

ALBALADEJO Y CIA., S. EN C., PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE REFINING CO., AS SUCCESSOR TO THE VISAYAN REFINING CO., DEFENDANT AND APPELLANT.*G.R. No. 20726. December 20, 1923*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Albay by Albaladejo y Cia., S. en C, to recover a sum of money from the Philippine Refining Co., as successor to the Visayan Refining Co., two causes of action being stated in the complaint. Upon hearing the cause the trial judge absolved the defendant from the first cause of action but gave judgment for the plaintiff to recover the sum of P49,626.68, with costs, upon the second cause of action. From this judgment the plaintiff appealed with respect to the action taken upon the first cause of action, and the defendant appealed with respect to the action taken upon the second cause of action. It results that, by the appeal of the two parties, the decision of the lower court is here under review as regards the action taken upon both grounds of action set forth in the complaint.

It appears that Albaladejo y Cia. is a limited partnership, organized in conformity with the laws of these Islands, and having its principal place of business at Legaspi, in the Province of Albay; and during the transactions which gave origin to this litigation said firm was engaged in the buying and selling of the products of the country, especially copra, and in the conduct of a general mercantile business in Legaspi and in other places where it maintained agencies, or sub-agencies, for the prosecution of its commercial enterprises.

The Visayan Refining Co. is a corporation organized under the laws of the Philippine Islands; and prior to July 9, 1920, it was engaged in operating its extensive plant at Opon, Cebu, for the manufacture of coconut oil.

On August 28, 1918, the plaintiff made a contract with the Visayan Refining Co., the material parts of which are as follows:

"Memorandum of Agreement Re Purchase of Copra.—This memorandum of agreement, made and entered into by and between Albaladejo y Compania, S. en C, of Legaspi, Province of Albay, Philippine Islands, party of the first part, and the Visayan Refining Company, Inc., of Opon, Province of Cebu, Philippine Islands, party of the second part,

"Witnesseth That.—Whereas, the party of the first part is engaged in the purchase of copra in the Province of Albay; and, Whereas, the party of the second part is engaged in the business of the manufacture of coconut oil, for which purpose it must continually purchase large quantities of copra; Now, Therefore, in consideration of the premises and covenants hereinafter set forth, the said parties have agreed and do hereby contract and agree as follows, to wit:

"1. The party of the first part agrees and binds itself to sell to the party of the second part, and the party of the second part agrees and binds itself to buy from the party of the first part, for a period of one (1) year from the date of these presents, all the copra purchased by the party of the first part in the Province of Albay.

"2. The party of the second part agrees to pay the party of the first part for the said copra the market price thereof in Cebu at date (of) purchase, deducting, however, from such price the cost of transportation by sea to the factory of the party of second part at Opon, Cebu, the amount deducted to be ascertained from the rates established, from time to time, by the public utility commission, or such entity as shall succeed to its functions, and also a further deduction for the shrinkage of the copra from the time of its delivery to the party of the second part to its arrival at Opon, Cebu, plus one-half of a real per picul in the event the copra is delivered to boats which will unload it on the pier of the party of the second part at Opon, Cebu, plus one real per picul in the event that the party of the first part shall employ its own capital exclusively in its purchase.

"3. During the continuance of this contract the party of the second part will not appoint any other agent for the purchase of copra in Legaspi, nor buy copra from any vendor in Legaspi.

"4. The party of the second part will, so far as practicable, keep the party of the first part advised of the prevailing prices paid for copra in the Cebu market.

"5. The party of the second part will provide transportation by sea to Opon, Cebu, for the copra delivered to it by the party of the first part, but the party of the first part must deliver such copra to the party of the second part free on board the boats of the latter's ships or on the pier alongside the latter's ships, as the case may be."

Pursuant to this agreement the plaintiff, during the year therein contemplated, bought copra extensively for the Visayan Refining Co. At the end of said year both parties found themselves satisfied with the existing arrangement, and they therefore continued by tacit consent to govern their future relations by the same agreement. In this situation affairs remained until July 9, 1920, when the Visayan Refining Co. closed down its factory at Opon and withdrew from the copra market.

