

SONG FO & CO., PLAINTIFF AND APPELLANT, VS. MANUEL ORIA, DEFENDANT AND APPELLANT.*G.R. No. 10056. December 24, 1915*

Ponente: CARSON, J.

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Song Fo & Co., the original plaintiff in this action, sold a launch to Oria, the defendant, for P16,500, payable in quarterly installments of P1,000, together with interest at the rate of ten per centum per annum. The launch was delivered to Oria in Manila, but was shipwrecked and became a total loss while en route to Oria's place of business in Samar. No part of the purchase price has ever been paid and this action was instituted for the recovery of the total amount of the purchase price with interest thereon until paid. The trial court gave judgment in favor of the plaintiff for P6,000 and interest, that being the amount of the unpaid installments due under the express terms of the contract at the date of the institution of the action; but declined to enter judgment for the balance of the indebtedness on the ground that, under the express terms of the contract, it was not due and payable when the complaint was filed.

From this judgment both parties appealed, and the record is now before us on their duly perfected bills of exceptions.

The defendant's contentions on this appeal are substantially limited to his claim that under the terms of the deed of sale of the launch, Song Fo & Co. had obligated themselves to insure the launch, and since they had failed and neglected to do so, they themselves should suffer the losses resulting from the shipwreck of the launch without insurance.

It cannot be denied that if the contract of sale did in fact impose on Song Fo & Co. an imperative obligation to insure the launch, which under the terms of the contract was mortgaged to secure the payment of the purchase price, and if Song Fo & Co. did in fact fail and neglect to insure the launch in compliance with the terms of the contract, Oria would be entitled to have the amount of his indebtedness reduced by the amount of the insurance which he would have been entitled to have applied to the payment of the purchase price had Song Fo & Co. faithfully complied with the terms of the contract.

But an examination of the terms of the deed of sale of the launch discloses that Song Fo & Co. did not expressly obligate themselves to insure and keep the launch insured, although it is true that the contract expressly authorized them to insure it in their own name.

Counsel for Oria contend, however, that although the language of the contract did not in express terms obligate Song Fo & Co. to insure the launch, it was their duty so to do under all the circumstances, and it is insisted that they should not be permitted to evade the loss resulting from their negligence in the performance of that duty.

The contract expressly authorized Song Fo & Co. to insure the launch in their own name and to charge the estimated cost of the premiums with interest at the rate of ten per centum to Oria, and there is much force in the

contention of counsel for Oria at least to the extent that under all the circumstances, it was the duty of Song Fo & Co. to insure the vessel if they could. But there is nothing in the record which would justify a holding that Song Fo & Co. obligated themselves to insure the launch at all events. There is nothing in the written contract, examined in the light of all the surrounding circumstances, which justifies an inference that there was any thought in the mind of either of the parties that the vendor of the launch would himself insure her against loss or damage during the long period allowed for the payment of the purchase price; yet that substantially would be the effect of the assumption of an obligation to insure and keep her insured at all events. On the contrary, the language of the contract, which authorized Song Fo & Co. to take out insurance in their own name and to charge the amount of the premium to Oria, when read in the light of the transaction of which it was a part, imposed at most, a duty upon Song Fo & Co. to take such reasonable measures looking to the insurance of the vessel as might be required of a prudent man in connection with the insurance of his own property.

The undisputed evidence of record shows that Song Fo & Co. did in fact make a bona fide attempt to insure the launch, and to that end did all in their power and adopted all available means which could reasonably be required of them. It appears, however, that partly due to the dangerous nature of the coast of Samar along which Oria desired to operate the launch, and partly due to some lack of confidence in the character and reputation of the owner of the property for which application for insurance was made, the local agents of the marine insurance companies declined to accept the risk without previous communication with their foreign principals; and the launch was lost before they could ascertain the wishes of these principals as to the execution of an insurance contract. It appears also that Oria, who had exclusive control of the operation of the vessel, sent her from Manila to Samar on the trip in the course of which she was shipwrecked, well knowing that she had not yet been insured; and that Song Fo & Co. had no power to interfere, or to keep her in port pending their application for insurance. Indeed it is evident that under the terms of the deed of sale, they would not have had the right to detain the vessel in a place of safety, against the wishes of Oria, had the insurance agents definitely defined their insurance proposals.

Under these circumstances we are of opinion and so hold that Song Fo & Co. were in no wise responsible under the contract for the loss of the launch without insurance, and that the contentions of the defendant in this regard furnish no defense to the action against him for the purchase price agreed upon in the deed of sale.

Coming now to examine the contentions of the plaintiffs on their appeal, we think that the trial judge erred in declining to render judgment in their favor for the total amount of the purchase price of the launch. He appears to have relied upon the provisions of article 1125 of the Civil Code but to have overlooked the co-related provisions of article 1129 of the same code.

These articles are as follows:

"1125. Obligations, the fulfillment of which has been fixed for a certain day, are exigible only when such day arrives.

"By a certain day is understood one which shall necessarily arrive, even when the date of the arrival is unknown.

"When the uncertainty consists in the arrival or nonarrival of the day, then the obligation is conditional and shall be controlled by the rules of the preceding section.

"1129. The debtor shall lose all right to profit by the term:

"1. When, after the obligation has been contracted, it appears that he is insolvent, unless he gives security for the debt.

"2. When he does not give to the creditor the security he is bound to give.

"3. When by his own acts, he has reduced such security, after giving it, or when it disappears through, an unforeseen event (vis major), unless it is immediately substituted by a new one equally safe."

The security for the payment of the purchase price of the launch itself having disappeared as a result of an unforeseen event (vis major), and no other security having been substituted therefor, the plaintiffs were clearly entitled to recover judgment not only for the installments of the indebtedness due under the terms of the contract at the time when they instituted their action, but also for all installments which, but for the loss of the vessel, had not matured at that time.

The judgment entered in the court below should be modified by substituting for so much thereof as provides for the recovery by the plaintiff of P6,000 together with interest at the rate of 10 per centum per annum from the 15th day of November 1911, a provision for the recovery of P16,500 together with interest at the rate of ten per centum per annum, from the 15th day of November, 1911, and thus modified, the judgment appealed from should be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C.J., Torres, Johnson, Moreland, Trent, and Araullo, JJ., concur.

Judgment modified.

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