

LA FABRICA DE CERVEZA DE SAN MIGUEL, PLAINTIFF AND APPELLEE, VS. ABELARDO HIZON ET. AL., DEFENDANTS AND APPELLANTS.

G.R. No. 27957. February 17, 1928

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the City of Manila on the 16th day of July, 1925. Its purpose was to recover of the defendants the sum of P14,052.16 for "Royal Soft Drinks" and beer furnished by plaintiff to the defendant Abelardo Hizon as its agent. The other defendants were included, as sureties of said Abelardo Hizon.

The defendants Abelardo Hizon, Cayetano Arnedo, Atanacio Mercado, Soledad Mercado and Felino Hizon filed a demurrer on the ground of ambiguity and insufficiency of facts to constitute a cause of action, which demurrer was overruled. All of the defendants answered, denying generally and specifically each and every allegation of the complaint. Abelardo Hizon in his amended answer alleged, by way of special defense and counterclaim, (a) that should a liquidation of the transactions between him and the plaintiff be made, the result would be a credit in his favor and against the plaintiff in the sum of P559.38, plus the sum of P550 for containers returned by him to the plaintiff and (b) that he suffered damages in the sum of P25,000, arising from the termination of his agency by the plaintiff, without reasonable cause and in violation of the terms of their contracts; and prayed for a judgment against the plaintiff for said amounts.

Upon the issue raised by the above pleadings, the cause was brought on for trial before the Honorable C. A. Imperial, judge, on the 25th day of February, 1926. After hearing the principal witness for the plaintiff, by agreement of the parties, the court appointed Mr. Vicente Fabella, a public accountant residing in the City of Manila, as referee "con facultades para recibir las pruebas que las partes y sus abogados presenten."

The trial was continued before the referee, at the conclusion of which and pursuant to a stipulation, the parties presented their written "statements" in support of their respective claims. After a consideration of the evidence adduced during the trial and the said written "statements," on September 10, 1926, the referee submitted his report to the court, in which he arrived at the conclusion that the defendant Abelardo Hizon was indebted to the plaintiff in the sum of P12,586.62. As to the liability of the other defendants, the referee says in his report:

"(d) Los Exhibits H, I, J y K establecen de que los otros demandados nan prestado fianzas solidariamente con el obligado principal, Abelardo Hizon, y que dichas fianzas han sido prestadas en las formas y cantidades siguientes: por Cayetano Arnedo y Soledad Mercado solidariamente hasta la cantidad de tres mil pesos (Exhibit H); por Atanacio Mercado y Graciana Mercado hasta la cantidad de dos mil pesos garantizada con primera hipoteca de cierto terreno a favor de la San Miguel Brewery (Exhibit I); por Tiburcio Mercado y Felino Hizon solidariamente hasta la cantidad de seis mil pesos (Exhibit J); y, por Porfirio Espinosa y Chua Uy Kioc solidariamente hasta la cantidad de tres mil pesos (Exhibit K); cuyas fianzas ascienden a un total de catorce mil pesos."

By permission of the court, on October 27, 1926, the defendant Abelardo Hizon filed a long memorandum in which he contested various items allowed by the referee in favor of the plaintiff and against the defendant. On November 15, 1926, the Honorable C. A. Imperial, judge, rendered a judgment, based on the report of the referee, in favor of the plaintiff and against the defendants for the sum of P12,586.62, ordering the defendant Abelardo Hizon, as principal, and the other defendants as sureties, to pay jointly and severally to the plaintiff the said sum of P12,586.62 with legal interest from the date of the filing of the complaint, and costs.

By reason of several motions for reconsideration and new trial filed by the attorneys for the defendants, the court on December 28, 1926, set aside its decision of November 15, 1926, and issued the following order:

"Con el fin de que las partes y sus respectivos abogados tengan oportunidad de discutir ampliamente el informe por escrito presentado por el arbitro (referee) nombrado se deja sin efecto la decision dictada en el asunto con fecha 15 de noviembre de 1926, y se senala a vista el referido informe del arbitro para el 8 de enero de 1927, a las 8.30 a. m., en cuya fecha y hora los abogados de todas las partes interesadas compareceran y expresaran sus puntos de vista acerca de dicho informe."

On January 11, 1927, after a consideration of said motions for reconsideration and new trial, the court, finding that said motions were, without merits, revived its judgment of November 15, 1926, above stated. From said judgment the defendants appealed.

Appellant Abelardo Hizon now contends that the lower court committed an error (a) in overruling his demurrer and (b) in not allowing his counterclaim for alleged damages arising from the closing of his agency. He also makes other assignments of error in which he contends that such and such amounts or items should not have been charged against him.

