

CONSOLIDATED TERMINALS, INC., PLAINTIFF-APPELLANT, VS. ARTEX DEVELOPMENT CO., INC., DEFENDANT-APPELLEE.

G.R. No. L-25748. March 10, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Consolidated Terminals, Inc. (CTI) appealed from the order of Judge Jesus Y. Perez of the Court of First Instance of Manila, dismissing its amended complaint for damages against Artex Development Co., Inc. (Artex for short). The dismissal was predicated on lack of cause of action.

The following ultimate facts, which were hypothetically admitted in the motion to dismiss, were alleged in the amended complaint:

CTI was the operator of a customs bonded warehouse located at Port Area, Manila. It received on deposit one hundred ninety-three (193) bales of high density compressed raw cotton valued at P99,609.76. It was understood that CTI would keep the cotton in behalf of Luzon Brokerage Corporation until the consignee thereof, Paramount Textile Mills, Inc., had opened the corresponding letter of credit in favor of shipper, Adolph Hanslik Cotton of Corpus Christi, Texas.

Allegedly by virtue of a forged permit to deliver imported goods, purportedly issued by the Bureau of Customs, Artex was able to obtain delivery of the bales of cotton on November 5 and 6, 1964 after paying CTI P15,000 as storage and handling charges. At the time the merchandise was released to Artex, the letter of credit had not yet been opened and the customs duties and taxes due on the shipment had not been paid. (That delivery permit, Annex A of the complaint, was not included by CTI in its record on appeal).

CTI, in its original complaint, sought to recover possession of the cotton by means of a writ of replevin. The writ could not be executed. CTI then filed an amended complaint by transforming its original complaint into an action for the recovery from Artex of P99,609.76 as compensatory damages, P10,000 as nominal and exemplary damages and P20,000 as attorney's fees.

It should be clarified that CTI in its affidavit for manual delivery of personal property (Annex B of its complaint not included in its record on appeal) and in paragraph 7 of its original complaint alleged that Artex acquired the cotton from Paramount Textile Mills, Inc., the consignee. Artex alleged in its motion to dismiss that it was not shown in the delivery permit that Artex was the entity that presented that document to the CTI. Artex further averred that it returned the cotton to Paramount Textile Mills, Inc. when the contract of sale between them was rescinded because the cotton did not conform to the stipulated specifications as to quality (14-15, Record on Appeal). No copy of the rescissory agreement was attached to Artex's motion to dismiss.

In sustaining Artex's motion to dismiss, which CTI did not oppose in writing, Judge Perez said:

"Since the plaintiff (CTI) is only a warehouseman and according to the amended complaint, plaintiff was already paid the warehousing and handling charges of the 193 bales of high density compressed raw cotton

mentioned in the complaint, the plaintiff can no longer recover for its services as warehouseman.

"The fact that the delivery of the goods was obtained by the defendant without opening the corresponding letter of credit cannot be the basis of a cause of action of the plaintiff because such failure of the defendant to open the letter of credit gives rise to a cause of action in favor of the shipper of the goods and not in favor of the plaintiff.

"With respect to the allegation of the amended complaint that the goods were taken by the defendant without paying the customs duties and other revenues (sic) assessed thereon, this does not give rise to a cause of action in favor of the plaintiff for the party aggrieved is the government.

"Likewise, the alleged presentation of a forged permit to deliver imported goods by the defendant did not give rise to a cause of action in favor of the plaintiff but in favor of the Bureau of Customs and of the consignee." (18-19, Record on Appeal).

Judge Perez was guided more by logic and common sense than by any specific rule of law or jurisprudence.

CTI in this appeal contends that, as warehouseman, it was entitled to the possession (should be repossession) of the bales of cotton; that Artex acted wrongfully in depriving CTI of the possession of the merchandise because Artex presented a falsified delivery permit, and that Artex should pay damages to CTI.

The only statutory rule cited by CTI is section 10 of the Warehouse Receipts Law which provides that "where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods x x x".

We hold that CTI's appeal has no merit. Its amended complaint does not clearly show that, as warehouseman, it has a cause of action for damages against Artex. The real parties interested in the bales of cotton were Luzon Brokerage Corporation as depositor, Paramount Textile Mills, Inc. as consignee, Adolph Hanslik Cotton as shipper and the Commissioners of Customs and Internal Revenue with respect to the duties and taxes. These parties have not sued CTI for damages or for recovery of the bales of cotton or the corresponding taxes and duties.

The case might have been different if it was alleged in the amended complaint that the depositor, consignee and shipper had required CTI to pay damages, or that the Commissioners of Customs and Internal Revenue had held CTI liable for the duties and taxes. In such a case, CTI might logically and sensibly go after Artex for having wrongfully obtained custody of the merchandise.

But that eventuality has not arisen in this case. So, CTI's basic action to recover the value of the merchandise seems to be untenable. It was not the owner of the cotton. How could it be entitled to claim the value of the shipment?

In other words, on the basis of the allegations of the amended complaint, the lower court could not render a valid judgment in accordance with the prayer thereof. It could not render such valid judgment because the amended complaint did not unequivocally allege what right of CTI was violated by Artex, or, to use the familiar language of adjective law, what delict or wrong was committed by Artex against CTI which would justify the latter in recovering the value of the bales of cotton even if it was not the owner thereof. (See *Ma-ao Sugar Central Co., Inc. vs. Barrios*, 79 Phil. 666; 1 *Moran's Comments on the Rules of Court*, 1970 Ed., pp. 259, 495).

WHEREFORE, the order of dismissal is affirmed with costs against the plaintiff-appellant.

SO ORDERED.

Makalintal, C.J., Barredo, Antonio, and Fernandez, JJ., concur.

Fernando, J., did not take part.

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