

FAR EASTERN EXPORT & IMPORT CO., PETITIONER, VS. LIM TECK SUAN, RESPONDENT.

G.R. No. L-7144. May 31, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari to review a decision of the Court of Appeals dated September 25, 1953, reversing the decision of the Court of First Instance of Manila, and sentencing the defendant-petitioner Far Eastern Export & Import Co. later referred to as export company, to pay the plaintiff-respondent Lim Teck Suan later to be referred to as Suan, the sum of P11,476.60, with legal interest from the date of the filing of the complaint and to pay the costs.

As to the facts and the issue in the case we are reproducing the findings of the Court of Appeals, which findings are binding on this Tribunal in case of similar appeals:

"Sometime in November, 1948, Ignacio Delizalde, an agent of the Far Eastern Export & Import Company, went to the store of Lim Teck Suan situated at 267 San Vicente Street, Manila, and offered to sell textile, showing samples thereof, and having arrived at an agreement with Bernardo Lim, the General Manager of Lim Teck Suan, Delizalde returned on November 17 with the buyer's order, Exhibit A, already prepared which reads:

FAR EASTERN EXPORT & IMPORT COMPANY
75 Escolta 2nd Floor Brias Roxas Bldg., Manila

Ship to Lim Teck Suan

Date Written 11/17/48

475 Nueva St., Manila

Your No.

Our No. 276

I hereby commission you to procure for me the following merchandise, subject to the terms and conditions listed below:

Quantity

Unit

Particulars

Amount

10,000—

yds

Ashtone Acetate & Rayon—No. 13472 Width: 41/42 inches; Weight: Approximately 8 oz. per yd; Ten (10) colors, buyers choice, as per attached samples, equally assorted; at \$1.13 per yard F.A.S. New York U. S.....

\$11,500.00

Item herein sold are FOB—FAS X C. & F CIF

TERMS AND CONDITIONS

Acceptance

This Buyer's Order is subject to confirmation by the exporter.

Shipment

Period of Shipment is to be within December. Bank Documents should be for a line of 45 days to allow for presentation and payment against "on board" bills of lading. Partial shipments permitted.

Payment

Payment will be by "Confirmed Irrevocable Letter of Credit" to be opened in favor of Frenkel International Corporation, 52 Broadway, New York, 4, N.Y.

for the full amount of the above cost of merchandise plus (approximately) for export packing: insurance, freight, documentation, forwarding, etc. which are for the buyers accounts, immediately upon written Confirmation.

Our Guarantee

In case shipment is not effected, seller agrees to reimburse buyer for all banking expenses.

Signed..... Nov. 17, 1948

Authorized official

Confirmed

Accepted (Sgd.) Illegible Date Nov. 1948 to be signed by our representative upon confirmation.

"In accordance with said Exhibit A, plaintiff established a letter of credit No. 6390 (Exhibit B) in favor of Frenkel International Corporation through the Hongkong and Shanghai Banking Corporation, attached to the agreed statement of facts. On February 11, 1949, the textile arrived at Manila on board the vessel M.S. Arnold Maersk, covered by bill of lading No. 125 (Exhibit C), Invoice No. 1684-M (Exhibit D) issued by Frenkel International Corporation direct to the plaintiff. The plaintiff complained to the defendant of the inferior quality of the textile received by him and had them examined by Marine Surveyor Del Pan & Company. Said surveyor took swatches of the textile and had the same analyzed by the Institute of Science (Exhibit E-1) and submitted a report of survey under date of April 9, 1949 (Exhibit E). Upon instructions of the defendants plaintiff deposited the goods with the United Warehouse Corporation (Exhibits H, H-1 to H-6. As per suggestion of the Far Eastern Export and Import Company contained in its letter dated June 16, 1949, plaintiff withdrew from the United Bonded Warehouse, Port Area, Manila, the fifteen cases of Ashtone Acetate and Rayon Suiting for the purpose of offering them for sale which netted P11,907.30. Deducting this amount from the sum of P23,686.96 which included the amount paid by plaintiff for said textile and the warehouse expenses, a difference of P11,476.66 is left, representing the net direct loss..

"The defense set up is that the Far Eastern Export and Import Company only acted as a broker in this transaction; that after placing the order the defendants took no further action and the cargo was taken directly by the buyer Lim Teck Suan, the shipment having been made to him and all the documents were also handled by him directly without any intervention on the part of the defendants; that upon receipt of Lim Teck Suan's

complaint the defendants passed it to its principal, Frenkel International Corporation, for comment, and the latter maintained that the merchandise was up to standard called for.

"The lower court acquitted the defendants from the complaint asking for damages in the sum of f 19,500.00 representing the difference in price between the textile ordered and those received, plus profits unrealized and the cost of this suit, and dismissed the counterclaim filed by the defendants without pronouncement as to costs."

As already stated, the Court of Appeals reversed the judgment entered by the Court of First Instance of Manila, basing its decision of reversal on the case of Jose Velasco, vs. Universal Trading Co., Inc., 45 Off. Gaz. 4504 where the transaction therein involved was found by the court to be one of purchase and sale and not of brokerage or agency. We have carefully examined the Velasco case and we agree with the Court of Appeals that the facts in that case are very similar to those in the present case. In the case of Velasco, we have the following statement by the court itself which we reproduced below:

"Prior to November 8, 1945 a salesman or agent of the Universal Trading Co., Inc. informed Jose Velasco, Jr. that his company was in a position to accept and fill in orders for Panamanian Agewood Bourbon Whisky because there were several thousand cases of this article ready for shipment to the company by its principal office in America. Acting upon this offer and representation Velasco went to the Universal Trading Co., Inc., and after a conversation with the latter's official entered into an agreement couched in the following terms:

'Agreement is hereby made between Messrs. Jose Velasco, Jr., 340 Echague, Manila, and the Universal Trading Company, Manila, for order as follows and under the following terms:

Quantity

Merchandise and Description

Unit

Unit Price

Amount

100

Panamanian Agewood Bourbon Whisky.....

