

THE GOVERNMENT OF THE PHILIPPINE ISLANDS AND JOAQUIN NATIVIDAD, PLAINTIFFS AND APPELLEES, VS. CHUA CHO PACK & CO., TOMAS LIAO LAMCO AND LIAO LIECCO, DEFENDANTS AND APPELLANTS.

G.R. No. 26801. August 04, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of Cebu on November 10, 1924. Its purpose was to recover of the defendants the sum of P41,852.62, representing the aggregate amount of eight bonds (Exhibits A-1 to H-1) executed in favor of the Government of the Philippine Islands by the above-named defendants. The defendant Chua Cho Pack & Co. signed the bonds as principal and the other two defendants as sureties. Chua Cho Pack & Co. was a commercial partnership, with its principal office in the City of Manila, and with a branch office in Cebu.

Said bonds were executed in order to enable Chua Cho Pack & Co. to get certain merchandise from the customhouse of Cebu without the production of the bills of lading. The merchandise had been ordered from Japan by E. L. Tusing, manager of the Cebu branch of the firm. The condition of said bonds was that the obligors shall produce the bills of lading at the time specified, or otherwise, shall pay to the Government the amount of said bonds. The merchandise was delivered by Joaquin Natividad, Collector of Customs of Cebu, to Chua Cho Pack & Co. The defendants failed to produce the bills of lading during the period stipulated.

After said merchandise had been delivered, the American Express Co., holder of the bills of lading for said merchandise, filed an action in the Court of First Instance of Manila against Joaquin Natividad in order to recover the value of said merchandise. Judgment was rendered in favor of the American Express Co. for the sum of P43,131.78, which was affirmed on appeal by the Supreme Court on September 25, 1924 (Exhibit J)[1]. Said judgment still remains unsatisfied. The present action was brought in order to enforce the above-mentioned bonds and to indemnify Joaquin Natividad for his pending liability to the American Express Co. resulting from the delivery of the merchandise to Chua Cho Pack & Co.

The defendants set up the following defenses: (1) That the bonds were not executed in accordance with the law; (2) that the defendant Tomas Liao Lamco signed the bonds, not in his individual capacity, but as agent of Tomas Liao Lamco & Co., in excess of his powers as such agent and contrary to express instructions given to him; (3) that the defendant Liao Liecco could not be bound on said bonds, inasmuch as the agent Liao Seng Wan who signed said bonds was not authorized to sign, for Liao Liecco, bonds of that nature and in so signing has acted beyond his powers; and (4) that the Government of the Philippine Islands has no interest in this case and is without right to bring this action jointly with the plaintiff Natividad.

Upon the issue joined, judgment was rendered for the plaintiffs for the sum of P41,850.62, to be paid to the Insular Government, primarily by Chua Cho Pack & Co. and subsidiarily by Tomas Liao Lamco and Liao Liecco.

The judgment further provided:

" * * * el Gobierno Insular entregara, a su vez, dicha cantidad (P41,850.62) a The American Express Company y los demandados pagaran los intereses legales de la misma desde la presentation de la demanda; la responsabilidad del Sr. Joaquin Natividad en virtud de la sentencia dictada contra el y a favor de The American Express Company quedara extinguida en la proporcion pagada por el Gobierno Insular a The American Express Company, y se condena, ademas, a los demandados al pago de las costas del juicio."

From said judgment the defendants appealed, and now contend that the lower court committed an error:

- (1) In holding Chua Cho Pack & Co. responsible for the payment of said merchandise;
- (2) In holding that the bonds in question were executed according to law and were duly signed by the defendants;
- (3) In holding that the Liao Seng Wan was authorized to sign the bonds in question for the defendant Liao Liecco, and that Liao Liecco was responsible on the bonds;
- (4) In holding that Tomas Liao Lamco signed said bonds personally and not as agent of the firm Tomas Liao Lamco & Co.; and
- (5) In holding the defendant liable to the Insular Government for the sum of P41,850.62.

It is contended in the first assignment of error that Chua Cho Pack & Co. should not be held responsible for the payment of said merchandise in view of the fact that said merchandise had been ordered directly from Japan by the manager of the Cebu branch of the firm, in violation of the express instructions of the Manila office. This contention is not well taken. The question here is not the payment to the vendor of the purchase price of said merchandise. The question is the liability of Chua Cho Pack & Co. on its bonds, executed in favor of the Government of the Philippine Islands for the purpose of taking possession of said merchandise without the surrender of the bills of lading. Said bonds having been duly executed by the agent of the firm and the conditions thereof not having been complied with, the firm cannot escape its liability thereon.