When the contract above referred to was originally made, Albaladejo y Cia. apparently had only one commercial establishment, i. e., that at Legaspi; but the large requirements of the Visayan Refining Co. for copra appeared so far to justify the extension of the plaintiff's business that during the course of the next two or three years it established some twenty agencies, or subagencies, in various ports and places of the Province of Albay and neighboring provinces.

After the Visayan Refining Co. had ceased to buy copra, as above stated, of which fact the plaintiff was duly notified, the supplies of copra already purchased by the plaintiff were gradually shipped out and accepted by the Visayan Refining Co., and in the course of the next eight or ten months the accounts between the two parties were liquidated. The last account rendered by the Visayan Refining Co. to the plaintiff was for the month of April, 1921, and it showed a balance of P288 in favor of the defendant. Under date of June 25, 1921, the plaintiff company addressed a letter from Legaspi to the Philippine Refining Co. (which had now succeeded to the rights and liabilities of the Visayan Refining Co.), expressing its approval of said account. In this letter no dissatisfaction was expressed by the plaintiff as to the state of affairs between the parties; but about six weeks thereafter the present action was begun.

Upon reference to paragraph five of the contract reproduced above it will be seen that the Visayan Refining Co. obligated itself to provide transportation by sea to Opon, Cebu, for the copra which should be delivered to it by the plaintiff; and the first cause of action set forth in the complaint is planted upon the alleged negligent failure of the Visayan Refining Co. to provide opportune transportation for the copra collected by the plaintiff and deposited for shipment at various places. In this connection we reproduce the following allegations from the complaint:

"6. That, from the month of September, 1918, until the month of June, 1920, the plaintiff opportunely advised the Visayan of the stocks that the former had for shipment, and, from time to time, requested the Visayan to send vessels to take up said stocks; but that the Visayan culpably and negligently allowed a great number of days to elapse before sending the boats for the transportation of the copra to Opon, Cebu, and that due to the

fault and negligence of the Visayan, the stocks of copra prepared for shipment by the plaintiff had to remain an unnecessary length of time in warehouses and could not be delivered to the Visayan, nor could they be transmitted to this latter because of the lack of boats, and that for this reason the copra gathered by the plaintiff and prepared for delivery to the Visayan suffered the diminishment of weight herein below specified, through shrinkage or excessive drying, and, in consequence thereof, an important diminishment in its value.

* * * * *

"8. That the diminishment in weight suffered as shrinkage through excessive drying by all the lots of copra sold by the plaintiff to the Visayan, due to the fault and negligence of the Visayan in the sending of boats to take up said copra, represents a total of 9,695 piculs and 56 cates, the just and reasonable value of which, at the rates fixed by the purchaser as the price in its liquidation, is a total of two hundred and one thousand, five hundred and ninety-nine pesos and fifty-three centavos (P201,599.53), Philippine currency, in which amount the plaintiff has been damaged and injured by the negligent and culpable acts and omissions of the Visayan, as herein above stated and alleged."

In the course of the appealed decision the trial judge makes a careful examination of the proof relative to the movements of the fleet of boats maintained by the Visayan Refining Co. for the purpose of collecting copra from the various ports where it was gathered for said company, as well as of the movements of other boats chartered or hired by said company for the same purpose; and upon consideration of all the facts revealed in evidence, his Honor found that the Visayan Refining Co. had used reasonable promptitude in its efforts to get out the copra from the places where it had been deposited for shipment, notwithstanding occasional irregularities due at times to the condition of the weather as related to transportation by sea and at other times to the inability of the Visayan Refining Co. to dispatch boats to the more remote ports. This finding of the trial judge, that no negligence of the kind alleged can properly be imputed to the Visayan Refining Co., is in our opinion supported by the proof.

