

E. A WAD, PLAINTIFF AND APPELLANT, VS. FILMA MERCANTILE CO., INC., DEFENDANT AND APPELLEE.*G. R. No. 25950. December 24, 1926*

Ponente: OSTRAND, J.

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Early in the month of September, 1924, the plaintiff, doing business in the Philippine Islands under the name of E. Awad & Co., delivered certain merchandise of the invoice value of P11,140 to Chua Lioc, a merchant operating under the name of Hang Chuan Co. in Manila, said merchandise to be sold on commission by Chua Lioc. Representing himself as being the owner of the merchandise, Chua Lioc, on September 8, 1924, sold it to the defendant for the sum of P12,155.60. He owed the Philippine Manufacturing Co., the sum of P3,480, which the defendant agreed to pay, and was also indebted to the defendant itself in the sum of P2,017.98. The total amount of the two debts, P5,497.98, was deducted from the purchase price, leaving a balance of P6,657.52 which the defendant promised to pay to Chua Lioc on or before October 9, 1924.

The merchandise so purchased on September 9, was delivered to the defendant, who immediately offered it for sale. Three days later D. J. Awad, the representative of the plaintiff in the Philippine Islands, having ascertained that the goods entrusted to Chua Lioc was being offered for sale by the defendant, obtained authorization from Chua Lioc to collect the sum of P11,707 from said defendant and informed the latter's treasurer of the facts above set forth. On September 15, D. J. Awad, in behalf of E. Awad & Co., wrote a letter to the defendant corporation advising it that, inasmuch as the merchandise belonged to E. Awad & Co., the purchase price should be paid to them, to which letter, the defendant, on September 18, 1924, made the following answer:

"Messrs; E. Awad & Co.

"435 Juan Luna, Manila.

"GENTLEMEN: We are in receipt of your letter of September 15, 1924, in which you state that certain blankets and shirts were bought from you by the Chinaman Chua Lioc 'under false pretenses on consignment, basis and in which you say that the merchandise is yours and we should make payment to you for said merchandise. In answer to your letter, we beg to say to you that the blankets and shirts in question, together with other merchandise, were purchased and received by us from the Chinaman Chua Lioc on September 9, 1924, in the ordinary course of business, and that there is now due from us to the said Chinaman a balance of P6,657.52, which is payable on October 9, 1924. In view of these facts, we are unable to comply with your request, and would advise you, in case this Chinaman is indebted to you for said merchandise, to take the necessary steps through the Court to secure the payment of this balance due to him to your firm, inasmuch as if you do not do so, we shall be obliged to pay the balance which we owe for said merchandise directly to him,

"Yours respectfully,

"FILMA MERCANTILE CO. INC."

On the same date, September 18, 1924, the Philippine Trust Company, brought an action, civil case No. 26934,

against Chua Lioc for the recovery of the sum of P1,036.36 and under a writ of attachment garnished the balance due Chua Lioc from the defendant. On October 7, E. Awad also brought an action, civil case No. 27016, against Chua Lioc for the recovery of the sum of P11,140, the invoice value of the merchandise above-mentioned and also obtained a writ of attachment under which notice of garnishment of the aforesaid balance was served upon the herein defendant.

The complaint in the present action was filed on November 26, 1924, the plaintiff demanding payment of the same sum of P11,140 for which action had already been brought against Chua Lioc. The defendant, in its answer, set up as special defense that it bought the merchandise in good faith and without any knowledge whatever of the person from whom or the condition under which the said merchandise had been acquired by Chua Lioc or Hang Chuan Co.; that the defendant therefore had acquired title to the merchandise purchased; that the balance of P6,657.52, now in the hands of the defendant had been attached in the two actions brought on September 18, and October 7, respectively, and garnishment served upon the defendant, who, therefore, holds the money subject to the orders of the court in the cases above-mentioned, but which sum the defendant is able and willing to pay at any time when the court decides to whom the money lawfully pertains.

Upon trial, the court below dismissed the case without costs on the ground that the plaintiff was only entitled to payment of the sum of P6,657.52, but which sum the defendant had the right to retain subject to the orders of the court in cases Nos. 26134 and 27016. From this judgment the plaintiff appealed.

The law applicable to the case is well settled. Article 246 of the Code of Commerce reads as follows:

"When the agent transacts business in his own name, it shall not be necessary for him to state who is the principal and he shall be directly liable, as if the business were for his own account, to the persons with whom he transacts the same, said persons not having any right of action against the principal, nor the latter against the former, the liabilities of the principal and of the agent to each other always being reserved."

The rule laid down in the article quoted is contrary to the general rule in the United States as to purchases of merchandise from agents with undisclosed principal, but it has been followed in a number of cases and is the law in this jurisdiction. (*Pastells & Regordosa vs. Hollman & Co.*, 2 Phil., 235; *Castle Bros., Wolf & Sons vs. Go-Juno*, 7 Phil., 144; *Lim Tiu vs. Ruiz y Rementeria*, 15 Phil., 367.) But the appellant points out several circumstances which, in his opinion, indicate that the defendant-appellee was aware of the condition under which the merchandise was entrusted to the agent Chua Lioc and therefore did not purchase the goods in good faith. This, if true, would, of course, lead to a decision of the case in favor of the plaintiff, but there is, in our opinion, nothing conclusive about the circumstances referred to and they are not sufficient to overcome the presumption of good faith.

The appealed judgment is in accordance with the law and the facts and is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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