As to the due execution and formalities of the bonds, and the authenticity of the signatures thereon, a careful examination of said documents shows that they were signed for Chua Cho Pack & Co., as principal, by its agent E. L. Tuising, and by Tomas Liao Lamco and Liao Liecco as sureties. It is contended that Tomas Liao Lamco signed the bonds, not in his personal capacity, but as agent or representative of Tomas Liao Lamco & Co. This contention is not supported by the record. The evidence is conclusive that Tomas Liao Lamco signed the bonds in his personal and individual capacity. He is therefore personally liable thereon. The record also shows that the bonds were properly ratified and acknowledged before the proper officer of the customhouse of Cebu.

With reference to the third contention of the appellants, as noted above, that Liao Seng Wan was not authorized to execute in the name of Liao Liecco the bonds here in question and that Liao Liecco cannot be held responsible thereon, an examination of the record shows that Liao Seng Wan was a duly appointed agent or representative of Liao Liecco, as shown by Exhibit C. Under paragraph 24 of said Exhibit C, Liao Seng Wan was not authorized to execute bonds of the nature of those here in question. He was limited by said paragraph to execute judicial bonds when necessary for the interest of the business of his principal. ' Said paragraph 24 reads as follows:

"24. Para que cuando sea necesario para los intereses de mis negocios y bienes, presten ante los tribunales de justicia todas las fianzas y garantias previstas por la Ley, a favor de cualquiera persona o casa comercial gravando con la fianza que asi suscribieran, todos o parte de mis bienes existentes en las Islas Filipinas."

However, a careful examination of the evidence shows that, in practice, paragraph 24 of Exhibit C has not been followed by Liao Seng Wan nor enforced by Liao Liecco. The eight bonds here in question (Exhibits A-1 to H-1)

were executed during the period from November 8, 1920 to May 18, 1921. Within, that period, or from January 14, 1921 to May 3, 1921, Liao Seng Wan executed fifteen other bonds (Exhibit M) of exactly the same nature, in the name of his principal Liao Liecco. The Collector of Customs of Cebu also accepted said bonds. The execution of a total of twenty-three bonds during so short a period (November 8, 1920 to May 18, 1921), without any objection on the part of Liao Liecco, tends to show that the execution of bonds of that nature was in conformity with the business practice of Liao Seng Wan as agent and representative of Liao Liecco, and was tacitly tolerated and sanctioned by the latter. Consequently, Liao Liecco is now estopped from invoking said paragraph 24 in his favor in order to escape liability on the bonds executed by his agent, in conformity with business practice. The lower court committed no error, therefore, in holding Liao Liecco liable on the bonds in question.

It is also contended that the Insular Government not having suffered any damage on account of the delivery of said merchandise, in view of the fact that Joaquin Natividad was held personally liable to the American Express Co. for said delivery, the defendants cannot be held responsible to the Insular Government on said bonds. It is true that the Insular Government suffered no damage calling for indemnity on said bonds. It may be said, however, that the Insular Government or the Government of the Philippine Islands in this action is merely a nominal party. It was included as plaintiff simply because the bonds which constituted the basis of this action were executed in favor of the Government of the Philippine Islands, even though, to all intents and purposes, said bonds were executed in favor of Joaquin Natividad as Collector of Customs of Cebu for his protection and indemnity. Section 1316 of the Administrative Code explains the nature, purpose and effect of bonds of this kind, as follows:

"SEC. 1316. Delivery of merchandise without production of bill of lading.—When a collector of customs delivers merchandise without the surrender of the proper bill of lading, he may protect himself from any liability to the rightful holder of the bill by requiring the person to whom delivery is made to execute a sufficient bond in an amount greater than the invoice, or manifest, or in the absence of both, greater than the appraised value of the merchandise. Such bond shall run to the Government of the Philippine Islands, for the benefit of whom it may concern, and shall be conditioned for the production of the proper bill of lading or for the satisfaction of any damages occasioned to its lawful holder by reason of wrongful delivery."

In the judgment appealed from the defendants were held liable to the Government of the Philippine Islands or Insular Government, also nominally, when, as a matter of fact, they were held liable to Joaquin Natividad. As quoted above, said judgment provided that the amount to be recovered from the defendants shall be delivered to the American Express Co. in order to extinguish the liability to said company of Joaquin Natividad resulting from the wrongful delivery of the merchandise."

In view of all of the foregoing, the judgment appealed from should be and is hereby affirmed, with costs. So ordered.

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

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