Upon the point of the loss of weight of the copra by shrinkage, the trial judge found that this is a product which necessarily undergoes considerable shrinkage in the process of drying, and intelligent witnesses who are conversant with the matter testified at the trial that shrinkage of copra varies from twenty to thirty per centum of the original gross weight. It is agreed that the shrinkage shown in all of the copra which the plaintiff delivered to the Visayan Refining Co. amounted to only 8.187 per centum of the whole, an amount which is notably below the normal. This showing was undoubtedly due in part, as the trial judge suggests, to the fact that in purchasing the copra directly from the producers the plaintiff's buyers sometimes estimated the picul at sixty-eight kilos, or somewhat less, but in no case at the true weight of 63.25 kilos. The plaintiff was therefore protected in a great measure from loss by shrinkage by purchasing upon a different basis of weight from that upon which he sold, otherwise the shrinkage shown in the result must have been much greater than that which actually appeared. But even considering this fact, it is quite evident that the demonstrated shrinkage of 8.187 per centum was an extremely moderate average; and this fact goes to show that there was no undue delay on the part of the Visayan Refining Co. in supplying transportation for the copra collected by the plaintiff.

In the course of his well-reasoned opinion upon this branch of the case, the trial judge calls attention to the fact that it is expressly provided in paragraph two of the contract that the shrinkage of copra from the time of its delivery to the party of the second part till its arrival at Opon should fall upon the plaintiff, from whence it is to be inferred that the parties intended that the copra should be paid for according to its weight upon arrival at Opon regardless of its weight when first purchased; and such appears to have been the uniform practice of the parties in settling their accounts for the copra delivered over a period of nearly two years.

From what has been said it follows that the first cause of action set forth in the complaint is not well founded, and the trial judge committed no error in absolving the plaintiff therefrom.

It appears that in the first six months of the year 1919, the plaintiff found that its transactions with the Visayan Refining Co. had not been productive of reasonable profit, a circumstance which the plaintiff attributed to loss of weight or shrinkage in the copra from the time of purchase to its arrival at Opon; and the matter was taken up with the officials of said company, with the result that a bounty amounting to P15,610.41 was paid to the plaintiff by the Visayan Refining Co. In the ninth paragraph of the complaint the plaintiff alleges that this payment was made upon account of shrinkage, for which the Visayan Refining Co. admitted itself to be liable; and it is suggested that the making of this payment operated as a recognition on the part of the Visayan Refining Co. of the justice of the plaintiff's claim with respect to the shrinkage in all subsequent transactions. With this proposition we cannot agree. At most the payment appears to have been made in recognition of an existing claim, without involving any commitment as to liability on the part of the defendant in the future; and furthermore it appears to have been in the nature of a mere gratuity given by the company in order to encourage the plaintiff and to assure that the plaintiff's organization would be kept in an efficient state for future activities. It is certain that no general liability for plaintiff's losses was assumed for the future; and the defendant on more than one occasion thereafter expressly disclaimed liability for such losses.

As already stated purchases of copra by the defendant were suspended in the month of July, 1920. At this time the plaintiff had an expensive organization which had been built up chiefly, we suppose, with a view to the buying of copra; and this organization was maintained practically intact for nearly a year after the suspension of purchases by the Visayan Refining Co. Indeed in October, 1920, the plaintiff added an additional agency at Gubat to the twenty or more already in existence. As a second cause of action the plaintiff seeks to recover the sum of P110,000, the alleged amount expended by the plaintiff in maintaining and extending its organization as above stated. As a basis for the defendant's liability in this respect it is alleged that said organization was maintained and extended at the express request, or requirement, of the defendant, in conjunction with repeated assurances that the defendant would soon resume activity as a purchaser of copra.

With reference to this cause of action the trial judge found that the plaintiff, as claimed, had incurred expenses at the request of the defendant and upon its representation that the plaintiff would be fully compensated therefor in the future. Instead, however, of allowing the plaintiff the entire amount claimed, his Honor gave judgment for only thirty per centum of said amount, in view of the fact that the plaintiff's transactions in copra had amounted in the past only to about thirty per centum of the total business transacted by it. Estimated upon this basis, the amount recognized as constituting a just claim was found to be P49,626.68, and for this amount judgment was rendered against the defendant.

