his individual capacity (Exhs. 22-25) where it is clearly revealed that defendants Choy had private arrangements and transactions among themselves, unknown to plaintiff; so that it is highly probable, as pointed out by the Court below, that these items were the object of private deals with which plaintiff had nothing to do.

Considering the foregoing facts, and considering also that the trial Court's appraisal of the credibility of the witnesses for plaintiff as superior to that of the defendants appears justified by the repeated contradictions in the testimony of the latter, we find the rejection of the defenses and counterclaims to be entirely proper.

Turning now to plaintiff's appeal. It is first averred that the liability of Somera, Sarile and Ilusorio on the San Fernando contract should be deemed solidary, and not joint, because of the evident bad faith of the defendants Somera, Ilusorio and Sarile, as shown by their private arrangements with Charles Choy personally for secret discounts, "cover", "adjustments", rebates and commissions on plaintiff's purchases, all paid or payable to Choy individually in his "private account", apparently as a result of his favoring the defendants and allowing them, *inter alia*, to sell to other persons scrap originally destined to be delivered under the contracts Exhs. A and T. (Exhs. 22-25). In other words, defendants secretly dealt with Choy and allowed him to profit ("make money on the side," *t.s.n.* p.439) to the detriment of the plaintiff, when defendants knew all the time that plaintiff was Choy's co-partner in the venture. That such acts and conduct utterly violated the rule that contracts should be fulfilled in good faith (new Civil Code, Art. 1315; old Civil Code Art. 1258) need not be emphasized. Nevertheless, the claim of solidarity of the debtors must be disallowed, because the suit is not on tort but upon contract, where solidarity is not presumed (new Civil Code, Art. 1207; old Code, Art. 1137); and, in the absence of express stipulation or specific law to the contrary, the intentional non-performance of a joint contractual obligation does not convert the latter into a solidary one. Such is the rule even if the obligation is indivisible (new Civil Code, Art. 1224; old Code Art. 1150). The obligation of each joint (*mancomunado*) debtor being separate, the damages due to its breach must be borne by him alone. (*cf.* Sent. Sup. Court of Spain, 29 March 1921).

Plaintiff likewise complains of the lower Court's refusal to award its damages for lost profits represented by the difference between the contract prices under Exhs. A and T, and the resale price (at \$25.00 a ton *f.a.s.*) under its contract with Messrs. George Cohen Sons Ltd., who had opened a covering letter of credit (Exh. R) in favor of plaintiff for \$250,000 that had to be cancelled because the steel scrap called for could not be delivered.

We are of the opinion that the alleged damages were correctly disallowed by the Court below. In the first place, there is no reliable evidence of the terms of the contract with Cohen and Sons, since no copy thereof was produced. Secondly, according to the letter of credit, Exh. R, deliveries to Cohen Sons Ltd. were payable at \$25.00 (P50.00) a ton "*f.a.s.* Manila to U.K. port", while the contract with the defendants called for deliveries at P36.00 a ton "*f.a.s.* barge" at Cavite (Exh. A) and for P30.00 a ton, plus P10.00 "for hauling and placing on board vessel San Fernando, La Union" (Exh. T). There is no evidence of the cost of transporting the scrap from Cavite and San Fernando to alongside ship in Manila to show that plaintiff would obtain real profit. In the third place, the law being that the injured creditor must exercise diligent efforts to minimize the resulting damages (new Civil Code, Art. 2203; *Castelvi vs. Compañia General de Tabacos*, 49 Phil. 998; *Puentebella vs. Negros Coal Co.*, 50 Phil. 69), such rule required plaintiff to procure the scrap in the open market, in view of defendants' breach, and fulfill the Cohen contract from such purchases, only charging defendants with the difference between the contract

price and market price. It is not shown that the scrap was not procurable locally, or that the price thereof was unreasonably high. In fact, Schedule "E" attached to the assignment from Choy (Phil.) Inc. in favor of plaintiff (Exh. Q) includes a contract for scrap with one Isabelo Ocampo, of Bacnotan, La Union, thereby pointing out the possibility of obtaining scrap from other sources.

However, considering that plaintiff has been awarded a judgement for the recovery of the balance of its advances made to defendants under contracts Exhs. A and T (158,816 and P48,686.75), and that said defendants used these amounts to their benefit while failing to make deliveries of scrap to compensate for the same, it is only just that the amounts due be returned with legal interest from the time the advances were made, and not from the time the suit to recover them was filed. The first P152,950.00 were paid to the Surplus Property Commission on or about September 14, 1948, for the contents of the Cavite base, while the P50,000.00 for the San Fernando base (Base M) were paid to defendants on August 9, 1948; hence, the legal interest should be computed from these dates.

In view thereof, the judgement appealed from is affirmed, with the sole modification that in case G.R. No. L-7038 (Civ. Case No. 9441 of the Court below), defendants shall pay legal interest on P152,950.00 from September 14, 1948; and in case G.R. No. L-7039 (Civ. Case No. 9442), defendants shall pay legal interest on P48,686.75 from August 9, 1948. No costs in this instance.

So ordered.

Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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