

JOSE ABESAMIS, PLAINTIFF-APPELLEE, VS. WOODCRAFT WORKS, LTD., DEFENDANT-APPELLANT.

G.R. No. L-18916. November 28, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The plaintiff, doing business under the name "East Samar Lumber Mills," was the owner of a timber concession and sawmill located at Dolores, Samar. On November 8, 1950 the defendant Woodcraft Works, Ltd., entered into an agree-ment with the plaintiff to purchase from the latter 300,000 board feet of Philippine round logs at P60.00 per thousand board feet. Due to bad weather conditions and the failure of the defendant to send the necessary vessels to Dolores, Samar, only 13,068 hoard feet of logs were delivered.

On January 22, 1951 the parties entered into a new contract. The previous one was cancelled, with the plain-tiff waiving all his claims thereunder. Certain advances which had been given by the defendant to the plaintiff, in the aggregate amount of P9,000.00, were transferred to and considered as advances on the new contract. It was stipulated that the defendant would purchase from the plaintiff 1,700,000 board feet of logs of the specifica-tions stated in the contract - 1,300,000 board feet at P78.00 per thousand and the rest at P70.00. It was also agreed that the shipment was to be "before the end of July, but will not commence earlier than April with the option to make partial shipment depending on the availabi-lity of logs and vessels."

Of the quantity of logs agreed upon, only two shipments were made, one in March and the other in April, 1951, amounting to 333,832 board feet and 128,825 board feet, respectively, or a total of 462,657 board feet. On September 13, 1951 the plaintiff filed in the Court of First Instance of Leyte an action for rescission of the contract of January 22, 1951 and for recovery of damages in the sum of P155,000.00 by reason of the defendant's failure to com-ply with its obligations. The defendant filed an answer and later an amended answer, denying the material allega-tions of the complaint, with special defenses and counter-claims.

After due trial the lower court rendered judgment as follows:

"WHEREFORE and on the strength of all the foregoing, the Court renders judgment: declaring the aforementioned contract of January 22, 1951, rescinded; ordering the defendant to pay to the plaintiff for actual damages suffered by the latter in the amount of P145,623.03, plus the amount of P50,000.00 represent-ing the plaintiff's actual loss of credit in the operation of his business, and, another sum of P5,000.00 as attorney's fees. The defendant is likewise ordered to pay the costs."

The defendant appealed to this Court and now avers that the lower court erred: "(1) in stating that Woodcraft Works, ltd. was obligated to send the boat to receive the shipment of logs of the East Samar Lumber Mills at Dolores, Samar, before the end of July 1951; (2) in deciding that (appellee) had sufficient stock of logs to cover the con-tract on July 31, 1951; (3) in stating that appellant failed to comply with the terms and conditions of the contract; (4) in granting damages to appellee; and (5) in not granting damages and recovery of money in favor of herein appellant."

The main issue before us is whether or not appellant Woodcraft Works, Ltd. failed to comply with its obligations under the contract, or more specifically, whether or not it was obligated to furnish the vessel to receive the shipment of logs from appellee. Appellant contends that it was not.

The contract (Exh. A) does not expressly provide as to which of the parties should furnish the vessel. But it does contain provisions which show clearly, albeit only by implication, that the obligation to do so devolved upon appellant, thus:

Fees & Charges: Bureau of Forestry inspection charges and Philippine Government wharfage fees are for account of Woodcraft Works, Ltd.

Dispatch of Ship: Immediately upon arrival of the vessel at Dolores, Samar, you will commence loading at the rate of 200,000 bdft. per working day per four hatches.

Should the weather be unfavorable, be sure to have a certificate signed by the captain confirming time idle due to this fact. Furthermore, in the event the ship's gears are not functioning well, kindly do likewise and get a statement from the captain.

Demurrage: Failure to load 200,000 bdft. per working day, you agree to pay us the sum of P800.00 per day pro-rata.