The other appellants contend, in substance, that the lower court committed an error—

- (a) In not absolving them from all liability under the complaint;
- (b) In not holding that they were jointly and severally liable with the appellant Abelardo Hizon only to the extent of their respective bonds;
- (c) In holding them liable for obligations contracted by Abelardo Hizon prior to the execution of their bonds; and
- (d) In not giving them an opportunity to present their proof in support of their objection to the report of the referee.

It appears from the record that the defendant Abelardo Hizon had been acting as agent for the plaintiff for the distribution and sale of "Royal Soft Drinks" and beer in the Province of Tarlac and in some of the towns of Nueva Ecija and Pangasinan, from 1922 to 1925 under the terms of "cartas-contratos" dated December 29, 1922, December 29, 1923 and December 29, 1924; July 9, 1923 and July 9, 1924; December 11, 1923 and December 11, 1924 (Exhibits A to G). It was provided in said contracts that "la San Miguel Brewery se reserva el derecho de cancelar este contrato en cualquier tiempo durante el mencionado periodo si hay suficiente motivo para ello, a fin de proteger los intereses de esta Fabrica."

Under the terms of said contracts and pursuant to the practice of the plaintiff, the defendant Abelardo Hizon as agent, was to have an account with the plaintiff, on which will be debited the prices of all products ordered by him at the time of their shipment. Credits will be taken on said account for remittances made by the agent as well as for the return of containers (cases and bottles) and also for commissions, discounts and freight (Exhibits A to G).

To guarantee the performance of his obligations with the plaintiff, the defendant Abelardo Hizon jointly and severally with his codefendants executed and delivered in favor of the plaintiff four bonds as follows:

Exhibit H, by Abelardo Hizon, as principal, and Cayetano Arnedo and Soledad Mercado as sureties, solidariamente, for the sum of P3,000.

Exhibit I, by Abelardo Hizon, as principal, and Atanacio Mercado and Graciana Mercado, as sureties, solidariamente for the sum of P2,000;

Exhibit J, by Abelardo Hizon, as principal, and Felino Hizon and Tiburcio Mercado, as sureties, solidariamente, for the sum of P6,000; and

Exhibit K, by Abelardo Hizon, as principal, and Porfirio Espinosa and Chua Uy Kioc, as sureties, solidariamente, for the sum of P3,000.

In June, 1925, by reason of the failure of Abelardo Hizon to comply with his obligations with the plaintiff in regard to payment of his accounts, the agency was closed by the plaintiff with the acquiescence of the defendant Abelardo Hizon (Exhibit B-1). At that time he was behind in his accounts with the plaintiff in the sum of P13,613.32 as follows:

Statements of Accounts

Exhibit L

Exhibit M

Exhibit O

P2,919.63

Exhibit P

4,949.66

Exhibit Q

509.50

Exhibit R

575.40

Exhibit S

834.90

Exhibit T

Exhibit U

1,885.39

Exhibit V

914.24

Exhibit W

893.60

Exhibit X

131.00

Balance against Abelardo Hizon

13,613.32

The defendant Abelardo Hizon presented documentary evidence only, through the attorney for the plaintiff, consisting of Exhibits 1, 2, 3, and 4. The intent and purpose of said exhibits not having been explained during the trial, and the same not being self-explanatory, we are at a loss to appreciate their full evidentiary value. According to the record said exhibits "hacen referencia segun el (Abelardo Hizon) a los Exhibits L a X." The other defendant presented no evidence whatsoever.

In connection with said Exhibits 1 to 4 of the defendant, the plaintiff further presented Exhibits C-1 to F-1 and, with said exhibits, explained in detail the correctness of the items or amounts questioned by the defendant in his Exhibits 1 to 4.

The referee, after a careful consideration of the evidence adduced during the trial and of the written arguments or "statements" filed by the parties pursuant to a stipulation between them, found that certain objections or "reparos" made by the defendant Abelardo Hizon in his written argument, should be sustained and, accordingly, reduced the claim of the plaintiff from P13,613.32 to P12,586.62 as follows:

Exhibit O reduced from P2,919.63 to

2,857.11

Exhibit P reduced from 4,949.66 to
4,043.28

Exhibit S reduced from 834.90 to
827.10

Exhibit U reduced from 1,885.39 to
1,835.39

Exhibit Q as claimed by plaintiff
509.50

Exhibit R as claimed by plaintiff
575.40

Exhibit V as claimed by plaintiff
914.24

Exhibit W as claimed by plaintiff
893.60

Exhibit X as claimed by plaintiff
131.00

Total
12,586.62;

which is the amount allowed by the lower court in favor of the plaintiff and against the defendants jointly and

severally.

