

PAMPANGA SUGAR MILLS, PLAINTIFF AND APPELLANT, VS. M. CHONG TIAOPOC ET AL., DEFENDANTS. M. CHONG TIAOPOC AND LUIS VISMANOS, DEFENDANTS AND APPELLANTS; UNION GUARANTEE CO., LTD.,...

G. R. No 24678. March 06, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On May 23, 1924, the Pampanga Sugar Mills filed a complaint in the Court of First Instance of Manila against M. Chong Tiaopoc, Luis Vismanos, Jao Pi, and the Union Guarantee Co., Ltd., praying that judgment be rendered (a) against the defendants M. Chong Tiaopoc, Luis Vismanos, and Jao Pi by ordering them to pay the plaintiff, jointly and severally, the sum of P14,027.52, with legal interest from the date of the filing of the complaint until fully paid; (6) against the Union Guarantee Co., Ltd., for the sum of P14,027.52 with legal interest from the date of the filing of the complaint, or any portion of the said amount which may be left unpaid after proceeding against the property of the said defendants M. Chong Tiaopoc, Luis Vismanos, and Jao Pi for the payment of said sum; (c) against all the herein defendants jointly and severally for the costs of the action and for such other remedy as may be proper under the law.

On June 27, 1924, the defendant, the Union Guarantee Co., Ltd., answered the complaint by denying each and every allegation contained therein, reserving the right, if necessary, to file a more complete answer, and praying that it be absolved from the complaint.

On July 29, 1924, the defendants M. Chong Tiaopoc and Luis Vismanos, answering the complaint, denied each and every allegation contained therein and presented a special defense, a counter-complaint, and a cross-complaint, praying that they be absolved from the complaint; that the plaintiff be ordered to render an account of the proceeds of the sales of the molasses mentioned in the cross-complaint, and that it be ordered to pay them the sum of P1,500 as damages and the costs.

On August 9, 1924, the plaintiff, in reply to the answer of the defendants M. Chong Tiaopoc and Luis Vismanos, denied each and every allegation of the special defense, cross-complaint, and counterclaim and prayed that the same be dismissed.

On January 12, 1925, the defendant, the Union Guarantee Co., Ltd., filed an amendment to its previous answer, by making that filed by its codefendants their own and prayed that the complaint be dismissed, with costs against the plaintiff.

The case was called for trial, both parties presented their evidence, and the court rendered judgment dismissing the complaint and absolving the defendants therefrom, dismissing also the counterclaim and cross-complaint, without special pronouncement as to costs.

The facts proven at the trial by a preponderance of evidence are as follows: On December 19, 1921, the Pampanga

Sugar Mills entered into a contract with M. Chong Tiaopoc, Luis Vismanos, and Jao Pi by virtue of which the said Pampanga Sugar Mills bound itself to sell to the said M, Chong Tiaopoc, Luis Vismanos, and Jao Pi, and they to purchase from the Pampanga Sugar Mills, one million five hundred thousand (1,500,000) gallons of molasses produced and manufactured in the sugar central at Del Carmen, Pampanga, between January 1 and December 30, 1922, at the price of P0.051 per gallon, on the condition that said vendees would furnish the means of transportation and take delivery of at least 75,000 gallons a month (Exhibit A) ; and on the further condition that if the vendees failed to take delivery of the whole amount stipulated within the period specified, the vendor, the Pampanga Sugar Mills, may, at its option, dispose of the uncalled for portion by either throwing it away, utilizing it in any manner it may see fit, or by selling it at the current market price, all for the account of the vendees; provided, however, that forty-eight hours' notice shall be given to the vendees before any molasses is thrown away. The Union Guarantee Company secured the fulfillment of the contract on the part of the defendants.

On December 31, 1921, the vendees authorized the vendor to deliver to Lo Seng up to 850,000 gallons of the molasses purchased, at the rate of not more than 100,000 gallons a month, said delivery being considered in all respects the same as if made directly to the vendees and in accordance with the terms and conditions of the contract (Exhibit B).

By virtue of said contract (Exhibit A) Jao Pi took delivery of 222,190 gallons of the contracted molasses; Lo Seng 180,612 gallons; M. Chong Tiaopoc 216,863 gallons, and Luis Vismanos 195,026 gallons. In March, 1922, the vendor threw away 38,158 gallons, and in June of the same year 36,671 gallons (Exhibit C). The vendees notified the vendor that they did not need more than 1,187,619 gallons of molasses, and in pursuance to that notice, said vendor charged the account of the vendees with said amount of molasses instead of 1,500,000 gallons stipulated in the contract.

On January 6, 1923, the Pampanga Sugar Mills entered into a contract with Carlos Palanca by virtue of which it bound itself to deliver to the latter all of the molasses in the sugar mill at Del Carmen, Pampanga, on December 31, 1922, which had been left from the production of 1921-1922, at the rate of 90,000 gallons a month from December 1, 1922 to June 30, 1923; and Carlos Palanca agreed to deliver to the central 60 gallons of motor alcohol manufactured by the said Carlos Palanca for each one thousand gallons of molasses received (Exhibit 1). By virtue of said contract Carlos Palanca received 500,000 gallons of molasses from the Pampanga Sugar Mills.

