

**THE UNITED STATES OF AMERICA, PLAINTIFF AND APPELLANT, VS.
JUAN GISBERT AND RICARDO CABALLERO, DEFENDANTS AND
APPELLANTS. RUIZ, REMENTERIA Y CIA., S. EN C, INTERVENOR AND
APPELL...**

G. R. No. 25954. December 18, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

The complaint alleges that at all the times hereinafter stated, the plaintiff was the owner of the American steamship Lake Farmingdale; that on June 16, 1924, it entered into a contract with the defendant Juan Gisbert for the charter of the steamship for a period of six months, a copy of which is attached to the complaint, marked Exhibit A; that in accord with the terms of the charter-party, and on June 16, 1924, the defendant Juan Gisbert secured and delivered to plaintiff a bond of the Philippine Guaranty Company, in the sum of P20,000 for his faithful performance of the charter-party contract; that pursuant thereto, and on June 16, 1924, the plaintiff delivered to the defendant Juan Gisbert the steamship in question at Olongapo "in seaworthy condition and good repair;" that upon its delivery, Juan Gisbert paid the plaintiff P6,232.50 as charter hire for one month, and the sum of P1,000 as partial payment of the insurance premiums on the vessel, as provided for in paragraph 18 of the charter-party contract; that no other payments have ever been made under the contract; that the vessel in question was sold October 27, 1924; and that at the time of the sale, the charter hire had then accrued in the sum of P27,267.18, together with the insurance in the sum of P4,375; that on July 28, 1924, the defendant Ricardo Caballero deposited with the plaintiff the sum of P20,000 in cash as a guaranty of the performance of the contract by the defendant Juan Gisbert; and that by reason thereof, plaintiff surrendered and cancelled the bond of the Philippine Guaranty Company for a like amount; "that the said sum of P20,000 is now in the possession and control of plaintiff;" that on August 13, 1924, due to the failure of the defendant Gisbert to pay the charter hire and insurance premiums then due, plaintiff notified him that the contract of the charter-party was rescinded, "and thereupon took possession of the said steamship;" that plaintiff, at the instance of Gisbert, caused repairs to be made on the steamship at a cost, of P8,978.33, no part of which has been paid; that in the return of the steamship from Manila to Olongapo, plaintiff incurred expenses amounting to P910.72, and has paid outstanding charges against the ship, incurred by the defendant, in the sum of P44 for rent of signal apparatus for the month of July, 1924, and P79.76 for customs charges; that during the period of Gisbert's possession, equipment of the ship of the value of P200 was used by the defendant; that while in his possession, the defendant Gisbert used fuel oil, which was the property of the plaintiff, of the value of P2,491.44, no part of which has been paid, and payment thereof refused.

Plaintiff prays for judgment against Gisbert in the sum of P34,944.19, with interest and costs, and that the cash bond of P20,000 deposited by the defendant Caballero with plaintiff be applied "in partial satisfaction of the said

judgment," and that it have such further relief as to the court may seem just and equitable.

For answer the defendant Gisbert admits the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 8 of the amended complaint, and specifically denies all other allegations, and as a special defense alleges that any interest which he had as charterer of the steamship was transferred to his co-defendant Ricardo Caballero, as evidenced by a public document executed July 22, 1924, a copy of which is attached to, and made a part of, the pleadings; that in and thereby, the defendant Caballero assumed all the rights and obligations of this defendant, of which the plaintiff had knowledge, and as a counterclaim, he alleges that he acted merely as a captain of the chartered steamer for three months, and that his services were reasonably worth the sum of P500 a month. Wherefore, he prays that, as to him, the complaint be dismissed, and that he have judgment against the plaintiff and the defendant Caballero for P1,500, with interest and costs.