It is now contended on behalf of the appellant Abelardo Hizon that the lower court committed an error in overruling his demurrer and in not allowing his counterclaim for alleged damages arising from the cancellation by the plaintiff of his contracts as agent.

The demurrer was without merits. It was based on the grounds of ambiguity, and insufficiency of facts to constitute a cause of action. Such alleged defects are not found in the complaint. The claim for damages is without any foundation whatever. In the first place no evidence of damages was produced during the trial; and, besides, his contracts as agent were cancelled by the plaintiff by reason of his failure to comply with his obligations. The contracts themselves specifically reserved to the plaintiff the right so to do, as stated above. Furthermore, he agreed to the cancellation of said contracts. (See Exhibit B-1.)

It is also contended on behalf of Abelardo Hizon that the item for ice and tumblers, amounting to P1,079, should not have been allowed in favor of the plaintiff, inasmuch as the contracts on which he was sued refer exclusively to "Royal Soft Drinks" and beer. The evidence shows, however, that there was an oral understanding between him and the plaintiff, that if this article (ice) were not paid in cash, the same would be charged on his account or else deducted from his remittances. Therefore, the inclusion of that amount in the judgment is not an error. Counsel specify in his brief twenty-three other items, contending that the same should not have been allowed by the lower court. In answer to this contention it may be said that after a careful examination of the evidence we are satisfied that a preponderance of the same shows that the items were a proper charge on the accounts of the defendant.

The first contention of the other appellants, as above stated is, that the court erred in not absolving them from all liability under the complaint. It is argued that the obligation of the appellants, as sureties for Abelardo Hizon, was extinguished in view of the fact that the contracts of Abelardo Hizon with the plaintiff had been renewed without their consent or knowledge. This contention cannot be sustained. The bonds executed by the sureties contained the following proviso: "Entendiendose que esta obligacion de fianza subsistira durante cualquier prorroga o renovacion de todos o cualquiera de los contratos arriba mencionados." Therefore the renewal of the contracts did not extinguish the liability of the sureties on their bonds.

The second contention of the appellants is, that under the terms of their bonds they are liable severally with Abelardo Hizon, only to the extent of the amounts specified in the bonds and not for the total liability of Abelardo Hizon as held by the trial court. We have carefully examined the bonds and, under the terms thereof, we agree with the appellants that their liability to the plaintiff is limited only to the amounts specified in their respective bonds. The pertinent portions of said bonds, showing the extent of the liability of the sureties, are as follows:

"Exhibit H

"Por tanto, nosotros Abelardo Hizon como obligado principal, Cayetano Arnedo y Soledad Mercado, como fiadores nos obligamos solidariamente a favor de la San Miguel Brewery por los saldos deudores de las cuentas que dicho Abelardo Hizon contraiga o haya contraido con la San Miguel Brewery hasta la referida cantidad de tres mil pesos (P3,000) segun los terminos de las cartas-contratos reseñadas, a cuyo pago nos obligamos por nosotros y por nuestros herederos y sucesores.

"Exhibit I

"Por cuanto, dicho D. Abelardo Hizon y la San Miguel Brewery han convenido en que dicho credito de diez mil pesos (P10,000) as como todas las demas obligaciones contraidas por el Sr. Hizon en los mencionados contratos, esten garantizados con varias fianzas por un valor total de diez mil pesos (P10,000), y que de esta cantidad, dos mil pesos (P2,000) esten garantidos con hipoteca sobre ciertos inmuebles por uno o dos fiadores;

"2. Esta hipoteca la otorgan Don Atanacio Mercado y Da. Graciana Mercado con el fin de garantizar el pago de las cuentas que dicho D. Abelardo Hizon contraiga a la San Miguel Brewery hasta la cantidad de dos mil pesos (P2,000), etc.

"Exhibit J

"Por cuanto, dicho Agente (Abelardo Hizon) esta obligado a prestar fianza, adicional a las otorgadas hasta la fecha, a satisfaccion de la San Miguel Brewery por los saldos deudores de las cuentas expresadas en el parrafo anterior, hasta la suma de seis mil pesos (P6,000);

"Por tanto, nosotros, Abelardo Hizon como obligado principal y Felino Hizon de San Fernando, Pampanga y Tiburcio Mercado de Mayantoc, Tarlac como fiadores, nos obligamos solidariamente a favor de San Miguel Brewery por el saldo deudor de las cuentas antes expresadas, etc.

