

**BUNGE CORPORATION AND UNIVERSAL COMMERCIAL AGENCIES,  
PLAINTIFFS AND APPELLEES, VS. ELENA CAMENFORTE &#038;  
COMPANY, DOING BUSINESS OR TRADING UNDER THE NAME AND  
STYLE OF VISAYAN PROD...**

*G.R. No. L-4440. August 29, 1952*

Ponente: BAUTISTA ANGELO, J.

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**BAUTISTA ANGELO, J.:**

Plaintiffs brought this action against the defendants to recover certain damages they have allegedly sustained in View of the failure of the latter to deliver to the former the amount of Philippine copra which they had agreed to deliver within the time and under the conditions specified in the contract celebrated between them on October 22, 1947.

Plaintiffs claim that on October 22, 1947, in the City of Cebu, a contract was entered into between the Visayan Products Company and Bunge Corporation (represented by the Universal Commercial Agencies) whereby the former sold to the latter 500 long tons of merchantable Philippine copra in bulk at the prices of \$188.80, U. S. currency, per ton, less 1 per cent brokerage per short ton of 2,000 pounds, C & F Pacific Coast, U. S. A.; that, according to the terms and conditions of the contract, the vendor should ship the stipulated copra during the month of November or December 1947, to San Francisco, California, U. S. A. for delivery to the vendee; that, notwithstanding repeated demands made by the vendee, the vendor failed to ship and deliver the copra during the period agreed upon; that believing in good faith that the vendor would ship and deliver the copra on time, the vendee sold to El Dorado Oil Works the quantity of copra it had purchased at the same price agreed upon; and that because of the failure of the vendor to fulfill its contract to ship and deliver the quantity of copra agreed upon within the period stipulated, the vendee has suffered damages in the amount of P180,000.

Defendants answered separately the allegations set forth in the complaint and, with the exception of Vicente Kho, denied that the Visayan Products Company has ever entered into a contract of sale of copra with the plaintiffs, as mentioned in the complaint. They aver that if a contract of that tenor has ever been entered into between said company and the plaintiffs, the truth is that Vicente Kho who signed for and in behalf of the company never had any authority to act for that company either expressly or impliedly, inasmuch as the only ones who had the authority to do so are Elena Camenforte, the general manager, Tan Se Chong, the manager, and Tiu Kee, the assistant manager.

Vicente Kho, on his part, after admitting that the commercial transaction mentioned in the complaint had actually taken place, avers that that contract was concluded with the Visayan Products Company which had its office in Tacloban, Leyte, and not with the Visayan Products Company established in Cebu, which is not a party to the transaction; that the Visayan Products Company organized in Tacloban is the one that was represented by him in the transaction, of which he is the manager and controlling stockholder, which fact was clearly known to the plaintiffs when the contract was entered into so that they cannot now claim that they had been misled into

believing that the company he was representing was the one recently organized in Cebu; that he, Vicente Kho, did his best to comply with the contract, but he failed because of force majeure as follows: he informed the plaintiffs sometime, in December, 1947, that he would have all the copra covered by the contract ready for shipment somewhere in the port of San Ramon, Samar, in order that they may make an arrangement for the booking of a ship, but before the arrival of the ship, a strong storm visited the place causing the bodega where the copra was stored to be destroyed and the copra washed away into the sea; and that, because of this force majeure, he cannot now be held liable for damages.

After trial, at which both parties presented their respective evidence, the court rendered decision ordering defendant Elena Camenforte & Company to pay to the plaintiffs the sum of P79,744, with legal interest thereon from the filing of the complaint, and the costs of action. The court ordered that, in case said company be unable to pay the judgment because of total or partial insolvency, the same be paid by its co-defendants, jointly and severally, either in full or such part thereof as may be left unpaid. Defendants interposed the present appeal.

At the outset, it should be stated that while in the lower court there was a dispute between plaintiffs and defendants as regards the real contract that was entered into between the parties and which has given rise to this litigation, that defense apparently has been abandoned in this appeal, for the only issue now raised by appellants is one of law. Thus, appellants now admit, contrary to their stand in the lower court, that a contract of purchase and sale of copra was in effect entered into between the plaintiffs and the defendants under the terms and conditions embodied in the contract quoted in the complaint, and the only defense on which they now rely is that the copra they had gathered and stored for delivery to the appellees in Samar was destroyed by force majeure which under the law has the effect ; of exempting them from liability for damages. Consequently, appellants now contend that the lower court erred in condemning them for damages despite the fact that their failure to fulfill the contract is due to force majeure.

A perusal of the contract is necessary to see the feasibility of this contention. This contract is embodied in Exhibit C. A perusal of this contract shows that the subject-matter is Philippine copra. The sale is to be made by weight, 500 long tons. It does not refer to any particular or specific lot of copra, nor does it mention the place where the copra is to be acquired. No portion of the copra has been earmarked or segregated. The vendor was at liberty to acquire the copra from any part of the Philippines. The sale simply refers to 500 long tons of Philippine copra. The subject-matter is, therefore, generic, not specific.

Having this view in mind, it is apparent that the copra which appellants claim to have gathered and stored in a bodega at San Ramon, Samar, sometime in December, 1947, in fulfillment of their contract, and which they claim was later destroyed by storm, in the supposition that the claim is true, cannot be deemed to be the one contemplated in the contract. It may be the one chosen by appellants in the exercise of the discretion given to them under the contract, which they could exercise in a manner suitable to their interest and convenience, but it cannot certainly be considered as the copra contemplated by the parties in the contract. And this must be so because the copra contemplated in the contract is generic and not specific.