For answer the defendant Caballero makes a specific denial, and as a first special defense alleges that, notwithstanding the provisions in article 18 of the charter-party, there was an agreement that such provisions could not and would not be enforced; that about August 6, 1924, the plaintiff advised the defendant Gisbert to immediately deposit \$40,000 in lieu of a membership by which the plaintiff might be secured, and in accord with the regulations of the American Steamship Owners' Mutual Protection and Indemnity Association; that as a result thereof, this defendant was relieved from all liability as the supposed surety of Gisbert. As a second special defense, it is alleged that the supposed delay in the payment of the freight by the defendant Gisbert was due not only to the requirement made by the United States Shipping Board in connection with the additional security in cash in the sum of \$40,000, but also to a prior agreement had between plaintiff and the defendant Gisbert, pending the arrangement with regard to the controversies between them on account of the \$40,000 in the nature of a bond. As a third special defense, it is alleged that the expenses in connection with the repairs of the ship in the sum of P8,978.33 is not a legal claim and ought not to be charged against either Gisbert or this defendant. As a cross-complaint, the defendant alleges that about July 28, 1924, he deposited with the plaintiff the sum of P20,000, which was then and is now his property, which was the subject of a letter dated September 3, 1924, in which he demanded the return of the money, which was refused, and he prays for judgment absolving him from all liability as surety, and that he is entitled to the possession and return of the P20,000.

In October, 1925, Ruiz, Rementeria & Co., Ltd., filed a bill of intervention in which it is alleged that in June, 1924, the defendant, now the plaintiff, was the owner of the ship in question, and that the defendant Gisbert was the captain, and that this plaintiff was the owner of a grocery store in the City of Manila; that on June 27, 1924, the defendant Gisbert, as captain and master of the vessel, bought on credit from the intervenor provisions for the vessel of the value of P316.10, the amount of which has never been paid, and it prays for corresponding judgment, with costs.

After the evidence was taken upon such issues, the lower court rendered judgment against the defendant Juan Gisbert, as principal, and the defendant Ricardo Caballero, as surety, and in favor of the plaintiff for the sum of P7,232.50, with legal interest from October 29, 1924, and against the defendant Gisbert, and in favor of Ruiz, Rementeria & Co. for the sum of P316.10, and that the plaintiff should return to the defendant Caballero the P20,000 in question, after deducting therefrom the P7,232.50 and interest.

From that judgment, all parties appeal, and in its appeal, the plaintiff assigns the following errors:

"The trial court erred:

"1. In rendering judgment in favor of the plaintiff- appellant for charter hire and insurance premiums upon the vessel Lake Farmingdale, in the sum of P7,232.50 covering one month only, instead of P22,339.94, P19,264.93 for charter hire and P3,075.01 for insurance premiums for three months and two days covering the period July

16, 1924, to October 27, 1924, the date of the sale of the vessel, three months and eleven days, less nine days allowance for the period the vessel was undergoing repair.

"2. In not rendering judgment in favor of plaintiff- appellant for the sum of P8,978.33, the costs of repairs made to the vessel by the owner.

"3. In not rendering judgment in favor of plaintiff-appellant for the sum of P910.72 expenses of returning the vessel to Olongapo; P44 for rent of signal apparatus; P79.76 for customs charges; P200 for equipment used by defendants; P2,491.44 for fuel oil used by defendants, all of which items the court erroneously found were not covered by the stipulation of facts although the same were fully set forth in the statement of account Exhibit C which was admitted by the parties in open court to be corrected as appears on page 5 of the transcript of the stenographic notes of the trial.

"4. In rendering judgment in favor of the defendant Ricardo Caballero for the return of a portion of the cash deposit made by him to guarantee the performance of the terms of said charter party.

"5. In not rendering judgment in favor of plaintiff-appellant for the sum of P34,944.19 and the application of the entire amount of said deposit of P20,000 in partial satisfaction thereof.

"6. In denying plaintiff-appellant's motion for a new trial.

The defendant Gisbert assigns the following errors:

"I. The court below erred in not admitting the special defense and counter-claim of the defendant Juan Gisbert against the defendant Ricardo Caballero for the sum of P1,500, the value of his salaries as captain of the steamship Lake Farmingdale, corresponding to the months of July and August, and a monthly pay for the month of September, 1924.

"II. The lower court erred in not finding that the real charter of the steamship Lake Farmingdale was the defendant Ricardo Caballero."