The contract was in the form of a letter addressed by appellant to appellee, and the terms set forth in the portions aforequoted, particularly with respect to wharfage dues, demurrage and condition of the weather and of the ship's machinery, would have been of little concern to appellant and would not have been imposed by it if appellee were the one to furnish the vessel. Besides, the contemporaneous and subsequent acts of the parties, which under the law may be taken into consideration to determine their intention (Art. 1371, Civil Code), point unequivocally to the same conclusion. In the two shipments of logs in March and April of 1961 the vessels "SS AEULUS" and "SS DON JOSE" were furnished by appellant. In several telegraphic communications exchanged between the parties it was invariably appellee who requested information as to the arrival of the vessels and appellant who gave the information accordingly.

Finally it was appellant, through its witness Irza Toeg, who had to explain at length during the trial its failure to furnish the necessary vessels, as follows:

"A. Well, when the shipping firms in Manila learned about the failures of the vessels which we sent to Dolores, Samar to load, and news travels fast from one shipping company to the other, the other shipping companies were very hesitant when we asked for a vessel to call at the port of Dolores, Samar. They asked us whether any vessel has already gone there to load and what is the loading rate for that particular vessel. So the facts of loading rates that the East Samar Lumber Mills was able to effect on the Bunyo Maru had a very bad effect in obtaining additional vessels. Other shipping companies instructed their vessels not to go to Dolores, Samar because shipping companies as a rule do not want to gamble and sent vessels to a loading port when they know of the place and they know that the people operating there would not be able to handle the loading of the vessels judging from their past performances.

x x x You will recall that the first vessel that loaded in this contract was a foreign vessel which was the Bunyo Maru. Out of the expected quantity of 400,000 bd. ft. of logs only 13,000 approximately was loaded. Therefore, that had a very bad effect on the other foreign vessels. The second and third vessels however were of Philippine Registry, and it was only thru our good connection with the shipping company that they even permitted their vessels to call at Dolores, Samar. So, after the three sad experiences, each one with considerable delay in the loading time with incomplete quantities that should have been loaded, it was difficult for us to obtain vessels to call at that port." (T.S.N. pp. 28-30, Deposition)

In the light of all these circumstances, appellant's claim that it was not obligated to furnish the vessel can-not prevail.

It is next contended that appellee was not in a position to comply with his own obligation to ship the quantities of logs called for under the contract. This was sought to be proven by means of a certificate issued by the Bureau of Forestry (Exhs. 11 & 11-A), which is the official record of timber cut under appellee's permit, showing that appellee's production from January to July, 1951, amounted only to 1,926.64 cubic meters or 816,795 board feet of logs, which was short by 833,205 board feet of the quantity called for in the contract.

There is indeed a discrepancy between the certificate of production issued by the Bureau of Forestry and the testimony of Francisco Abesamis regarding the quantity of timber cut under appellee's permit, but this was satisfactorily explained by him at the trial in this wise:

"A. Because my export grade logs is a big quantity, and if we immediately report those export grade logs to the Bureau of Forestry before shipment is made, we will be paying forest charges for the logs for which we have not received payment yet. So we make it a practice to report only the logs that are actually shipped. The forest charges amount to so much money that we could hardly afford to pay this in advance. This was more or less a convenience given to us by the lumber grader. And besides that, we prepare a big quantity of logs but the lumber grader usually is instructed by the buyer to grade only a certain portion of it because of the limitation of cargo space in buyer's vessel. For example, we have there prepared 1,000,000 board feet but Mr. Selga is instructed to inspect only 400,000 board feet which is the capacity of incoming vessel. So the balance of 600,000 board feet could not be graded as this quantity could not be loaded."

Abesamis categorically stated on the witness stand that by the end of July 1951 he had 1,300,000 board feet of logs available - 800,000 at hand and ready for loading and the rest deposited at various stations; and that he advised appellant of that fact in a telegram dated July 31, 1951 (Exh. S), at the same time requesting that a grader and a vessel be dispatched to Dolores immediately as the logs were in danger of deteriorating.