The discussion of this branch of the appeal involves the sole question whether the plaintiff's expenses in maintaining and extending its organization for the purchase of copra in the period between July, 1920, to July, 1921, were incurred at the instance and request of the defendant, or upon any promise of the defendant to make that expenditure good. A careful examination of the evidence, mostly of a documentary character, is, in our opinion, convincing that the supposed liability does not exist.

By recurring to paragraph four of the contract between the plaintiff and the Visayan Refining Co. it will be seen that the latter agreed to keep the plaintiff advised of the prevailing prices paid for copra in the Cebu market. In compliance with this obligation the Visayan Refining Co. was accustomed to send out "trade letters" from time to time to its various clients in the southern provinces of whom the plaintiff was one. In these letters the manager of the company was accustomed to make comment upon the state of the market and to give such information as might be of interest or value to the recipients of the letters. From the series of letters thus sent to Albaladejo y Cia. during the latter half of 1920, we here reproduce the following excerpts:

(Letter of July 2, 1920, from K. B. Day, General Manager, of the Visayan Refining Co., to Albaladejo y Cia.)

"The copra market is still very weak. I have spent the past two weeks in Manila studying conditions and find that practically no business at all is being done. A few of the mills having provincial agents are accepting small deliveries, but I do not suppose that 500 piculs of copra are changing hands a day. Buyers are offering from P13 to P15, depending on quality, and sellers are offering to sell at anywhere from P16 to P18, but no business can be done for the simple reason that the banks will not lend the mills any money to buy copra with at this time.

"Reports from the United States are to the effect that the oil market is in a very serious and depressed condition and that large quantities of oil cannot be disposed of at any price.

* * * * *

"Under these conditions it is imperative that this mill buy no more copra than it can possibly help at the present time. We are not anxious to compete, nor do we wish to purchase same in competition with others. We do, however, desire to keep our agents doing business and trust that they will continue to hold their parroquianos (customers), buying only minimum quantities at present.

"The local market has not changed since last week, and our liquidating price is P14."

(Letter of July 9, 1920, from Visayan Refining Co. to Albaladejo y Cia.)

"Notify your subagents to drop out of the market temporarily. We do not desire to purchase at present."

(Letter of July 10, 1920, from K. B. Day, General Manager, to Albaladejo y Cia.)

"The market continues to grow weaker. Conditions are so uncertain that this company desires to drop out of the copra market until conditions have a chance to readjust themselves. We request therefore that our agents drop out of active competition for copra temporarily. Stocks that are at present on hand will, of course, be liquidated, but no new stocks should be acquired. Agents should do their best to keep their organizations together temporarily, for we expect to be in the market again soon stronger than ever. We expect the cooperation of agents in making this effective; and if they give us this cooperation, we will endeavor to see that they do not lose by the transaction in the long run. This company has been receiving copra from its agents for a long time at prices which have netted it a loss. The company has been supporting its agents during this period. It now expects the same support from its agents. Agents having stocks actually on hand in their bodegas should telegraph us the quantity immediately and we will protect same. But stocks not actually in bodegas cannot be considered."

(Letter of July 17, 1920, from K. B. Day to Albaladejo y Cia.)

"Conditions have changed very little in the copra market since last reports. * * * We are in the same position as last week and are out of the market.

"For the benefit of our agents, we wish to explain in a few words just why we are out of the market. Our tanks are full of oil and we have been forced to close down our mill until the arrival of a boat to load some of our stocks on hand. We have large stocks of copra. The market for oil is so uncertain that we do not care to increase these stocks until such time as we know that the market has touched the bottom. As soon as this period of uncertainty is over, we expect to be in the market again stronger than ever, but it is only the part of business wisdom to play safe at such times as these.

