WING KEE COMPRADORING COMPANY, PLAINTIFF AND APPELLANT, VS. THE BARK “MONONGAHELA,” VICTOR S. FOX & CO., INC., OWNER OF THE BARK MONONGAHELA, THE ADMIRAL LINE, AND C. G. LOTHIGI...

G.R. No. 19540. January 29, 1923

Ponente: MALCOLM, J.

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MALCOLM, J.:

The plaintiff in this case, Wing Kee Compradoring Company, seeks to recover from the defendants, principally the Admiral Line, as agent for the Bark Monongahela, the sum of P17,675.64, with interest and costs, on account of goods, wares, and merchandise sold and delivered by the plaintiff to the defendants for the use of the crew of the Bark Monongahela. The case, as submitted to the appellate court, must be reconstructed as best it may, from pleadings not altogether clear and explicit, from facts taken in part from the decision of the trial court, and in part from the exhibits, the stenographic notes not having been written up, and from the briefs on the questions of law which are involved.

Turning first to the pleadings, we find the plaintiff in its amended complaint praying for judgment against the defendants jointly and severally for the sum of P17,675.64, meaning, thereby, we presume, that it had a just and preferred claim upon and against the Bark Monongahela, and that the debt was due from the Admiral Line, the agent; C.G. Lothigius, the captain of the boat; arid the owners of the boat, either Victor S. Fox & Co., Inc., or the United States Shipping Board Emergency Fleet Corporation. Captain Lothigius and the Admiral Line answered. The owners were not cited to appear. No action against the bark was taken. Following the trial, judgment was rendered dismissing the complaint, without special finding as to costs.

Turning next to the facts, the exhibits of record show that beginning with March 16, 1921, and ending with August 16, 1921, various supplies were furnished the Bark Monongahela by Wing Kee Compradoring Company. Most of the bills for these goods are made out against the "Admiral Line, S.S. Monongahela" All are countersigned by the master and the first steward. It appears, therefore, that the plaintiff was looking to the Admiral Line for payment.

The first requisitions for supplies are on forms headed "The Admiral Line." Then follows Manila, the date, and the name, "Wing Kee Compradoring Co." Next is the order, reading: "Please deliver to S.S. Monongahela now lying at Bay, the following goods and send bills to the Admiral Line:". After this the goods are named. At the foot is found, "United States Shipping Board Emergency Fleet Corporation," although these words are erased in a few of the requisitions, "The Admiral Line (Pacific Steamship Co.) Operating Agents. By J.J. Armstrong." On the side of the requisitions in red ink is the following: "Note: This requisition must be receipted by either Chief Officer, Chief Steward or Chief Engineer and returned to the Admiral Line, with six copies of invoice immediately after delivery of goods." After May 4, 1921, the requisitions seem to have been made out by the steward and the master. We deduce from these documents that the Admiral Line was the operating agent for the Monongahela,

and was responsible as such until the agency was terminated.

In the Manila Daily Bulletin for August 2, 1921, appeared the following: "Notice—Bark Monongahela—The undersigned hereby give notice that they are not responsible in any manner whatsoever for any indebtedness incurred by the Bark Monongahela, its Master and/or Crew—The Admiral Line." The trial judge found as a fact that on or before August 4, 1921, the Admiral Line had ceased to act as agent for the Monongahela. Nevertheless, supplies were furnished the Monongahela after these dates by the plaintiff.

Turning finally to the law, we find section 1 of Title 2 of our Code of Commerce, given up to the subject, "Owners of Vessels and Their Agents." The first article in this section (art. 586), and the provision of law which in our judgment is controlling, reads:

> "The owner of a vessel and the agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.
>
> "By agent is understood the person intrusted with the provisioning of a vessel, or who represents her in the port in which she happens to be."

The civil law, in this respect, is not at all dissimilar to the common law. By the general law of the United States, as well as of England and of Europe, it has been held, that when the agents buy in their own names, but really for the account of their principal, the seller has an option to look to either for. payment, unless (1) he trusted the agent exclusively; or (2) by the usage and understanding of the business the agent only is held; or (3) unless the special circumstances of the case show that only the agent was intended to be bound and the seller knew it or was chargeable with knowledge of it. Although the English rule that, where the agent buys in his own name for the account of a foreign principal, the agent only is bound appears not to have been followed in the United States, yet the general doctrine is the same, that the seller has an option to resort to either. (Berwind vs. Schultz [1885], 25 Fed., 912.)

Applying more directly the law to the pleadings and the facts, it is first to be noted that the plaintiff has not followed out its allegation that it has a claim against the Bark Monongahela, and might not have prospered any way, considering the rather dubious doctrine announced in the case of Heath vs. Steamer San Nicolas ([1907], 7 Phil., 532). Not only this, but the plaintiff has made no effort to bring the owner of the bark into the case and has pushed with no enthusiasm its case against the captain of the boat. What apparently the plaintiff wants is for the Admiral Line, as the agent for the Bark Monongahela, to pay the claim, leaving the latter to reimburse itself, if it sees fit, from the owners.

To all this appellee answers that as the agency has ceased, action cannot be brought against the Admiral Line. To our minds this is a rather far-fetched argument, for, pursued to its logical conclusion, every agent for a vessel could thus avoid responsibility pursuant to article 586 of the Code of Commerce, by giving up its agency when threatened with suit to enforce the obligations of third parties. Moreover, the bills were presented when the Admiral Line was yet the agent.

In resume, therefore, we are of opinion and so hold that the Admiral Line, as agent for the Bark Monongahela, is liable to the plaintiff for supplies furnished the Monongahela between March 16, 1921 and August 2, 1921, but is not responsible for supplies furnished after that date. The mathematical additions show that the debt of the Admiral Line to the plaintiff amounts to P16,526.29.

In accordance with the foregoing, judgment is reversed, and the plaintiff shall have and recover from the defendant, the Admiral Line, the sum of P16,526.29, without interest and costs. So ordered.

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Araullo, C.J., Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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