

HERRANZ & GARRIZ, PLAINTIFFS AND APPELLEES, VS. KER & COMPANY, DEFENDANTS AND APPELLANTS.

G.R. No. 3131. March 25, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This is an appeal taken by the defendants from a judgment of the Court of First Instance of the city of Manila, wherein the defendant, Ker & Co., were found liable and directed to pay to Herranz & Garriz, plaintiffs, the sum of P5,871, Philippine currency, with costs.

The court below in one of its last findings states: "The court has no doubt, as is shown in the record, that the plaintiffs had the right to believe and that they did believe that they were contracting directly with Ker & Co. and for the account of said Ker & Co., and that the defendants are responsible for the sum asked for in this cause, to wit, P5,700, Philippine currency, together with the interest thereon, which interest amounts to P171, Philippine currency." (Pp. 11 and 12, bill of exceptions.)

The following are facts proven beyond question:

First. That the steamer Pharsalia having run aground and being in need of assistance, accepted and received the services of the two lorchas Oriente and Soledad, the properties of the plaintiffs, for the purpose of discharging coal from said steamer.

Second. That said services, together with demurrage, of the two lorchas were to be paid for at the rate of 300 pesos per day, which was so stipulated in a written contract; that the amount claimed by reason thereof is the sum of 5,700 pesos, Philippine currency.

Third. That the said services were requested by James M. Beattie, manager of the firm of Ker & Co.

Fourth. That demand for the delays caused, that is to say, the demurrage and detention, was also duly made, of Ker & Co.

The only point in controversy is whether or not Ker & Co. requested these said services for their private account or for the account of others. The court below finds as follows: "It is very clear that the plaintiffs contracted with the defendants as principals and that the plaintiffs so understood on that date and that the plaintiffs did not contract with the defendants, Ker & Co., as agents of Lloyds and the London Salvage Association, or either of the latter." (P. 10, bill of exceptions.)

Beattie, manager of the firm of Ker & Co., went to Candido Pascual, manager of the firm of Lizarraga Hermanos, of this city, for the purpose of securing assistance for the steamer Pharsalia. As a result of an understanding between Ker & Co. and Lizarraga Hermanos, the following telegram was sent by Lizarraga Hermanos to Herranz & Garriz, of Sorsogon: "Herranz, Sorsogon, captain of Pharsalia needs lorchas to lighten vessel aground on Capul Point. We would appreciate your furnishing aid. Arrange with captain for account Ker." (Exhibit A, 2, of the

plaintiff.)

This being the point of controversy and by reason of which this court has reviewed the proof in this case, we find with regard to the same, the following:

First. That Candido Pascual ratified the contents of the telegram in these terms:

"Question. You then sent the telegram after having had this conversation with Mr. Beattie, did you not?

"Answer. After having had the conversation and having prepared the telegram in his presence, and after his approval and acceptance of the same." (P. 44.)

Second. That Beattie expressed himself in the following terms:

"Question. When you went to see Candido Pascual, the representative of Lizarraga Hermanos, to secure the sending of lorchas to the assistance of the steamer Pharsalia, is it not true that Mr. Pascual wrote a telegram in your presence?

"Answer. He wrote down certain points which were to be telegraphed to Sorsogon.

"Question. And did he not read these points to you?

"Answer. If they were direct points, no; the telegram shown to me (during the trial of the case) is not the telegram that was prepared.

"Question. Do you remember the words that were written in that telegram?

"Answer. No, sir.

"Question. If you do not remember, how do you know that it is not the same?

"Answer. Because it had a clause at the end that was not in the one they showed to me.

"Question. When you went to see Mr. Pascual, did you tell him that you came in representation of any other person outside of Ker & Co.?

"Answer. The captain of the Pharsalia.

"Question. Is it not true that if you had said to Candido Pascual that you represented the captain of the Pharsalia he would not have heeded you?

"Answer. I can not say what he would have done under these circumstances." (Pp. 72, 73.)