"Owing to the very small amounts of copra now in the provinces, we do not think that our agents will lose anything by our being out of the market. On the contrary, the producers of copra will have a chance to allow their nuts to mature on the trees so that the quality of copra which you will receive when we again are in the market should be much better than what you have been receiving in the past. Due to the high prices and scarcity of copra a large proportion of the copra we have received has been made from unripe coconuts and in

order to keep revenue coming in the producers have kept harvesting these coconuts without giving them a chance to reach maturity. This period now should give them the chance to let their nuts ripen and should give you a better copra in the future which will shrink less and be more satisfactory both from your standpoint and ours. Please do all you can to assist us at this time. We shall greatly appreciate your cooperation."

(Letter of August 7, 1920, from H. U. Umstead, Assistant General Manager, to Albaladejo y Cia.)

"The copra situation in Manila remains unchanged and the outlook is still uncertain. Arrivals continue small.

"We are still out of the market and are not yet in a position to give you buying orders. We trust, however, that within the next few weeks we may be able to reenter the market and resume our former activity.

* * * * *

"While we are out of the market we have no objection whatever to our agents selling copra to other purchasers, if by doing so they are able to keep themselves in the market and retain their parroquianos (customers). We do not, however, wish you to use our money for this purpose, nor do we want you to buy copra on speculation with the idea in mind that we will take it off of your hands at high prices when we reenter the market. We wish to warn you against this now so that you will not be working under any misapprehension.

"In this same mail, we are sending you a notice of change of organization. In your dealings with us hereafter, will you kindly address all communications to the Philippine Refining Corporation, Cebu, which you will understand will be delivered to us."

(Letter of August 21, 1920, from Philippine Refining Corporation, by K. B. Day, to Albaladejo y Cia.)

"We are not yet in the market, but, as we have indicated before, are hopeful of renewing our activities soon. We shall advise all our agents seasonably of our return to the market. * * *

"We are preparing new forms of agreement between ourselves and our agents and hope to have them completed in time to refer them to our agents in the course of the next week or ten days.

"All agents should endeavor to liquidate outstanding advances at this time because this is a particularly good time to clean out old accounts and be on a business basis when we return to the market. We request that our agents concentrate their attention on this point during the coming week."

(Letter of October 16, 1920, from K. B. Day, Manager, to Albaladejo y Cia.)

"Copra in Manila and coconut oil in the United States have taken a severe drop during the past week. The Cebu price seems to have remained unchanged, but we look for an early drop in the local market.

"We have received orders from our president in New York to buy no more copra until the situation becomes more favorable. We had hoped and expected to be in the market actively before this time, but this most unexpected reaction in the market makes the date of our entry in it more doubtful.

"With this in view, we hereby notify our agents that we can accept no more copra and advance no more money until we have permission from our president to do so. We request, therefore, that you go entirely out of the market, so far as we are concerned, with the exception of receiving copra against outstanding accounts.

"In case any agent be compelled to take in copra and desire to send same to us, we will be glad to sell same for him to the highest bidder in Cebu. We will make no charge for our services in this connection, but the copra must be forwarded to us on consignment only so that we will not appear as buyers and be required to pay the internal-revenue tax.

"We are extremely sorry to be compelled to make the present announcement to you, but the market is such that our president does not deem it wise for us to purchase copra at present, and, with this in view, we have no

alternative other than to comply with his orders. We hope that our agents will realize the spirit in which these orders are given, and will do all they can to remain faithful to us until such time as we can reenter the market, which we hope and believe will be within a comparatively short time."

(Special Letter of October 16, 1920, from Philippine Refining Corporation, by K. B. Day, to Albaladejo y Cia.)

"We have received very strict instructions from New York temporarily to suspend the purchase of copra, and of course we must comply therewith. However, should you find yourselves obliged to buy copra in connection with your business activities, and cannot dispose of it advantageously in Cebu, we shall be glad to receive your copra under the condition that we shall sell it in the market on your account to the highest bidder, or, in other words, we offer you our services free, to sell your copra to the best possible advantages that the local market may offer, provided that, in doing so, we be not obliged to accept your copra as a purchase when there be no market for this product.