Nicanor Selga, lumber inspector of the Bureau of Forestry, reported to appellant that as of July 3, 1951 he had graded appellee's logs amounting to 488,015 board feet (Exh. aa). Of this quantity appellant, in its reply telegram of July 13, 1951 (Exh. BB) said that it could accept 239,547 board feet, made up of logs at least 13 feet in length and 20 inches in diameter. However, Selga likewise testified that appellee had other logs - some 600,000 board feet in all - in the two barrios of Aroganga and Genolaso. After July 3, 1951, which was the last day Selga made his inspection, there is evidence that appellee continued its logging operations, such that there was enough to cover the quantity called for in the contract by due date, that is, on July 31, 1951.

Appellee divides his claim for damages into three categories, each based on a separate breach of contract by appellant.

First, appellee maintains that due to the failure of appellant to send a vessel to Dolores, Samar, the storm on May 5, 1951 swept away almost all the logs then awaiting shipment, amounting to 410,000 board feet, valued at P73,537.77. On this point it should be noted that under the contract shipment was to be made before the end of July 1951, but not to commence earlier than April of the same year. The obligation between the parties was a reciprocal one, appellant to furnish the vessel and appellee to furnish the logs. It was also an obligation with a term, which obviously was intended for the benefit of both parties, the period having been agreed upon in order to avoid the stormy weather in Dolores, Samar, during the months of January to March. The obligation being reciprocal and with a period, neither party could demand performance nor incur in delay before the expiration of the period. Consequently, when the typhoon struck on May 5, 1951 there was yet no delay on the part of appellant, and the corresponding loss must be shouldered by appellee.

As regards the second breach it has been established that after the storm of May 5, 1951 appellee continued its logging operations. Appellant was advised of the quantity of logs ready for shipment and was urged to send a vessel to take delivery. It thereupon gave assurance that a vessel, the "SS ALBAY", with a capacity of 450,000 board feet, was coming to Dolores, Samar, to load on June 25, 1951. Appellee readied the necessary quantity of logs but the vessel did not arrive. As a result, 60,000 board feet of logs which had been rafted broke loose and were lost. Appellee's loss on this account amounted to a total of P7,685.26, representing the value of the logs lost, the cost of rafting and other incidental expenses. It may be observed in this respect that although the obligation would not become due until July 31, 1951 appellant waived the benefit of the period by assuring appellee that it would take delivery of the logs on June 25, 1951. On that date appellee was ready to comply, but appellant failed on his commitment, without any satisfactory explanation for such failure. Therefore, appellant should bear the corresponding loss.

Third and finally, as heretofore pointed out, by the end of July 1951 appellee had sufficient logs ready for shipment in accordance with the contract. But appellant, in spite of the representations made by the former, failed to send a vessel on the aforesaid date. There is no evidence that such failure was due to circumstances beyond appellant's control. As a result logs totalling 800,000 board feet were destroyed by marine borers, causing a loss of P62,000.00, for which appellant should be held liable.

The trial court sentenced appellant to pay P50,000.00 representing appellee's loss of credit in the operation of his business. The decision does not say upon what evidence the award is based. Nor is there any attempt in appellee's brief to justify the amount awarded. Actual or compensatory damages must be established by clear evidence. In this case, other than a few letters of demand for payment of money accounts received by appellee from its creditors and presented as exhibits, there is nothing to go upon, and the mere fact that such demands were made does not necessarily prove loss of credit. This item must therefore be eliminated.

In view of the foregoing the judgment appealed from is affirmed, with the modification that appellant Woodcraft Works Ltd. is sentenced to pay appellee the aggregate sum of P69,685.26 by way of damages, plus P5,000 as attorney's fees, without costs in this instance.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Teehankee, and Barredo, JJ., concur.

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