In regard to the first assignment of error of the plaintiff- appellant, the statement of account (Exhibit C) presented by the vendor to the vendees shows that the total amount of molasses produced during the year 1922 was 1,187,619 gallons, and the statement of molasses produced during the calendar year of 1922 (Exhibit K) shows that the total amount went to 1,984,098. As may be seen, therefore, there is a great difference between the two statements as to the total production of the same year, unless it is meant by the phrase "on hand from last crop 302,008," that this amount of molasses, together with the 815,691 gallons delivered to the vendees and to Lo Seng, and the 69,920 gallons thrown away, which make a total of 1,187,619 gallons, from a part of the greater amount produced in the year of 1922. The molasses contracted by virtue of the contract Exhibit A is that produced during the calendar year of 1922 and not that produced in the harvest of 1921-1922, which ended in June, 1922. The amount of molasses specified in the statement of accounts, Exhibit C cannot, then, be other than that produced during the calendar year of 1922. If that is so, there is a great difference between said Exhibit C and Exhibit K. The trial court committed no error therefor in finding that such difference existed.

In regard to the second, third, fourth and fifth assignments of error, it having been alleged in the complaint filed on May. 23, 1924 that the total amount of molasses produced from January 1 to December 31, 1922 was 1,187,619, and it having been shown by Exhibit C, which must have been prepared previous to the complaint and from which the data therein shown must have been taken, the trial court committed no abuse of discretion in

giving a greater weight to the contents of said document than the contents of the document Exhibit K, which appears to have been prepared during the pendency of this case. Articles 109 and 110 of the Code of Civil Procedure require the court to permit an amendment to the complaint only when a variance exists between the allegation and the proof. In the present case the fact alleged and proven is the amount of 1,187,619 gallons of molasses as produced during the calendar year of 1922 and not the amount of 1,984,098 gallons. Consequently, the trial court did not commit an error in not permitting the amended complaint to be amended so as to allege an unproven fact.

In regard to the sixth and seventh assignments of error, whether it is considered that the total production of the calendar year of 1922 is 1,187,619, or whether it is 1,984,098, the plaintiff has no right to demand payment from the defendants for the difference between the amount of 815,691 gallons of molasses taken by them from the central and the amount of 1,187,619 gallons which they had agreed to take. The vendor threw out 69,920 gallons without having complied with the requirements to give the vendees forty-eight hours' notice to the vendees. The Pampanga Sugar Mills attempted to prove the compliance with this requirement by means of the presentation of copies of letters written to that effect, but did not succeed in doing so satisfactorily. The mere fact of, the letters having been written and signed and later placed in a correspondence basket is not sufficient proof that said letters reached the hands of the addressees, especially when they deny having received them. The cost of the said 69,920 gallons of molasses thrown out cannot therefore be charged to the account of the defendants.

The plaintiff entered into a contract with Carlos Palanca by virtue of which it bound itself to deliver to him all of the molasses in the sugar central of Del Carmen on December 31, 1922, which had been left from the production of 1921-1922, in exchange for alcohol produced in the distillery of Carlos Palanca, at the rate of 60 gallons for every 1,000 gallons of molasses, said Carlos Palanca binding himself to take delivery of 90,000 gallons each month from December 1, 1922 to June 30, 1923. There is evidence that Carlos Palanca took delivery of 90,000 gallons of molasses from the said central which, according to the contract, must have been in December, 1922. If it is considered that the total amount produced in the calendar year of 1922 was no more than 1,187,619 gallons, the amount not disposed of by the plaintiff nor taken by the defendants should be 212,008 gallons. Now then, are the defendants obliged to pay the plaintiff the price of the said remaining molasses? The contract entered into between the plaintiff and the defendants and marked Exhibit A, authorizes the plaintiff to dispose of the portion of the 1,187,619 gallons of molasses not taken either by throwing it away, utilizing it in any manner it may see fit, or by selling it at the current market price all for account of the vendees. . In order that plaintiff may charge the defendants for the 212,008 gallons which appear not to have been taken by them, it must first give an account of the disposition that it might have made thereof, for if they were sold the amount must be credited to the defendants; if they were utilized or thrown away without the necessary notification, the defendants do not have to pay for them. The same thing would be true even when it is considered that the total amount of molasses produced during the calendar year of 1922 was 1,984,098, with the only difference that the 90,000 gallons taken by Carlos Palanca would not effect the amount of 1,187,619 which the defendants obligated themselves to take, but the plaintiff would always be obliged to give an account of what was done with the balance of the 1,187,619 gallons, after deducting the total amount taken by the defendants.

For all of the foregoing and not finding any error in the judgment appealed from, the same is hereby affirmed in all its parts, without any special pronouncement as to the costs. So ordered.

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

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