

MARIA LOPEZ Y VILLANUEVA, PLAINTIFF AND APPELLANT, VS. TAN TIOCO, DEFENDANT AND APPELLEE.

G.R. No. 2827. October 03, 1907

Ponente: CARSON, J.

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CARSON, J.:

This is an action to recover 22,684.94 pesos, Mexican currency, balance due on account. The only item of the account in dispute is the price at which 7,713.99 piculs of sugar should be charged to the defendant and appellee, and credited to the plaintiff and appellant.

Maria Lopez, the plaintiff, alleges that she entered into a verbal contract with the defendant to deliver to him certain sugar, which he obligated himself to store in Iloilo until he received instructions from her to sell, whereupon he was to credit her account with its market value in Iloilo on the day upon which such instructions were communicated to him; that in accordance with the terms of the agreement she delivered to the defendant 7,713.99 piculs of sugar; that she gave instructions to sell on the 29th of September, 1904; that on the 29th day of September, 1904, the market value of the sugar she thus delivered was as follows: 1,085.13 piculs of No. 1, at 5.35½ pesos, Mexican currency; 1,741.56 piculs of No. 2, at 5.12½ pesos, Mexican currency; 4,823.67 piculs of No. 3, at 4.87½ pesos, Mexican currency; 16.23 piculs of la clase humeda, at 3.37½ pesos, Mexican currency; and 47.40 piculs of corriente, at 3 pesos, Mexican currency; that had the sugar been sold on the 1st of December, 1904, the date on which the complaint was filed, it would have brought a still higher price, and that crediting her with the market value of the sugar on the 1st day of December, 1904, the balance due on account would be 22,638.94 pesos, Mexican currency.

The defendant, Tan Tioco, admits the truth of the foregoing allegations, but insists that he received authority to sell the sugar on the 26th of March, 1904, when the market price in Iloilo was much lower than on the 29th of September, 1904, or the 1st of December, 1904, and that crediting the plaintiff with the market value of the sugar as of the 26th of March, 1904, the balance due the plaintiff would amount to but 1,082.95 pesos, Mexican currency, which he admits he is indebted to her in accordance with the terms of their agreement.

The trial court was of opinion that the evidence sustained the contention of the defendant, and gave judgment in favor of the plaintiff for 1,082.95, which the defendant admitted to be due on account. From this judgment the plaintiff appeals and prays that the judgment of the trial court be reversed and that judgment be rendered in her favor for the balance due, after crediting the plaintiff with the market value of the sugar as of the day of the filing of the complaint.

The plaintiff positively denies the defendant's allegation that she had given him authority to sell the sugar on the 26th of March, 1904. There is a direct conflict in the testimony as to this point. The defendant affirms, the plaintiff denies, and, other than their contradictory statements, there is no satisfactory evidence in the record upon which to base a finding.

The defendant, in corroboration of his statements, called a witness who declared that on the 26th day of March,

1904, he was an employee of the firm of Smith, Bell & Co., in whose godown the sugar was stored; that he was sent by his employer to tell Tan Tioco "to come to the office to fix up his account;" that Maria Lopez was in Tan Tioco's office when he arrived; that he heard Tan Tioco tell her in Visayan that he, the witness, was an employee of Smith, Bell & Co., who had come to hurry the defendant in the settlement of his accounts; that he waited for Tan Tioco, and in their conversation heard Maria Lopez say, "Very well, I leave it to you;" that thereupon Tan Tioco said to the witness, "Go back and tell them that I will come up to-day;" that this was the only part of the conversation which he overheard. It is somewhat remarkable that this witness was able to overhear or understand no more than half a dozen words, which the defendant, who called him, appears to imagine were the vital words necessary to corroborate his statement; but granting that he did, in fact, overhear the plaintiff say what he says she said, it is impossible for us to say that these words were used in reference to the sugar in question, or that they conveyed authority to the defendant to sell the sugar, unless we believe the statement of the defendant, whose veracity is in question.