Third. That on March 5, 1905, the captain of the Pharsalia sent the following telegram to Ker & Co.: "Ker, Manila. Garriz asks 300 pesos, Conant, per day for two lorchas of 115 tons each. Do you approve? (Signed) Foote." (Plaintiff's Exhibit A, 6.)

Fourth. That on the same day the firms of Herranz & Garriz and Inchausti & Co., of Sorsogon, sent a telegram to Ker & Co., of Manila, of the following tenor: "Ker, Manila. The Pharsalia will probably be floated to-morrow night after being lightened by four lorchas taking about 430 tons. Should it be necessary to lighten her more, the captain desires to know whether the lorchas are to be discharged here or in Bulan. In addition to the hire of the lorchas, we need a guaranty against damages and risk to lorchas by reason of dangerous currents. Ynchausti-Garriz." (Plaintiff's Exhibit A, 4.)

Fifth. That the firm of Herranz & Garriz received from Lizarraga, of Manila, this telegram: "Herranz, Sorsogon. Ker refuses to guarantee risk lorchas. (Signed) Lizarraga."

Sixth. That on March 10, 1905, the captain of the Pharsalia wrote to Herranz & Garriz the following letter: "Sres. Herranz & Garriz, Sorsogon. My dear sirs: I agree to pay to you the sum of 300 pesos, Philippine currency, per day, for the hire of the lorchas Oriente and Soledad, which lorchas have been used in receiving coal from the Pharsalia under my command, for the purpose of lightening her on the Calantes Bank, in accordance with the request of Ker & Co., Lloyds' agents. I also agree to guarantee the damages suffered by said lorchas in the lightening of the coal. I am, truly yours, (signed) D. M. Foote, master."

Seventh. That upon being questioned further, Beattie testified as follows:

"Question. And did you act merely as the representative of the captain?

"Answer. Yes, sir.

"Question. And solely as such representative?

"Answer. Yes, and in the interests of the parties interested in the insurance represented by the captain.

"Question. If you only represented the captain, why did you say, when you went to see Lizarraga Hermanos, in this letter, that they were not to discharge the coal until they received notice from Ker & Co. instead of until they had received notice from the captain?

"Answer. Because it came to us for instructions, and before giving other instructions, we asked the captain what he desired to do. We followed the captain, we do not take the initiative for our account.

"Question. What business relations, if any, existed between you or your firm and Captain Foote, with respect to the hire of the lorchas of the plaintiffs?

"Answer. Nothing more than that we were in the position of advisers of the captain? (P. 68.)

"Question. Instead of putting here 'Ker & Co. for the captain,' why did you write here 'Agents of the London Salvage Association,' if you had nothing to do with them?

"Answer. We were the agents of the London Salvage Association, and as its agent we had to advise and assist the captain so that in the end it resulted that we acted for the captain through the London Salvage Association.
* * *

"Question. And have you not come into this matter in the representation of Lloyds and of the London Salvage Association?

"Answer. Yes, sir.

"Question. And do you always make these transactions in the name of Ker & Co.—that is, business transactions?

"Answer. Our transactions are made in the name of Ker & Co., but if we represent anyone, we show whom we represent.

"Question. In what capacity are you the representatives of Lloyds' Agency?

"Answer. In the capacity of advisers. (P. 47.)

"Question. Why do you sign here as 'agents of the London Salvage Association'?

"Answer. Because we are the agents.

"Question. Have you not said that you were no more than advisers?

"Answer. But our agency consists in or is limited to advice and assistance by authority given by the 'London

Salvage Association.' For instance, I will make it clear, it is not an agency permitting us to do business, or such things." (Pp. 74, 77, and 81.)

Eighth. That according to the testimony of the manager of the firm of Inchausti & Co., the coal discharged from the Pharsalia was sold by a member of the firm of Ker & Co. and delivered by Ker & Co. through Herranz & Garriz, as is shown by the certificate of the representative of Inchausti & Co. in Sorsogon, which is as follows: "We certify that the lorchas Soledad and Oriente, of Messrs. Herranz & Garriz, were discharged of the coal received by them from the steamer Pharsalia at 10 a. m., on March 22 last, as to the first discharge; and at 12 p. m. on March 24 last, as to the second discharge." (Plaintiffs' Exhibit E.)