The defendant Caballero assigns the following errors:

"1. The lower court erred in admitting over the objection of appellant Ricardo Caballero Exhibit B of the United States of America.

"2. The lower court erred in admitting over the objection of Ricardo Caballero the testimony of Juan Gisbert in relation to the existence of a bond or undertaking which had deference to Ricardo Caballero.

"3. The lower court erred in finding that the undertaking for the sum of \$10,000 subscribed by the Philippine Guaranty Company on June 26, 1924, to guarantee the faithful performance by Juan Gisbert of his obligations under the terms of the charter party was substituted by the cash deposit made by Ricardo Caballero.

"4. The lower court erred in finding that Ricardo Caballero assumed the obligations of a surety to the full extent of his cash deposit from the moment the said Ricardo Caballero made said cash deposit of P20,000, and in holding him liable as surety for Juan Gisbert.

"5. The lower court erred in not finding Ricardo Caballero entitled to the full amount of P20,000 instead of adjudicating the said sum of P20,000 less the amount awarded to the plaintiff entity.

"6. The lower court erred in sentencing Ricardo Caballero, as surety, to pay the sum of P7,232.50 with legal interest thereon from October 29, 1924, to the United States of America.

"7. The lower court erred in not finding that there had been a novation of the contract of charter party between the United States of America and Juan Gisbert sufficient under the law to release Ricardo Caballero as alleged bondsman even granting but not conceding that he had assumed responsibility as surety for the charterer.

"8. The lower court erred in not finding that the alleged delay on the part of Juan Gisbert in the payment of the monthly rental was due to a previous arrangement between the owner of the vessel and the charterer thereof, in consequence of which Caballero was relieved from responsibility under a contract of suretyship which we shall assume to have existed.

"9. The lower court erred in not finding that at the time of the alleged violation of the terms of the charter-party by Juan Gisbert, Ricardo Caballero had not yet made the cash deposit of P20,000 and consequently should not be held answerable for Gisbert's default even were we to grant for the sake of argument that Caballero actually assumed the obligations of a surety."

The intervenor-appellant contends that the lower court erred in not sentencing the plaintiff as owner of the vessel Lake Farmingdale and the defendant Juan Gisbert to pay jointly and severally the sum of P316.10, the value of the merchandise furnished the vessel.

JOHNS, J.:

The Bareboat Charter, known in the record as Exhibit A, was duly executed by the plaintiff and the defendant Juan Gisbert.

Among other things, it provides that the steamer shall be delivered at the port of Olongapo, fully equipped in every respect, and in good running order; that it shall be surveyed before delivery, and on its redelivery to determine its condition, and that the cost of such survey on delivery shall be paid for by Gisbert, and that such cost of redelivery shall be paid by the plaintiff; that Gisbert shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of the vessel, and at his own expense shall keep the vessel in good running order and in the same condition as when received, less reasonable wear and tear; that Gisbert shall pay the plaintiff for the use of the steamer at the rate of P1.50 deadweight per ton per month, commencing from the date of its delivery. The defendants shall pay for all fuel and consumable stores on board the ship at the time of the delivery, and the plaintiff shall accept and pay for such fuel and stores left on board at the time of redelivery at current market prices at the ports of delivery and redelivery. The defendant shall have the use of all outfit, equipment and appliances now on board without extra cost, with the exception of the submarine signal apparatus, blinker lights, and radio equipment, which shall be returned to the plaintiff on redelivery in as good a condition as when received, ordinary wear and tear excepted. A complete inventory of the steamer's equipment shall be taken and mutually agreed upon at the time of delivery, and a like inventory at the time of redelivery.

Clause 13 specifically provides that neither the defendant nor the master of the vessel "shall have any right, power, or authority to create, incur, or permit to be imposed upon the steamer any liens whatsoever except for crew's wages and salvage;" that the charterer shall carry a certified copy of this contract in the ship or vessel, subject to inspection by any person having business with the steamer, and further that a notice that the steamer is the property of the Government and is not subject to liens, shall be posted in a conspicuous place.