"Exhibit K

"Por cuanto, dicho Agente esta obligado a prestar fianza adicional a las otorgadas hasta la fecha, a satisfaccion de la San Miguel Brewery por los saldos deudores de las cuentas expresadas en el parrafo anterior, hasta la suma de tres mil pesos (P3,000);

"Por tanto, nosotros, Abelardo Hizon como obligado principal y Poriirio Espinosa, de Tarlac, Tarlac, y Chua Uy Kioc de Tarlac, Tarlac, como fiadores, nos obligamos solidariamente a favor de San Miguel Brewery por el saldo deudor de las cuentas antes expresadas, etc."

From the above-quoted portions of the bonds, it clearly appears that the liability of the sureties is limited to the respective amounts therein specified. Therefore, that part of the judgment, holding them jointly and severally liable with Abelardo Hizon for the latter's total obligation to the plaintiff in the sum of P12;586.62, should be modified.

It is also contended that Exhibit I is not a bond, but a mortgage on a parcel of land situated in Pampanga, and that the judgment of the court, in so far as it affects said alleged mortgage, is null and void. A reading of said Exhibit I shows that even though it is designated in the body of said document as "hipoteca" its spirit, intent and purpose is that of a bond. The parties who signed said document executed the same, having in mind that it was a bond and not a mortgage. They signed the document as follows:

"ABELARDO HIZON

"Obligado Principal

"GRACIANA MERCADO

"Fiadora

"ATANACIO MERCADO

"Fiador"

If the parties intended the document to be a mortgage, only Graciana Mercado and Atanacio Mercado would have signed the same as "mortgagors," and Abelardo Hizon would not have signed the same, inasmuch as he did not have any right, interest or participation in the land described in the document. Therefore, the contention of counsel cannot be sustained.

Counsel also contends that the lower court erred in holding the defendants liable for obligations contracted by

Abelardo Hizon prior to the execution of their bonds. This contention is without any foundation altogether. Under the terms of the bonds the sureties bound themselves to answer for "Los saldos de las cuentas que dicho Abelardo Hizon contraiga o haya contraído," under his contracts as agent for the plaintiff.

In the last assignment of error counsel contends that the lower court did not give the defendants an opportunity to present evidence in support of their objections to the report of the referee.

This contention is not supported by the record. As above stated, counsel for Abelardo Hizon, by permission of the court, filed a memorandum contesting various items which had been allowed by the referee in favor of the plaintiff. In said memorandum counsel specified all of the items objected to, with his reasons for so objecting. The trial judge rendered his decision after considering all of the evidence, the report of the referee and the defendants' objections thereto. And not only that, but in order to give full and complete justice to the defendants, the court in its order of December 28, 1926, above quoted, set aside its decision and set the cause for further hearing on January 8, 1927, with special reference to the report of the referee. By reason of the failure of the attorneys for the defendants to appear, and after considering their motion for reconsideration and new trial, the court on January 11, 1927 revived its decision of November 15, 1926, and reproduced the same by incorporating at the beginning thereof the following paragraphs:

"La decision dictada en este asunto el dia 15 de noviembre de 1926 se dejo sin efecto, por orden dictada el 28 de diciembre de 1926, para dar oportunidad amplia a los abogados de todas las partes interesadas de discutir los meritos del informe por escrito presentado por el arbitro que ha sido nombrado por convenio de todas dichas partes.

"En la vista de dicho informe del arbitro comparecio el abogado Marcial Cordero, en representation del codemandado Abelardo Hizon, y en el escrito que ha presentado aparecen los fundamentos que se alegan para que dicho informe sea desaprobado, se conceda reapertura de juicio y que se dicte despues sentencia a favor de dicho demandado. El abogado de los otros demandados en vez de puntualizar sus objeciones contra el informe, sometió una moción por escrito solicitando transferencia de vista de dicho informe. Esta petition se ha denegado, por no estar bien fundada. Ninguno compareció por el abogado de la entidad demandante.

"Los meritos del asunto no han cambiado enteramente, y las conclusiones de hecho y de derecho expuestas en la decision dictada el 15 de noviembre de 1926 deben ser mantenidas. El informe del arbitro, con sus conclusiones, esta enteramente de acuerdo con los hechos y esta sostenido por las pruebas presentadas por todas las partes y esta fundado en la ley."

From the foregoing it appears that the defendants were given every opportunity to present evidence in support of their objections to the report of the referee. The assignment of error, that the defendants did not have their day in court, is without any foundation.

In accordance with all of the foregoing, we are of the opinion that the judgment appealed from should be and is hereby modified. Therefore, Abelardo Hizon is hereby, sentenced to pay to the plaintiff the sum of P12,586.62; and his codefendants, as sureties, are hereby sentenced to pay to the plaintiff, jointly and severally with Abelardo Hizon, the proportional parts of said sum as may be covered by the amounts of their respective bonds. In all other respects, the judgment appealed from is hereby affirmed, with costs. So ordered.

Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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