Supposing that these facts are well proven, and it being evident that the services of lightening given to the steamer Pharsalia by the plaintiffs was the result of the telegram sent to them by Lizarraga Hermanos on March 3, 1905, a telegram sent under understanding and agreement with the manager of the firm of Ker & Co., it follows that Ker & Co., defendant in this cause, requested that service.

It is a fundamental principle that the person causing the act is responsible for the same and for the obligations arising from the contract. Therefore, Ker & Co., who requested the performance of said services, contracted the obligations produced by such contract as implied by the same.

Had Ker & Co. proved that they acted in the name of another, the obligations contracted would, in that event, have been upon that other, but Ker & Co. did not prove at any time during the trial of this cause that they contracted the obligation in the name of any specific person, natural or juridical. They merely make known that they are the representatives of and act in the name of the captain of the vessel, but only to give counsel and advice; that they are the agents of English Lloyds and of the London Salvage Association, but here again, only to give counsel and advice, and this without authority to bind any of these for whom they say that they, Ker & Co., intervened. This is not the way or manner in which to represent true agency according to mercantile law, or in accordance with legitimate authority under the civil law which would enable them or give them the right to bind a determined principal or superior authority, leaving in such principal or superior authority the responsibility or obligation that they, Ker & Co., had contracted.

In accordance with article 247 of the Code of Commerce: "If the agent transacts business in the name of the principal, he must state that fact; and if the contract is in writing, he must state it therein or in the subscribing clause, giving the name, surname, and domicile of said principal."

Beattie, the manager of Ker & Co., in the first contract for salvage, did not show that he contracted in the name of the captain of the Pharsalia, and the proof of this is that he answered that he did not know how Pascual, manager of Lizarraga Hermanos, would have acted, if he, Beattie, had shown him that he was contracting in the name of the said captain; therefore it follows and is evident that the contract was not made in the name of the captain. Beattie, in the second contract covering the detention of the cargo or demurrage of the lorchas into which the coal from the Pharsalia had been discharged, did not sign the letter written for this purpose in the name of the captain, but in the name of the "London Salvage Association." The captain, in order to accept the price of 300 pesos, Conant, per day, as the hire of the lorchas for the purpose of lightening the vessel, required the approval of Ker & Co., and consented to pay the sum of 300 pesos, Conant, per day, for the lorchas "used in accordance with the request of Ker & Co., Lloyds' agents." All of this is contrary to the pretensions of the defendant that it was not true that in negotiating with Pascual when requesting said service and the demurrage of the lorchas, which were the reasons for the claim for the larger amount of money now prayed for in the complaint, that they acted in the name of the captain of the Pharsalia, nor did the defendants show that they acted in the name of their principal, since Beattie testified that he did not know how Pascual would have acted under such circumstances—that is to say, if he had made known to him such fact.

In the same article 247 of the Code of Commerce, paragraph 2, it is said: "In the case prescribed in the foregoing article, the contract and the actions arising therefrom shall be effective between the principal and the person or persons who may have transacted business with the agent; but the latter shall be liable to the persons with whom he transacted business during the time he does not prove the commission, if the principal should deny it, without prejudice to the obligation and proper actions between the principal and agent."

The plaintiffs have no cause of action against any specific principal: First, because the contract was not made in the name of any of the three persons or entities, for whom Ker & Co. say they have intervened in this matter; second, because Ker & Co. expressly declare that their representation is limited to counsel and advice and not to obligations on account of others. And so long as the agent can not prove his agency, and, inasmuch as Ker & Co. have not proven such agency, therefore the obligation remains with the persons executing the contract, and Ker & Co. are the only parties responsible with the plaintiffs and, according to law, are the only parties from whom relief should be asked.

Therefore, we affirm, in all of its parts, the judgment appealed from, and in addition thereto, find for the appellees and as against the appellants for the payment of legal interest from the date of said judgment appealed from until the payment of the total indebtedness, together with costs of this instance. After the expiration of twenty days let judgment be entered in conformity herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

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

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