

BASILAN LUMBER COMPANY, PETITIONER, VS. CAGAYAN TIMBER EXPORT COMPANY, ET AL., RESPONDENTS.

G.R. No. 15908. June 30, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of Appeals, reversing a judgment of the Court of First Instance of Manila in favor of plaintiff and dismissing the complaint.

In a nutshell, the question at issue is: In an action for breach of contract of sale of logs, caused by the failure of the supplier to furnish the agreed quantity, as a result of which the exporter of the logs became liable for demurrage and dead freight, may the exporter be allowed to recover the amount of demurrage and dead freight even if the same has not been actually paid for by the exporter? Stated otherwise, in an action for damages resulting from a breach of contract to supply, may the exporter recover from a supplier the amount of damages for which it would be held liable under its contract with a Japanese buyer even if such damages have not yet been demanded from and paid by it, and before said exporter actually paid the same?

The facts of the case are not disputed, and may be briefly stated as follows: The plaintiff Basilan Lumber Company entered into a contract with the defendant Cagayan Timber Export Company, whereby the latter agreed to deliver to the former 1,200,000 board feet of exportable logs not later than May 31, 1951. This contract is dated April 25, 1951. Subsequently, in an agreement dated July 3, 1951, the logs to be delivered were reduced to 500,000 board feet and the delivery thereof was to be made not later than July 15, 1951. But in another agreement of August 22, 1951, the contract was again amended, increasing the amount to be delivered to 740,000 board feet of logs to be delivered on or about September 1, 1951. In this contract, it was further agreed that a minimum of 50,000 board feet per gang per hatch per weather working day would be loaded.

The plaintiff sold the logs to a Japanese buyer, who had entered into a contract with the plaintiff through the East Asiatic Company, which acted as intermediary. The logs were to be loaded on the "Kanatsu Maru," which was chartered by the Japanese buyer and which arrived in the Philippines on September 9, 1951, at the place agreed upon for loading. It stayed in port for a total of 8 days, but was able to load only 483,672 board feet supplied by defendant.

There were four hatches in the vessel, hence the loading was to have lasted two and a half days, more or less. However, it actually took 7 days to load because no sufficient logs were available at the place where the loading was to take place and because of the poor stevedoring service. Hence the demurrage amounted, as per decision of the Court of First Instance, to \$4,141.16. As to dead freight, which corresponds to the freight of the logs which were not delivered shipside, the same amounted to \$5,673.43. So, the total amount of demurrage and dead freight is \$9,814.59, or P19,629.18. This is the amount awarded in the Court of First Instance. Legal interest on the said amount and attorney's fees amounting to P2,000 were also granted.

On appeal to the Court of Appeals, the judgment of the Court of First Instance was reversed. The reasons of the

said appellate court in reversing the judgment, are as follows:

"Because the damages in question are yet to be suffered and are not actual, they may fall under the general category of prospective damages. We are not unaware of American decisions to the effect that, in estimating the pecuniary loss sustained by a party as a result of another's tort or breach of contract, the former's right of recovery must be for all damages resulting therefrom, whether past, present, and prospective (15 American Jurisprudence, 416), and that prospective damages may be allowed upon proof that they are reasonably certain to occur (Watt vs. Nevada etc., 23 Nev. 154, 44 P. 423, 46 P. 52, 726, 62 Am. St. Rep. 772), but in this jurisdiction the rule is that no recovery of damages can be had without satisfactory proof of the real existence of such damages (Articles 1106 and 1107 of the Old Civil Code; Articles 2200 and 2201, New Civil Code; Sanz vs. Lavin, 6:299; Rubio vs. Rivera, 41:39), and that the true measure of damages for the breach of a contract is what the plaintiff has lost by the breach (De la Cruz vs. Seminario, etc., 18:830). The rule in this matter is tersely stated by Manresa as follows: * * * el resarcimiento de daños y perjuicios * * * exige la existencia real del daño' (8 Manresa, 4th Ed., pages 144-145)."

In this Court, the appellant argues that the demurrage and dead freight due the buyer in Japan had already been paid by the East Asiatic Company, Ltd., through which the Basilan Lumber Company sold the logs. The receipts evidencing such payment had been submitted as Exhibits "I-1", "J" and "K", in accordance with debit notes (Exhs. "G" and "H" Deposition). It is further argued that in accordance with the decisions of United States courts, it is enough that there is proof or reasonable certainty that substantial future damages will result in order that a recovery for damages can be had; that the majority of the provisions of the Uniform Sales Law had been adopted in the Civil Code, so that the decisions of American courts in the matter of damages should be applied.

It is also argued that the contract between the plaintiff and the defendant contains the following terms:

"In case of non-compliance by the SELLER with the amended contract conditions, the SELLER hereby agrees to indemnify the BUYER for whatever damages the BUYER would be held liable to their buyers in Japan as a consequence thereof, * * *" Exhibit "C").

"All other terms and conditions enumerated in the original agreement of April 21, 1951, and amendments thereto dated June 18th and July 3rd, 1951, remain unchanged." (Exhibit "D")

"* * * any claims arising out of default or failure of the SELLER to comply with loading capacity of the vessel shall be for account of the SELLER." (Exhibit "F") (See Petitioner's brief, page 11.)

from which, the intention of the parties to make the seller liable to plaintiff for the valid claims of Japanese buyers, is evident.

Our answer to the foregoing arguments of counsel for petitioner is the express provisions of Article 2199 of the Civil Code of the Philippines to the effect that damages must be "duly proved." This new provisions, which did not exist in the Civil Code of Spain, denies the grant of speculative damages, damages not actually proved to have existed and to have been caused to the party claiming the same. In the case at bar the evidence shows that actual damage was caused to the agent through which petitioner sold the logs to a Japanese buyer, as said agent had already paid the same to the latter. However, there is no proof that respondent had already paid the agent said damages, or that it had already been required to pay the same, and while these have not happened the damage to the petitioner may not, under the above-cited article of the Civil Code, be deemed to have actually been caused to him.

As regards the express terms of the agreement holding the seller liable for the damages it may cause the buyer, the same are merely declaratory of the obligation assumed, not an obligation which the obligee may demand compliance with upon breach of the terms of the contract and even before actual payment of damages by the one

who breached the agreement, because the obligee has not yet actually suffered the damage or paid the same to the person to whom damage was caused. It is only when the obligee actually suffers the damage, that compliance with the obligation may be demanded.

Wherefore, the judgment sought to be reversed is hereby affirmed. Without costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Paredes, and Natividad, JJ., concur.

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