

GERTRUDES CARLOS, PLAINTIFF-APPELLANT, VS. OVERSEAS FACTORS INC. AND BRIGIDO P. VALENCIA, DEFENDANTS-APPELLEES.

G.R. No. L-21511. June 29, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal from a decision of the Court of First Instance of Manila dismissing plaintiff's complaint and defendant's counterclaim, without pro-nouncement as to costs.

On September 3 and 9, 1954, defendant Overseas Factors, Inc. - hereinafter referred to as Overseas - a corporation duly organized under the Philippine laws, entered, through its president Brigido P. Valencia, into two (2) contracts with the National Rice and Corn Corporation - hereinafter referred to as NARIC - whereby Overseas undertook to supply and furnish the NARIC, under the first contract, with 5,000 metric tons of Kangni rice, and under the second, with 5,000 metric tons - later reduced to 2,500 metric tons - of Joshie rice, from Pakistan, at P0.51 per ganta. At the same time, Overseas appointed the NARIC as its agent and authorized the same to sell the rice to the public at such price as it may deem fit. Overseas further agreed that any amount received by the NARIC over and above said sum of P0.51 per ganta shall belong exclusively to said agency, as compensation for its work in the disposal of the cereal and for the use of its warehouse and distribution facilities.

Not having sufficient cash to make the marginal cash deposit and to meet the expenses incidental to said contracts, including pre-miums on the surety and performance bonds therein required, on September 6, 1954, Overseas entered into another contract, this time with Gertrudes Carlos - hereinafter referred to as plaintiff - where-by the latter undertook to make said marginal cash deposit and defray the aforementioned expenses, for a given consideration hereinafter to be stated.

The next day - September 7, 1954 - Brigido P. Valencia executed a supplemental undertaking, whereby he personally guaranteed to plaintiff the performance of the obligations of Overseas in her favor.

On May 27, 1959, plaintiff commenced the present action against Overseas and Valencia to recover from them, jointly and severally:

- 1) P88,750.00, representing the balance of P103,750.00, allegedly deposited by plaintiff with the NARIC, after deducting therefrom the sum of P15,000.00 later refunded by the NARIC;
- 2) P22,515.09, representing the aggregate amount allegedly paid by plaintiff by way of premiums on bonds posted for the benefit of Overseas, under its contract with NARIC;
- 3) P105,000.00 as alleged share of the plaintiff in the profits said to have been made by Overseas in the rice transactions in question;
- 4) P50,000.00 for other expenses in connection with said transactions;

- 5) P100,000.00 as moral damages;
- 6) P20,000.00 as attorney's fees; and
- 7) Interest on the foregoing sums.

Overseas and Valencia seasonably filed their respective answers, admitting some allegations of the complaint and denying other allegations thereof, as well as setting up special defenses and counterclaims.

In due course, the lower court rendered the aforementioned decision, dismissing the complaint, for lack of cause of action, and defendants' counterclaims. Hence, this appeal by plaintiff.

The main question before this Court is whether or not plaintiff has a cause of action against defendants herein. In this connection, it appears from the records that the parties herein had, in effect, undertaken a joint venture, whereby plaintiff agreed to finance the performance of the obligations of Overseas in favor of the NARIC, as well as to make the marginal cash deposit and defray all other expenses in connection with the importation of rice adverted to above, including the payment of premiums on the surety and performance bonds required in the contracts between Overseas and NARIC, and that, in consideration of such undertaking, it was agreed upon, between plaintiff and Overseas, that "all proceeds from the sale of the rice, or connected therewith, shall be equally divided between Carlos and Overseas, after deducting and reimbursing to each party the expenses and deposits each may have incurred," as set forth in the contract between them, and that "the liquidation of the proceeds shall not take place until the rice is fully paid for by the NARIC, unless circumstances require an earlier partial liquidation." (Record on Appeal, pp. 12-13.)

Up to now, no such liquidation has taken place. Neither has the Overseas received from the NARIC any amount representing the proceeds of the sales made by the latter. In the language of the decision appealed from:

"According to the agreement between Carlos and Overseas, Exhibit C-Stipulation Carlos and Overseas, Exhibit 3-Stipulation Carlos and Valencia, 'all proceeds from the sale of the rice, or connected therewith, shall be divided equally between Carlos and Overseas, after deducting and reimbursing to each party the expenses and deposits each may have incurred therein, as above set forth' and 'the liquidation of the proceeds shall not take place until the rice is fully paid for by the NARIC, unless circumstances require an earlier partial liquidation.'