It appearing that the obligation of appellants is to deliver copra in a generic sense, this obligation cannot be deemed extinguished by the destruction or disappearance of the copra stored in San Ramon, Samar. Their obligation subsists as long as that commodity is available. A generic obligation is not extinguished by the loss of a thing belonging to a particular genus. *Genus nunquam perit*.

"Manresa explains the distinction between determinate and generic thing in his comment on article 1096 of the Civil Code of Spain, saying that the first is a concrete, particularized object, indicated by its own individuality, while a generic thing is one whose determination is confined to that of its nature, to the genus (*genero*) to which it pertains, such as a horse, a chair. These definitions are in accord with the popular meaning of the

terms defined.

Except as to quality and quantity, the first of which is itself generic, the contract sets no bounds or limits to the palay to be paid, nor was there even any stipulation that the cereal was to be the produce of any particular land. Any palay of the quality stipulated regardless of origin or however acquired (lawfully) would be obligatory on the part of the obligee to receive and would discharge the obligation. It seems therefore plain that the alleged failure of crops through alleged fortuitous cause did not excuse performance." (De Leon vs. Soriano, 87 Phil., 193; 47 Off. Gaz., Supplement No. 12, pp. 377, 379-380.)

"In binding himself to deliver centrifugal sugar, the defendant promised a generic thing. It could be any centrifugal sugar without regard to origin or how he secured it. Hence, his inability to produce sugar, irrespective of the cause, did not relieve him from his commitment. War, like floods and other catastrophes, was a contingency, a collateral incident, which he could have provided for by proper stipulation." (Reyes vs. Caltex, 84 Phil., 654; 47 Off. Gaz., 1193; Vda. Lacson vs. Diaz, 87 Phil., 150; 47 Off. Gaz., Supp. to No. 12, p. 337.)

If appellants are not relieved of civil liability under the contract, what are then the damages for which they stand liable to the appellees? Appellees claim that, immediately after they had concluded their agreement to buy copra with the appellants, they agreed to sell to El Dorado Oil Works the 500 long tons of copra subject matter of the agreement, together with another lot of 500 long tons, confident in their belief that the Visayan Products Company would comply with its agreement. The copra was to be delivered by Bunge Corporation to El Dorado Oil Works not later than December 31, 1947. Because of the failure of the appellants to fulfill their aforementioned agreement, appellees failed to deliver the copra it sold with the result that they had to pay damages in the sum of \$84,730.86 (or P169,461.72).

The lower court, however, did not sustain this claim in view of the discrepancy of one day it noted in the dates of execution of the contracts of sale of the copra in question. The court found that the contract signed by El Dorado Oil Works is dated October 21, 1947, (Exhibit O), whereas the contract signed by the Visayan Products Company is dated October 22, 1947, (Exhibit C), which shows that the latter contract had been executed one day later than the former, which gives rise to the belief that the copra that was sold to the El Dorado Oil Works could not have been the one purchased from the appellants. Nevertheless, the court awarded damages to the appellees taking into account the highest price of copra in the market during the month of December, 1947, as per statement Exhibit P, even though the appellees had made no allegation in their complaint of any offer or transaction they might have had" with other copra dealers during the period contemplated in the contract in question.

We are of the opinion that the lower court erred in disregarding the transaction with the El Dorado Oil Works simply because it found an apparent discrepancy in the dates appearing in the contracts Exhibits O and C. Exhibit C appears dated on October 22, 1947, and was executed in Cebu, Philippines, whereas Exhibit O appears dated on October 21, 1947, and was executed in New York City. The difference of one day in the execution of these documents is merely nominal because New York time is several hours behind Cebu time. In fact both transactions have been practically executed on the same day. Even supposing that the contract with the El Dorado Oil Works was executed ahead, still appellees may contemplate the possibility of selling copra coming from the appellants because the transaction with the El Dorado Oil Works calls for future and not present deliveries. There is nothing improbable for the appellees to sell copra which they expect to acquire sometime in the future for purposes of speculation. But this error cannot now materially change the result of this case considering that plaintiffs-appellees did not appeal from the decision. "It has been held that appellee, who is not appellant, may also assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he may not do so if his purpose is to have the judgment modified or reversed, for, in such case, he must appeal." (Saenz vs. Mitchell, 60 Phil., 69, 80; see Mendoza vs. Mendiola, 53 Phil., 267; Villavert vs. Lim, 62 Phil., 178; Bajaladia vs.

Kusala, G. R. No. 42579).

Wherefore the decision appealed from is affirmed, with costs against appellants.

Paras, C. J., Padilla, Tuason, Montemayor, and Labrador, JJ., concur.

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### CONCURRING

#### **BENGZON, J.:**

I concur. However I wish to add a few remarks.

The copra was to be delivered at the Pacific Coast of the U. S. "during November/December 1947." The sellers duty to deliver matured at the end of December 1947. In the absence of special circumstances, failure of the sellers to comply with their obligation gave the buyer the right to damages based upon the price of Philippine copra at the end of December 1947 in the U. S. Pacific Coast. Such price, according to the decision—not challenged by appellants—was \$260 per short ton. On that basis, the judgment for damages in the amount of P79,744 may be affirmed.

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