Among other things, clause 18 provides:

"The charterer shall, at its own expense, fully insure the steamer for owners' account with the Marine Insurance Department, United States Shipping Board Emergency Fleet Corporation, under the form of policy attached hereto and made a part hereof. The owner and/or insurer shall not have any right of recovery or subrogation against the charterer on account of loss of or any damage to the vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the vessel or owner covered by such insurance.—Charterer to pay owner premium at rate of four per cent for six months.

"The charterer shall, at its own expenses, enter the steamer in the American Steamship Owner's Mutual

Protection & Indemnity Association, Inc., and the cover under this association shall be made available to the owner, and the charterer shall furnish to the owner proper evidence of such entries immediately upon the signing of this charter."

It is also provided that at the expiration of the charter period, the vessel shall be redelivered to the owner at Olongapo where it was received, or at Manila at the owner's option, in as good order and condition as when received, ordinary wear and tear excepted.

Clause 24 provides that the submarine signal apparatus, blinker lights and radio equipment, if any, shall be kept and maintained by the defendant Gisbert who assumes all the obligations of the plaintiff under any of its contracts in connection therewith.

Clause 26 provides:

"The charterer shall furnish, before delivery of steamer, a bond in the sum of ten thousand dollars (\$10,000) guaranteeing full performance of its obligations under this Charter."

Clause 30, among other things, provides that:

"If at any time after the delivery of the said steamer to the charterer hereunder, the charterer shall fail to perform any of its duties or obligations or shall violate any of the prohibitions imposed upon it under this charter," that the owner may, without prejudice to any of its legal rights, "withdraw and retake the said steamer, wherever the same may be found."

The vessel was delivered to Gisbert on June 16, 1924, at 6 a. m., and plaintiff seeks to recover rental for the period of four months and eleven and one-fourth days at P1,50 per deadweight ton per month.

June 28, 1924, the defendant Gisbert notified R. C. Morton, the local agent of the U. S. Shipping Board, that he was going to take the vessel to Saigon, and that "I am sorry that I depart without having terminated the P. & I. Insurance, but I believe that before my return the P. & I. Insurance will be fully settled." That letter refers to clause 18 of the charter-party contract.

The evidence shows that Gisbert never complied with that clause of the contract, and that after some negotiations in which he failed to satisfy the authorities as to the insurance, on August 6, the U. S. Shipping Board at Washington cabled its local agent Morton that, in view of the failure of the charterer to meet the charter condition with respect to P. & I. Insurance, the contract is cancelled, and that redelivery of the vessel should be taken. On the strength of that cable, cancelling the contract, redelivery of the vessel was taken on August 16, 1924.

The plaintiff having elected to cancel the contract and to take the redelivery of the vessel, it is now estopped to claim or assert that the contract was thereafter in force, or to collect rental from the date of redelivery.

In plaintiff's Exhibit C, there is an item of P44 for submarine rental. Also a claim for P8,978.33 for repairs made on the vessel at Cavite. For 1,078.3 barrels of fuel oil at P4.20 per barrel amounting to P4,528.86. For equipment found missing after rechecking P200. For inspector and guard service and pier charges P79.76. For expense of returning the ship to Olongapo after its redelivery amounting to P910.72.

We are clearly of the opinion that the amount of P8,978.33 claimed for repairs ought not to be allowed. Such repairs were made on and between June 16 and 24, inclusive. That is to say, immediately after the vessel was delivered to Gisbert, and that he never made any actual use of the vessel until after the repairs were made, and under the terms of the contract, it was to be seaworthy and in good condition. All of the above-mentioned items are covered by, and included in, the contract, and are a valid claim against Gisbert. That is to say, Gisbert should be charged with the rental of the vessel from June 16, 1924, to August 16, 1924, at the agreed price amounting to

P12,465, and the items of P44, P4,528.86, P200, P79.76, P910.72, to which should be added P2,000 for insurance during the life of the contract, making the total amount for which he is liable of P19,958.34. It further appears from Exhibit C that defendant is given and should have credit for the following items: Cash paid on account of charter hire, June 14, P6,232.50; insurance paid to the plaintiff P1,000; time allowance for repairs made on the vessel from June 16 to June 24, inclusive, P1,869.75; corresponding rate on insurance during the period of repairs P299.99; credit for fuel oil returned 485.1 barrels at P4.20 per barrel, P2,037.42, making a total credit to be allowed the defendant from plaintiff's own Exhibit C of P11,439.66. Thus leaving a balance due and owing the plaintiff from Gisbert at the time of the redelivery of the vessel on August 16, of P8,518.66.