Case

\$17.00

\$1,700

Total amount of order

\$1,700

Terms of Agreement:

'1. That the Universal Trading Company agrees to order the above merchandise from their Los Angeles Office at the price quoted above, C.I.F. Manila, for December shipment;

'2. That Messrs. Jose Velasco, Jr., 340 Echague, Manila, obligates myself/themselves to take the above

merchandise when advised of its arrival from the United States and to pay in cash the full amount of the order in Philippine Currency at the office of the Universal Trading Company;

'3. This order may be subject to delay because of uncertain shipping conditions. War risk insurance, transshipping charges, if any, port charges, and any storage that may be incurred due to your not taking delivery of the order upon being notified by us that the order is ready for delivery, and government taxes, are all for your account;

'4. The terms of this agreement will be either of the following:

'a. To open up irrevocable letter of credit for the value of the order with any of the local banks, or thru bills of lading payable to A. J. Wilson Company, 1263 South North Avenue, Los Angeles, California;

'b. To put up a cash deposit equivalent to 50% of the order;

'5. Reasonable substitute, whenever possible, will be shipped in lieu of items called for, if order is not available.'

"Accordingly, Velasco deposited with the defendant the sum of \$1,700 which is 50% of the price of the whisky pursuant to agreement made, instead of 'to open up irrevocable letter of credit for the value of the order with any of the local banks, or through bills of lading payable to A. J. Wilson Company.' On November 6, 1945, the same date that the contract or agreement, Exhibit A, was signed an invoice under the name of the Universal Trading Co., Inc. was issued to Velasco for the 100 cases of Panamanian Agewood Bourbon Whisky for the price of \$1,700 which invoice manifested that the article was sold to Jose Velasco, Jr. On January 15, 1946 another invoice was issued containing besides the list price of \$1,700 or P3,400, a statement of bank charges, customs duties, internal revenue taxes, etc., giving a total amount of P5,690.10 which after / deducting the deposit of \$1,700, gives a balance of P3,990.01.

"On January 25, 1946 the Universal Trading Co., Inc. wrote Exhibit 4 to Mr. Velasco advising him that the S.S. Manoeran had docked and that they would appreciate it if he would pay the amount of P3,990.10 direct to them. It turned out, however, that after the ship arrived, what the Universal Trading Co., Inc. tried to deliver to Velasco was not Panamanian Agewood Bourbon Whisky but Panamanian Agewood Blended Whisky. Velasco refused to receive the shipment and in turn filed action against the defendant for the return of his deposit of \$1,700 with interest. For its defense, defendant contends that it merely acted as agent for Velasco and could not be held responsible for the substitution of Blended Whisky for Bourbon Whisky and that furthermore the Blended Whisky was a reasonable substitute for Bourbon. After due hearing the Court of First Instance of Manila held that the transaction was purchase and sale and ordered the defendant to refund to the plaintiff his deposit of P1,700 with legal interest from the date of the filing of the suit with costs, which decision on appeal was affirmed by this Court."

We notice the following similarities. In the present case, the export company acted as agent for Frenkel International Corporation, presumably the supplier of the textile sold. In the Velasco case, the Universal Trading Co., was acting as agent for A. J. Wilson Company, also the supplier of the whisky sold. In the present case, Suan according to the first part of the agreement is said merely to be commissioning the Export Company to procure for him the merchandise in question, just as in the other case, Velasco was supposed to be ordering the whisky thru the Universal Trading Co. In the present case, the price of the merchandise bought was paid for by Suan by means of an irrevocable letter of credit opened in favor of the supplier, Frenkel International Corporation. In the Velasco case, Velasco was given the choice of either opening a similar irrevocable letter of credit in favor of the supplier A. J. Wilson Company or making a cash deposit. It is true that in the Velasco case, upon the arrival of the whisky and because it did not conform to specifications, Velasco refused to receive it; but in the present case although Suan received the merchandise he immediately protested its poor quality and it was deposited in the warehouse and later withdrawn and sold for the best price possible, all at the suggestion of the Export company. The present

case is in our opinion a stronger one than that of Velasco for holding the transaction as one of purchase and sale because as may be noticed from the agreement (Exhibit "A"), the same speaks of the items (merchandise) therein involved as sold, and the sale was even confirmed by the Export company. In both cases, the agents Universal Trading Co. and the export company dealt directly with the local merchants Velasco and Suan without expressly indicating or revealing their principals. In both cases there was no privity of contract between the buyers—Suan and Velasco and the suppliers Frenkel International Corporation and A. J. Wilson Company, respectively. In both cases no commission or monetary consideration was paid or agreed to be paid by the buyers to the Export company and the Universal Trading Co., proof that there was no agency or brokerage, and that the profit of the latter was undoubtedly the difference between the price listed to the buyers and the net or special price quoted to the sellers, by the suppliers. As already stated, it was held in the Velasco case that the transaction therein entered into was one of purchase and sale, and for the same reasons given there, we agree with the Court of Appeals that the transaction entered into here is one of purchase and sale.

As was held by this Tribunal in the case of Gonzalo Puyat & Sons Incorporated vs. Arco Amusement, 72 Phil. 402, where a foreign company has an agent here selling its goods and merchandise, that same agent could not very well act as agent for local buyers, because the interests of his foreign principal and those of the buyer would be in direct conflict. He could not serve two masters at the same time. In the present case, the Export company being an agent of Frenkel International Corporation could not, as it claims, have acted as an agent or broker for Suan.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs.

Pablo, Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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