

LAWYERS COOPERATIVE PUBLISHING COMPANY, PLAINTIFF-APPELLEE VS. PERFECTO A. TABORA, DEFENDANT-APPELLANT.

G.R. No. L-21263. April 30, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 3, 1955, Perfecto A. Tabora bought from the Lawyers Cooperative Publishing Company one complete set of American Jurisprudence consisting of 48 volumes with 1951 pocket parts, plus one set of American Jurisprudence, General Index, consisting of 4 volumes, for a total price of P1,675.50 which, in addition to the cost of freight of P6.90, makes a total of P1 ,082.10. Tabora made a partial payment of P300.00, leaving a balance of P1,382.40. The books were duly delivered and receipted for by Tabora on May 15, 1955 in his law office at Ignacio building, Naga City.

In the midnight of the same date, however, a big fire broke out in that locality which destroyed and burned all the buildings standing on one whole block including that where the law office and library of Tabora were located. As a result, the books bought from the company as above stated, together with Tabora's important documents and papers, were burned during the conflagration. This unfortunate event was immediately reported by Tabora to the company in a letter he sent on May 20, 1955. On May 23, the company replied and as a token of good will it sent to Tabora free of charge volumes 75, 76, 77 and 78 of the Philippine Hearts. As Tabora failed to pay the monthly installments agreed upon on the balance of the purchase price notwithstanding the long time that had elapsed, the company demanded payment of the installments due, and having failed to pay the same, it commenced the present action before the Court of First Instance of Manila for the recovery of the balance of the obligation. Plaintiff also prayed that defendant be ordered to pay 25% of the amount due as liquidated damages, and the costs of action.

Defendant, in his answer, pleaded force majeure as a defense. He alleged that the books bought from the plaintiff were burned during the fire that broke out in Naga City on May 15, 1955, and since the loss was due to force majeure he cannot be held responsible for the loss. He Played that the complaint be dismissed and that he be awarded moral damages in the amount of P15,000.00.

After due hearing, the court a quo rendered judgment the plaintiff. It ordered the defendant to pay the sum P1,382.40, with legal interest thereon from the filing of complaint, plus a sum equivalent to 25% of the total amount due as liquidated damages, and the costs of action.

Defendant took the case to the Court of Appeals, but the same is now before us by virtue of a certification issued by that Court that the case involves only questions of law.

Appellant bought from appellee one set of American Jurisprudence, including one set of general index, payable on installment plan. It was provided in the contract that "title to and ownership of the books shall remain with the seller until the purchase price shall have been fully paid. Loss or damage to the books after delivery to the buyer shall be borne by the buyer." The total price of the books, including the cost of freight, amounts to P1,682.40.

Appellant only made a down payment of P300.00 thereby leaving a balance of P1,382.40. This is now the import of the present action aside from liquidated damages. Appellant now contends that since it was agreed that the title to and the ownership of the books shall remain with the seller until the purchase price shall have been fully paid, and the books were burned or destroyed immediately after the transaction, appellee should be the one to bear the loss for, as a rule, the loss is always borne by the owner. Moreover, even assuming that the ownership of the books was transferred to the buyer after the perfection of the contract the latter should not answer for the loss since the same occurred through force majeure. Here there is no evidence that appellant has contributed in any way to the occurrence of the conflagration.

This contention cannot be sustained. While as a rule the loss of the object of the contract of sale is borne by owner or in case of force majeure the one under obligation to deliver the object is exempt from liability, the application of that rule does not here obtain because the law and the contract entered into on the matter argue against it. It is true that in the contract entered into between the parties the seller agreed that the ownership of the books shall remain with it until the purchase price shall have been, fully paid, but such stipulation cannot make the seller liable in case of loss not only because such was agreed merely to secure the performance by the buyer of his obligation but in the very contract it was expressly agreed that "the loss or damage to the books after delivery to the buyer shall be borne by the buyer." And such stipulation is sanctioned by Article 1504 of our Civil Code, which in part provides:

"(1) Where delivery of goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery."

Neither can appellant find comfort in the claim that since the books were destroyed by fire without any fault on his part he should be relieved from the resultant obligation under the rule that an obligor should be held exempt from liability when the loss occurs thru a fortuitous event. This is because this rule only holds true when the obligation consists in the delivery of a determinate thing and there is no stipulation holding him liable even in case of fortuitous event. Here these qualifications are not present. The obligation does not refer to a determinate thing, but is pecuniary in nature, and the obligor bound himself to assume the loss after the delivery of the goods to him. In other words, the obligor agreed to assume any risk concerning the goods from the time of their delivery, which is an exception to the rule provided for in Article 1262 of our Civil Code.

Appellant likewise contends that the court a quo erred in sentencing him to pay attorney's fees. This is merely the result of a misapprehension for what the court a quo ordered appellant to pay is not 25% of the amount due as attorney's fees, but as liquidated damages, which is in line with an express stipulation of the contract. We believe, however, that the appellant should not be made to pay any damage because his denial to pay the balance of the account is not due to bad faith.

WHEREFORE, the decision appealed from is modified by eliminating that portion which refers to liquidated damages. No costs.

Bengzon, C.J., Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur. Reyes, J.B.L., J., in the result.

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