The defendant also called Silverio Hinojales, one of his employees, who stated that in the month of February, 1904, he "went to the house of Maria Lopez by order of Tan Tioco, and told her that Tan Tioco was asking for an arrangement of her accounts;" that late in the month of March he went again to the house of Maria Lopez and informed her "that the sugar which had been deposited had been sold to Smith, Bell & Co., at the rate of 4.375 pesos per picul for No. 1, and 4.12½ pesos per picul for No. 2;" that when he informed her of that fact "she didn't say anything; she said she would go down to the office of Tan Tioco." While it may be true, as claimed by the defendant, that he was anxious to have the sugar sold on the 26th day of March, and that he requested the plaintiff on various occasions to authorize him to make such sale, and that he notified her that the sale had actually been made, these facts in no wise tend to prove that Maria Lopez did, in fact, grant him the authorization which, as he alleges, he so urgently importuned.

The plaintiff, in support of her contention, produced the receipts issued by the defendant for the delivery of the sugar, and her counsel insists that the mere fact that these receipts were in her hands at the time of the trial, and had not been delivered to the defendant, was sufficient to establish her contention that she had never given the defendant authority to sell. Since the defendant alleges that this authority was granted verbally, and that it was understood that after the sale had been made there was to be a settlement of accounts which did not take place because the plaintiff refused to come to the office for that purpose, we do not think that the possession of these receipts casts very much light upon the disputed point.

As stated before, the relevant testimony in this case substantially amounts to the unsupported statement of the defendant that authority was granted him to sell the sugar on the 26th day of March, 1904, and the unsupported denial of the plaintiff. It becomes important, therefore, to ascertain upon whom rests the burden of proof as to this point.

Section 297 of the Code of Civil Procedure is as follows:

"Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document the custody of which belongs to the opposite party."

This provision is practically the same as the rule embodied in the maxim *semper necessitas probandi incumbit illi qui agit*.

Under the terms of the agreement the plaintiff would be entitled to a judgment upon proof of the allegations in her complaint. The defendant practically admits the truth of these allegations, but in his defense sets up new matter by

way of an affirmative allegation, and it is therefore his duty to support this allegation by a preponderance of evidence.

"The reason that he who alleges himself to be the creditor of another is obliged to prove the fact of agreement upon which his claim is founded, when it is contested; and that, on the other hand, when the obligation is proved, the debtor who alleges that he has discharged it is obliged to prove the payment, is clearly one of those propositions in which every system of jurisprudence must concur in general, whatever particular rules may be adopted, as to the mode and form of the allegations by which the necessity of such proof is to be determined." (2 Evans' Pothier, 143, 144.)

We are of opinion that there is not a preponderance of proof in the record in support of the defendant's affirmative allegation, and that the judgment of the trial court should be reversed.

Counsel for the plaintiff and appellant contend that the sugar in question should be credited at its market value on the day when the complaint in this action was filed, and not at its market value on the day when instructions to sell were first communicated to the defendant.

This contention is not well founded. Article 1100 of the Civil Code, in which counsel appears to rely, prescribes that:

"Persons obliged to deliver or to do something are in default from the moment when the creditor demands the fulfillment of their obligation, judicially or extrajudicially."

Under the terms of the contract, which is the basis of the plaintiff's cause of action, her account was to be credited with the market value of the sugar on the day when the authority to sell was first communicated to the defendant. Neither the law nor the contract imposed the obligation upon the plaintiff to make judicial rather than extrajudicial demand for the sale of the sugar. She did, in fact, make an extrajudicial demand, and it is the defendant's default in complying with this demand which entitles her to relief in this action.

The market value of the 7,713.99 piculs of sugar in question on the 29th day of September, 1904, estimated upon the basis alleged in the complaint and proven at the trial, was 38,470.43 pesos, Mexican currency, and this, together with the sum of 12,000 pesos, Mexican currency, on the credit side of the plaintiff's account, which is not in controversy, amounts to 50,470.43 pesos, Mexican currency; deducting therefrom 41,757.90 pesos, Mexican currency, the amount of the advances made by the defendant to the plaintiff, the balance in favor of the plaintiff and for which judgment should be given amounts to 8,712.53 pesos, Mexican currency.

After twenty days let judgment be entered reversing the judgment of the trial court, and ten days thereafter let the record be returned to the trial court, where judgment will be entered in favor of the plaintiff for the equivalent in Philippine currency of 8,712.53 pesos, Mexican currency, with interest at the legal rate from the date of the filing of the complaint as prayed therein, and without especial condemnation of costs in this instance. So ordered.

Torres, Willard, and Tracey, JJ., concur.

Arellano, C. J., and Johnson, J., dissent.

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