The defendant Caballero claims that he is exempt from all liability. That he never signed any bond or any writing in and by which he assumed or agreed to pay any amount found due or owing the plaintiff from the defendant Gisbert under the charter contract. As stated, at the time it was signed, a surety bond for \$10,000 was given under section 26 of the contract, which provides that the charterer shall furnish before delivery of the steamer a bond in that amount "guaranteeing full performance of its obligations under this charter."

It appears that the surety bond was given and surrendered on July 28, at which time Caballero turned over and delivered to the plaintiff P20,000 in cash "to take the place of bond dated June 16, 1924, issued by the Philippine Guaranty Company to cover the faithful performance of all terms and conditions of charter party dated June 16, 1924," and for which a corresponding receipt was issued and delivered to Caballero, known in the record as Exhibit B, which is as follows:

"Received from Mr. Ricardo Caballero the sum of twenty thousand pesos (P20,000) to take the place of bond dated June 16, 1924, issued by the Philippine Guaranty Company to cover the faithful performance of all terms and conditions of charter party dated June 16, 1924, between the United States Shipping Board and Capt. Juan Gisbert for the bareboat charter of the S. S. Lake Farmingdale for six months from date of charter."

It will be noted that in the instant case, plaintiff is not seeking to enforce liability on any bond against the defendant Caballero. What it asks for is to apply from and out of the P20,000, which was delivered to it by Caballero, and which is now in its possession, to the payment and satisfaction of the amount found due and owing from Gisbert to the plaintiff. It is not claimed that Caballero ever signed any bond, or that he is liable on a bond. The sole purpose and intent of the delivery of the P20,000 in cash to the plaintiff was to dispense with, and to take the place of, the bond, and in legal effect that is what it did.

It appears from Morton's receipt, which was delivered to, and accepted by, Caballero, that the P20,000 was to take the place of the bond, and that it was "to cover the faithful performance of all terms and conditions of charter party dated June 16, 1924."

Plaintiff now seeks to apply the money in its actual possession in payment of the damages which it has sustained by reason of a breach and the failure to keep and perform those conditions. Having paid over and parted with his money for that specific purpose, and having accepted the receipt for the money, specifying that purpose, the defendant Caballero is now estopped to claim or assert that he paid over the money for that specific purpose.

We are clearly of the opinion that the plaintiff is entitled to take and apply from the money now in its possession the full amount of its claim against the defendant Gisbert.

As to the intervenor, we also agree with the trial court.

The vessel in question was a Government owned vessel, and it was operated under a lease which specifically provides that it shall be kept free and clear of all charges or liens, except for crew's wages and salvage, and that a notice of that fact should be kept posted in a conspicuous place on the vessel, and that at all times the charterer

should keep a copy of the charter-party among the ship's papers for the inspection of any one dealing with the ship. Under such conditions, the vessel being owned by the U. S. Government, neither the plaintiff nor the ship is liable for supplies in the nature of groceries purchased by the captain for the use of the ship.

There is no merit in the appeal of the defendant Gisbert.

The judgment of the lower court will be modified, and one will be entered here in favor of the plaintiff and against the defendants Juan Gisbert and Ricardo Caballero, the former as principal obligor, and the latter as surety, for the sum of P8,518.66, with legal interest from October 29, 1924, and after the satisfaction of such judgment, the plaintiff is ordered to return to the defendant Caballero any amount which may be left remaining of the P20,000, as evidenced by its receipt of July 28, 1924. In all other respects, the judgment of the lower court is affirmed, without costs to either party on this appeal. So ordered.

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

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