

ATLAS TRADE DEVELOPMENT CORPORATION, PLAINTIFF AND APPELLEE VS. F. LIMGENCO CO., LTD., DOING BUSINESS UNDER THE NAME AND STYLE OF WILLIAMS INTERNATIONAL, LTD., FRANCISCO LIMGENC...

G.R. No. L-7407. June 30, 1956

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7d4c71e30399/>

LABRADOR, J.:

Atlas Trade Development Corporation brought this action to recover the price of 200 tons of Australian frozen beef which defendant ordered plaintiff to supply for shipment to Japan upon orders of defendants. The record discloses that on July 8, 1948 William J. Herman wrote a letter to Ted Lewin, Atlas Trade Development Corporation, ordering 200 tons of Australian frozen beef in quarters to be shipped during July, August and September to Yokohama, Japan upon its orders (Exhibits F). The order is written on a letterhead of "William International Inc.", San Francisco and signed by Herman as president of said corporation. The defendant, however, is "F" Limgenco Co. Ltd." formed by William J. Herman, an American citizen, and Francisco Limgenco, a Filipino, a partnership doing business under the name of "William International Ltd." (Articles of Partnership, Exhibit A.) The first defense is that the defendant did not place the order, but that it was the corporation Williams International Inc. that did so, that William J. Herman had no authority to enter into the contract in the name of the partnership, and that the manager F. Limgenco never ratified the order. The second defense is that the contract was signed by Herman only as accommodation for Ted Lewin, to enable the latter to secure an extension of credit, and that said contract was not intended as one between plaintiff and the partnership F. Limgenco, Ltd., that the first shipment was made by Herman for Ted Lewin and paid for to Ted Lewin, and the last shipments were unfit for human consumption. The third defense is that even granting that defendant corporation is bound by the contract it is only liable for the shipment actually made, not for all.

It appears that on August 4, 1947 plaintiff, on one hand, and Ted Lewin and Paul Macdonald, on the other, formed a joint account association for the purpose of importing livestock from Australia, to be slaughtered and sold in the Philippines. The beef was stored in a local ice plant. The negotiations leading to the contract were made by Ted Lewin on the one hand and William J. Herman, representing defendant William International Ltd., on the other. Trial shipment was made to Japan on May 17, 1948 (Exhibit N.) The contract was signed on July 8, 1948. When this shipment was found satisfactory, another shipment for 33,926.27 lbs. was made in the name of defendant as shipper on July 14, 1948. The bills of lading showed defendant as shipper. No payment for the shipment was ever made.

The complaint was filed on November 26, 1948, and in the complaint it announced that it would sell the frozen meat and whatever may be realized after deducting the expenses, would be deducted from the amount of the claim. Since the filing of the complaint the beef has been sold, the sales appearing in the statement submitted as Annex A.

The trial court found that notwithstanding the fact that Exhibit F was written on a letterhead of Williams International, Inc. the order was in fact placed by defendant; that the order was not made for the accommodation, of Ted Lewin; that it was not a commission agency; and that there was no evidence to show that the meat was not fit for human consumption, and even if it were so, plaintiff was not aware thereof and defendant did not make such claim within 30 days as provided for in Article 342 of the Code of Commerce. It, therefore, ordered Francisco Limgenco and William J. Herman jointly and severally to pay P172,289.21, with legal interest from November 26, 1948, plus 5 percent as attorney's fees, while Ted Lewin and Paul Macdonald were held subsidiarily liable for the amount of the judgment.

On this appeal defendant corporation insists that the transaction was one between William J. Herman and Ted Lewin in their personal capacities, and that plaintiff and defendant were not actual parties thereto. While it seems to be true that neither Santiago Abraham, president of the plaintiff corporation, nor Francisco Limgenco, manager of the defendant partnership, did not have much to do in the formulation of the agreement, Exhibit F, such that defendant's assertion that the transaction was pushed through by Herman and Lewin is justified, it does not necessarily follow that Herman and Lewin entered into the transaction in their own personal capacities independently of the associations to which they belong. The fact that they may have conducted the negotiation is not incompatible with the theory on which the action is based, i.e., that the transaction was between the corporation and the partnership. As a matter of fact in order to engage in the business of importing livestock from Australia for slaughter in the city abattoir and deposit of the beef in a local cold store, Ted Lewin and Paul Macdonald, on the one hand, had made the joint account on August 4, 1947 with the plaintiff corporation. On the other hand, as William J. Herman, a San Francisco resident, could not do the business with Ted Lewin or his partners in the joint account without a representative in the Philippines, he entered into the partnership agreement in May, 1948, with Francisco Limgenco. In the joint account between Lewin and Macdonald, on the one hand, and the Atlas Trade Development Corporation on the other, Lewin and Macdonald contributed quite a considerable amount (P300,000) to the livestock and beef business, while in the partnership (F. Limgenco, Ltd.) between Herman and Limgenco, the former contributed P40,000 against F20,000 only from the latter. So that the main contributors to the transaction were Ted Lewin and Paul MacDonald, on the one hand, and William J. Herman, on the other. These circumstances point out to the fact that Lewin and Herman, assuming that they were the ones who negotiated the agreement, chose to act in relation thereto through their respective companies, not independently thereof. In legal contemplation also and by subsequent acts of the parties, the whole transaction involved not Lewin and Herman personally, but the Atlas Trade Development Corporation, of which Ted Lewin was an important member, and Williams International Ltd., to which Herman contributed two thirds of the capital. That the meat deal was to bind both associations, not; Lewin and Herman personally, is demonstrated by the further fact that the bills of lading covering beef actually ordered from plaintiff by defendant partnership were in the name and for the account of Williams International Ltd. (See Exhibit N, N-1 and N-2.) We, therefore, find no error in the conclusion of the trial court that the contract was in fact made in the name and through the plaintiff corporation and the defendant partnership and is binding upon both of them and not upon their members alone.