"The agreement between Carlos and Overseas therefore specifically provides that the expenses of Carlos shall be deducted from the proceeds of the sale of the rice and that the liquidation of the proceeds shall not take place until the rice is fully paid for by the NARIC.

"Now, did Overseas receive anything from the NARIC on its contract for the supply of 5,000 metric tons of Kangni rice and 2,500 metric tons of Joshie rice? The summary of the account of Overseas Factors, Inc. with NARIC covering the purchase of 5,000 metric tons of Kangni and 2,500 metric tons of Joshie rice marked as Exhibit 1-Valencia and Exhibit 2-Overseas shows that the two rice transactions resulted in a loss and that so far, NARIC had not paid anything to Overseas as proceeds from the sale of the rice. This summary of accounts showing a liability of P1,258,310.03 on the part of the Overseas to NARIC on the rice deals in question has not been rebutted. In fact, it is strengthened by Exhibit N, Stipulation Carlos-Overseas showing that NARIC had to file Civil Case No. 30244 of the Court of First Instance of Manila against Overseas and others for the recovery of Overseas' said liability amounting to P1,258,310.03.

"Since Carlos' right to recover for her expenses and share of the alleged profits is dependent upon the liquidation of the proceeds and since there is no proof by plaintiff that proceeds from the sale of rice were paid by NARIC to Overseas, the plaintiff has no cause of action against the defendants.

"Plaintiff's assertion that Overseas received P150,000.00 or P250,000.00 out of the rice deals is not supported by any evidence for the only amount which NARIC returned to Overseas is the sum of P15,000.00, part of the

marginal deposit made by Carlos, which Overseas turned over to the latter.

"With reference to the counterclaim of the de-fendant to the effect that Carlos collected 50,000 rupees in Karachi from Ivlom Corporation and which amount must be reimbursed by Carlos to Overseas because, according to the latter, Carlos was a mere trustee of a joint venture when she received that amount, the evidence shows that the 50,000 rupees which Carlos received from Ivlom Corporation was delivered to Atty. Salvador Nosce, the attorney in fact of Over-seas in Karachi, and was spent in the case of Over-seas against Ivlom Corporation in Karachi so that Carlos cannot be held liable for said 50,000 rupees.

"The counterclaims of both defendants for at-torney's fees and alleged moral damage cannot be sustained because there is no showing that the plaintiff acted in bad faith in filing this action.

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment dismissing plaintiff's com-plaint and defendants' counterclaim, without pronounce-ment as to costs."

Plaintiff maintains that the rice had been fully paid for by the NARIC, because the price due to the vendor in Pakistan had been satisfied with letters of credit issued by the NARIC for the account of the Overseas. Such payment is not, however, the one contemplated in the contract between plaintiff and Overseas. The latter referred to payments made by the NARIC in satisfaction of its own obligation in favor of the Overseas - or P0.51 per ganta of the rice imported by Overseas from Pakistan - whereas said letters of credit of the NARIC settled the debt of Overseas in favor of the dealer in Pakistan, who had sold the rice to Overseas. Plaintiff could not possibly cause the amount of her deposit with the NARIC and other expenses necessary for the importation of the rice, to be deducted from the sums paid by the NARIC, on behalf of Overseas, to the seller of the rice in Pakistan. Much less can plaintiff's share in such profits as Overseas may derive from the rice transactions, be deducted from the price thus paid by NARIC, for the account of Overseas. Said expenses and share in the profits were to be deducted from the payments by the NARIC to the Overseas, or, at least, from the sums due to the latter from the NARIC. As stated in the decision appealed from, no such payment has as yet been made by the NARIC to the Overseas. Neither have the accounts between NARIC and Overseas been liquidated. Plaintiff has not established any such payment by NARIC to Overseas, or, at least, a liquidation of the proceeds of the sale of the rice in question by the NARIC to the public, not by the vendor in Pakistan to Overseas. In fact, it would seem that Overseas had suffered losses in connection with its transactions with the NARIC. Accordingly, the lower court was justified in finding that plaintiff has no cause of action against defendants here-in.

Plaintiff alleges, also, that the lower court erred in not finding that Overseas violated its contract with her, and in not declaring that Overseas and its officers had acted in bad faith. Upon a review of the record we are satisfied that plaintiff has not established her pretense by a preponderance of the evidence.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against plaintiff Gertrudes Carlos.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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