"Whenever you find yourselves obliged to buy copra in order to liquidate pending advances, we can accept it provided that, so long as present conditions prevail, we be not required to make further cash advances."

We shall quote no further from letters written by the management of the Philippine Refining Corporation to the plaintiff, as we find nothing in the correspondence which reflects an attitude different from that reflected in the matter above quoted. It is only necessary to add that the hope so frequently expressed in the letters, to the effect that the Philippine Refining Corporation would soon enter the market as a buyer of copra on a more extensive scale than its predecessor, was not destined to be realized, and the factory at Opon remained closed.

But it is quite obvious that there is nothing in these letters on which to hold the defendant liable for the expenses incurred by the plaintiff in keeping its organization intact during the period now under consideration. Nor does the oral testimony submitted by the plaintiff materially change the situation in any respect. Furthermore, the allegation in the complaint that one agency in particular (Gubat) had been opened on October 1, 1920, at the special instance and request of the defendant, is not at all sustained by the evidence.

We note that in his letter of July 10, 1920, Mr. Day suggested that if the various purchasing agents of the Visayan Refining Co. would keep their organization intact, the company would endeavor to see that they should not lose by the transaction in the long run. These words afford no sufficient basis for the conclusion, which the trial judge deduced therefrom, that the defendant is bound to compensate the plaintiff for the expenses incurred in maintaining its organization. The correspondence sufficiently shows on its face that there was no intention on the part of the company to lay a basis for contractual liability of any sort; and the plaintiff must have understood the letters in that light. The parties could undoubtedly have contracted about it, but there was clearly no intention to enter into contractual relation; and the law will not raise a contract by implication against the intention of the parties. The inducement held forth was that, when purchasing should be resumed, the plaintiff would be compensated by the profits then to be earned for any expense that would be incurred in keeping its organization intact. It is needless to say that there is no proof showing that the officials of the defendant acted in bad faith in holding out this hope.

In the appellant's brief the contention is advanced that the contract between the plaintiff and the Visayan Refining Co. created the relation of principal and agent between the parties, and reliance is placed upon article 1729 of the Civil Code which requires the principal to indemnify the agent for damages incurred in carrying out the agency. Attentive perusal of the contract is, however, convincing to the effect that the relation between the parties was not that of principal and agent in so far as relates to the purchase of copra by the plaintiff. It is true that the Visayan Refining Co. made the plaintiff one of its instruments for the collection of copra; but it is clear that in making its purchases from the producers the plaintiff was buying upon its own account and that when it turned over the copra to the Visayan Refining Co., pursuant to that agreement, a second sale was effected. In paragraph three of the

contract it is declared that during the continuance of this contract the Visayan Refining Co. would not appoint any other agent for the purchase of copra in Legaspi; and this gives rise indirectly to the inference that the plaintiff was considered its buying agent. But the use of this term in one clause of the contract cannot dominate the real nature of the agreement as revealed in other clauses, no less than in the caption of the agreement itself. In some of the trade letters also the various instrumentalities used by the Visayan Refining Co. for the collection of copra are spoken of as agents. But this designation was evidently used for convenience; and it is very clear that in its activities as a buyer the plaintiff was acting upon its own account and not as agent, in the legal sense, of the Visayan Refining Co. The title to all of the copra purchased by the plaintiff undoubtedly remained in it until it was delivered by way of subsequent sale to said company.

For the reasons stated we are of the opinion that no liability on the part of the defendant is shown upon the plaintiff's second cause of action, and the judgment of the trial court on this part of the case is erroneous.

The appealed judgment will therefore be affirmed in so far as it absolves the defendant from the first cause of action and will be reversed in so far as it gives judgment against the defendant upon the second cause of action; and the defendant will be completely absolved from the complaint. So ordered, without express finding as to costs of either instance.

Johnson, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

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