As to the claim made before the trial court that William J. Herman executed the agreement only for the accommodation of Ted Lewin, we find no sufficient evidence on record to support the claim, and the appellant seems to have abandoned its theory in this Court. It has also abandoned its theory that the contract is one of agency on commission basis, it appearing from the contract that the beef was being purchased at \$.50 a pound f.o.b. Manila.

The next point raised before us by the defendant-appellant is that it should not be held responsible for the value of the whole amount of beef ordered, which is 200 tons, because the same was unfit for human consumption. We find no sufficient evidence to sustain the claim of defendant-appellant that the meat was unfit for human

consumption. However, we find that it was not acceptable to the prospective or intended buyers or customers in Japan, as shown by Exhibits 8 and 9. It must be remembered that the meat was to be sold for the exclusive use of the United States occupation personnel in Japan (Exhibit 12.) The meat could not be sold in Japan because it was found below the standard quality desired. Plaintiff-appellee refutes this fact with the argument that the meat was actually sold in the market in the Philippines. The mere sale of the meat in the Philippines is no satisfactory proof, however, that it was acceptable to the United States occupation personnel stationed in Japan. We find as a fact that the reason why the meat ordered was not taken by the defendant is because the same was not saleable in Japan where it was intended to be disposed of. The question that arises, therefore, is, who should bear the loss, the vendor or the vendee. The trial court held that it was the vendee because no notice of the unfitness of the meat was given to the vendor. But we find sufficient evidence to show that the plaintiff corporation, through its president, was advised of the fact that the quality of the meat was not satisfactory of the intended purchasers in Japan. The trial court based its decision, holding the defendant partnership responsible for the meat, on the provisions of Article 342 of the Code of Commerce, which is as follows:

"The purchaser who has not made any claim based on the hidden defects (*vicio internos*) of the thing sold, within thirty days after its delivery, shall lose all rights of action against the vendor based on such defects."

It can readily be seen from the above Article that it is applicable to goods or merchandise already delivered and in which deterioration was caused by the failure or default of a vendee to take possession within the agreed time. Such is not the situation in the case at bar. Here there never was any delivery. Neither does it appear that the vendee was guilty of mora in taking possession of the meat contracted for. As the meat was deposited in a cold storage, delay in not taking possession of it would not affect its quality or its fitness for human consumption. It has not also been claimed that the deterioration of the meat was due to the failure of appellant to take possession. The evident fact is that the appellant did not take the meat because the samples thereof sold in Japan were not found satisfactory or acceptable to those who would have wanted to purchase them. Under these circumstances, the provision applicable is not Article 342 but Article 334 of the Code of Commerce, which reads:

"The damages and deterioration suffered by the merchandise, even if caused by fortuitous event, shall be for the account of the vendor in the following cases:

- If the sale took place by number, weight, or measure, or if the article sold is not fixed and determined, with marks and signs which identify it.
- If by express agreement or the usages of commerce, in view of the nature of the article sold, the purchaser has the privilege to previously examine and investigate it.
- If the contract contains an agreement to the effect that the delivery shall not be made until the article sold shall have acquired the conditions stipulated."

In accordance with the second paragraph of this Article, the vendor is responsible for the deterioration of the quality of the meat if it appears to have been caused by a fortuitous event or to unexplained causes. As there is no evidence as to what caused the deterioration, we can only attribute it to nothing but a fortuitous event. If the meat was perfectly sound at the time the livestock was slaughtered, the deterioration of the meat must have been due to the handling thereof by the vendor or its agents, so that any loss resulting therefrom may not be imputable to the vendee. Under these circumstances, in accordance with the Article above quoted, it is the vendor who should bear the loss for its deterioration. Because of the deterioration the vendee was justified in not making¹ further orders for the delivery of the meat. This holds true with the undelivered meat. However, as to the meat which was

actually delivered, we hold' that the defendant-appellant must be made to account for its price, which according to plaintiff's own complaint is P38,427. We also find that the claim of the defendant-appellant that part of this amount was paid to Ted Lewin is not supported by the evidence.

The judgment appealed from is hereby modified. Defendants are absolved from all the demands contained in the prayer of plaintiff's complaint except the sum of P38,427, which they are hereby ordered to pay to the plaintiff, with legal interest from the time of the filing of the complaint. However, defendants Ted Lewin and Paul Macdonald are hereby declared only subsidiarily liable to plaintiff for said amount, they having acted as guarantors for defendant Williams International Ltd. Without costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.