

PEARL ISLAND COMMERCIAL CORPORATION, PLAINTIFF AND APPELLEE, VS. LIM TAN TONG AND MANILA SURETY & FIDELITY CO., INC., DEFENDANTS AND APPELLANTS.

G. R. No. 10517. June 28, 1957

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In June, 1951, plaintiff Pearl Island Commercial Corporation, engaged in the manufacture of floor wax under the name of "Bee Wax", in the City of Manila, entered into a contract, Exhibit A, with defendant Lim Tan Tong, wherein the latter, designated as sole distributor of said article in the provinces of Samar, Leyte, Cebu, Bohol, and Negros Oriental and all the provinces in the island of Mindanao, was going to buy the said floor wax for resale in the territory above-mentioned. The plaintiff undertook not to appoint any other distributor within the said territory; to sell to defendant Tong at factory price in Manila, F. O. B. Manila; that Tong could sell the article in his territory at any price he saw fit; that payment for any floor wax purchased shall be delivered to plaintiff within sixty days from the date of shipment; that (this is important) Tong was to furnish surety bond to cover all shipments of the floor wax; and that Lim Tan Tong may return to the plaintiff the floor wax that are damaged or unmerchantable, at its expense; and that in case of loss due to fortuitous event or force majeure, the plaintiff was to shoulder the loss, provided the goods were still in transit.

On the same day said contract was executed on June 16, 1951, defendant Manila. Surety & Fidelity Co., Inc., with Tong as principal, filed the surety bond (Exhibit B), binding itself unto the plaintiff in the sum of P5,000, by reason of the appointment of Tong as exclusive agent for plaintiff for the Visayas-Mindanao provinces, the bond being conditioned on the faithful performance of Tong's duties, in accordance with the agreement. It would appear that for its security, the Surety Company had Ko Su Kuan and Marciano Du execute in its favor an indemnity agreement that they would indemnify said surety company in whatever amount it may pay to the plaintiff by reason of the bond filed by it.

On June 18, 1951, plaintiff shipped 299 cases of Bee Wax, valued at P7,107, to Tong, duly received by the latter. Tong failed to remit the value within sixty days, and despite the demand made by plaintiff on him to send that amount, he sent only P770, leaving a balance of P6,337, which he admits to be still with him, but which he refuses to remit to the plaintiff, claiming that the latter owed him a larger amount. To enforce payment of the balance of P6,337, plaintiff filed this present action not only against Tong, but also against the Surety Company, to recover from the latter the amount of its bond of P5,000.

The Surety Company in its answer filed a cross-claim against Tong, and with the trial court's permission, filed a third-party complaint against Ko Su Kuan and Marciano Du who, as already stated, had executed an indemnity agreement in its favor. After trial, the lower court, presided by Judge Hermogenes Conception, rendered judgment, the dispositive part of which reads as follows:

"In view of all thk foregoing, the Court renders judgment in favor of the plaintiff and against the defendants as

follows:

"(a) The Court orders the defendants Lim Tan Tong and the Manila Surety & Fidelity Co., Inc., to pay jointly and severally the plaintiff Pearl Island Commercial Corporation the sum of P5,000.00, plus legal interest from the date of the filing" of this complaint, until it is fully paid;

"(b) the Court orders the defendant Lim Tan Tong' to pay to the plaintiff the sum of P1,337.00 with legal rate of interest from the date of the filing of this complaint until said amount is fully paid;

"(c) The two defendants shall pay jointly and severally another amount of P500 to the plaintiff as attorney's fees, plus the costs of this suit;

"(d) The Court orders the cross-defendant Lim Tan Tong and the third-party defendants Ko Su Kuan and Marciano Du to pay jointly and severally to the Manila Surety & Fidelity Co., Inc., the sum of P5,000 with legal rate of interest from the date of the filing of this complaint until fully paid, plus P500 as attorney's fees, plus the costs of this suit."

The Surety company is appealing said decision. The appeal originally taken to the Court of Appeals, was later certified to us as involving only questions of law.

Appellant assigns the following errors:

"I. The trial court erred in holding that the contract between the Pearl Island Commercial Corporation and Lim Tan Tong was one of agency so that breach thereof would come within the terms of the surety bond posted by appellant therein,

"II. The trial court erred in ordering the defendant-appellant herein to pay attorney's fees and other charges stated in the judgment."

It is appellant's contention that it cannot be held liable on its bond for the reason that the latter was filed on the theory that the contract between the plaintiff and Tong was one of agency as a result of which, said Surety Company guaranteed the faithful performance of Tong as agent, but that it turned out that said contract was one of purchase and sale, as shown by the very title of said contract (Exhibit A), namely, "Contract of Purchase and Sale", and appellant never undertook to guaranty the faithful performance of Tong as a purchaser. However, a careful examination of the said contract shows that appellant is only, partly right, for the reason that the terms of the said contract, while providing for sale of Bee Wax from the plaintiff to Tong and purchase of the same by Tong from the plaintiff, also designates Tong as the sole distributor of the article within a certain territory. Besides, paragraph 4 of the contract entitled "Security", provides that Tong was to furnish surety bond to cover all shipments made by the plaintiff to him. Furthermore, appellant must have understood the contract to be one, at least partly, of agency because the bond itself (Exhibit B) says the following:

"WHEREAS, the above bounden principal has been appointed as exclusive agent for Pearl Islands Commercial Corporation of Manila, Philippines, for the Visayas-Mindanao Provinces; * * *."

Under the circumstances, we are afraid that the Surety Company is not now in a position to deny its liability for the shipment of the 299 cases of Bee Wax duly received by Tong and his failure to pay its value of P7,107, minus P770 or a balance of P6,337, of course, up to the limit of P5,000, the amount of the bond. True, the contract (Exhibit A) is not entirely clear. It is in some respects, even confusing. While it speaks of sale of Bee Wax to Tong and his responsibility for the payment of the value of every shipment so purchased, at the same time it appoints him sole distributor within a certain area, the plaintiff undertaking not to appoint any other agent or distributor within the same area. Anyway, it seems to have been the sole concern and interest of the plaintiff to be sure that it was paid the value of all shipments of Bee Wax to Tong and the Surety Company by its bond,

guaranteed in the final analysis said payment by Tong, either as purchaser or as agent. Whether the article was purchased by Tong or whether it was consigned to him as agent to be sold within his area, the fact is that Tong admits said shipment, admits its value, admits keeping the same (P7,107 minus the P770 he had paid on account), but that he is retaining it for reasons of his own, namely, that plaintiff allegedly owes him a larger amount. Moreover, the Surety Company is adequately protected, especially by the judgment because by its express terms, appellant can recover from Ko Su Kuan and Marciano Du whatever amounts, including attorney's fees it may pay to plaintiff, and said two persons evidently have not appealed from the decision.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Bengson, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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