

MARIA ANIVERSARIO, PLAINTIFF AND APPELLANT, VS. FLORENCIO TERNATE, DEFENDANT AND APPELLEE.

G.R. No. 4030. January 29, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The plaintiff in this case seeks to recover the sum of 510 pesos and legal interest thereon. The action is based on an alleged breach, by the defendant, of a contract of agency.

It is alleged in the complaint that "on or about the 25th of November, 1902, the plaintiff gave to the defendant the sum of 510 pesos to purchase a horse in San Juan de Bocboc," and that the plaintiff, "upon the expiration of thirty days from the day she gave the defendant the said sum of 510 pesos, and successively thereafter on various occasions before the filing of this complaint, requested the defendant to repay the 510 pesos, and that the latter did refuse and still refuses to return to the plaintiff the sum in question."

By a written instrument, dated September 18, 1906, the plaintiff petitioned that the defendant be sentenced to the payment of 510 pesos, together with interest thereon from the date of the first demand for payment, with the costs.

The defendant pleaded that "on or about the 25th of November, 1902, he received from the plaintiff the sum of 510 pesos in payment of a horse which he then sold and delivered to her, and that the defendant has not received from the plaintiff any sum whatever with which to purchase a horse, and that he is in no wise indebted to the plaintiff."

Upon the hearing of the evidence, both documentary and oral, presented by both parties, the Court of First Instance of the city of Manila, absolved the defendant Florencio Ternate and sentenced the plaintiff Maria Aniversario to pay the costs.

On appeal taken for a review of the evidence, the appellant, in this instance, has contested the judgment of the lower court, alleging:

First, the court erred in finding that Exhibit A of the plaintiff, and the contents thereof, rather support the contention of the defendant than the allegations of the complaint. Said exhibit is as follows: "Received from Dona Maria Aniversario the sum of five hundred and ten (510) pesos, in payment of the price of a white horse purchased at San Juan de Bocboc.—Manila, November 25, 1902.—Florencio Ternate." The plaintiff, testifying in regard to this exhibit, said that she understood perfectly the contents of the above receipt, when the same was handed to her by Florencio Ternate.

As the lower court has accurately stated, this document, according to its wording, establishes rather the allegations of the answer than those of the complaint; according to its literal meaning, Florencio Ternate received from Maria Aniversario, on the 25th of November, the sum of 510 pesos, not for the purchase of a horse at that time but in payment of the price of a white horse previously bought at San Juan de Bocboc.

Exhibit 1 shows that Roman Ilustre, a son of the plaintiff, registered in the municipal registry of this city a white horse from San Juan de Bocboc, Province of Batangas, which was sold to Roman Pavia at the latter place on November 10, 1901, for the sum of 500 pesos, Roman Ilustre procuring the registration in this city on October 2, 1902. No error was, therefore, committed by the lower court in finding that the document marked as Exhibit A supports the allegations of the defendant rather than those of the plaintiff. This finding is in conformity with the provision of article 1281 of the Civil Code which says that "if the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its provisions shall be observed." The appellant says that had the defendant, from his own pocket, paid the 510 pesos, the value of a horse already purchased, it would seem natural that, by reason of this advance payment, the defendant should have demanded a voucher for the sum of money so advanced by him, and that when delivering the horse he should have demanded its purchase price and given the corresponding receipt, executing in favor of the plaintiff the proper bill of sale of the animal, or simply giving her the document of transfer of ownership,

This contention is not conclusive, because an agent, who, like the defendant was in commercial relations with the plaintiff in regard to the steamship business, and who, according to the latter's own statement, was acquainted with her for ten years, could have acted in either way.

The literal construction of the document is corroborated by the statements of Agustin Bizcocho, the first witness to testify for the plaintiff, who stated that "Florencio Ternate had a conversation with Doña Maria Aniversario in regard to a horse, at which he was present; that he overheard this conversation in which Florencio Ternate said to Doña Maria that he (Ternate) had bought a horse and that he would sell a white horse to Doña Maria; and that the latter really paid the sum of 510 pesos." This statement does not show that the sum of 510 pesos was delivered for the purpose of purchasing a horse which was already bought, and which the defendant then offered for sale to the plaintiff, but it shows that the money was received, not on commission to buy, but in payment for a white horse already acquired. It should be noted, however, that this witness, in addition to his above-quoted statement, said that the animal was not delivered after the conversation had taken place.

The second error assigned by the appellant is to the effect that the lower court erred in finding that the registration of the horse in the municipal registry, Manila, in the name of Roman Ilustre, a son of the plaintiff, and the transfer of the animal to the defendant, are facts established by Exhibit 1 and explain why the horse in question is now in the possession of the said defendant.

The court did not err in finding as above, because this fact is fully established by the document of registration of the horse, on the back of which there appears the entry of transfer, effected on October 2, 1902, at a time when Roman Ilustre was about to sail abroad, according to the testimony of the plaintiff and one of her witnesses.

The appellant asks if the horse was delivered to herself and registered in the name of her son on October 2, 1902, what was the object of the receipt given to her for the said sum, and dated November 25 of the same year, or one month and a half following the former date mentioned? And, if the receipt was delivered, then what was the object in registering the animal, and why did he (the defendant) not demand from Roman Ilustre a receipt for the purchase price of the horse? The plaintiff further states that the entry of transfer is not the best evidence to prove the transaction, but is only a receipt given by her son.

A mere recital of the above facts is sufficient to demonstrate that they can not prevail against the findings of the lower court, because said facts are not contradictory and rather serve to explain, in a logical and reasonable manner, the answer of the defendant, that he had bought a horse at San Juan de Bocboc, as shown by the document of transfer; that he had proposed its sale to the plaintiff, as corroborated by the witness Agustin Bizcocho; that on October 2, 1902, Roman Ilustre registered as his own property a white horse branded as stated

in the document of transfer issued at San Juan de Bocboc, and that subsequently, on November 25, 1902, Maria Aniversario paid to Florencio Ternate the price of the horse.

The appellant alleges a third error, that the Court of First Instance erred in finding that the plaintiff has not proven the facts upon which her complaint is based, while, on the contrary, there is sufficient evidence supporting the facts set up by the defendant in his answer. In support of this contention the plaintiff only says that the delivery of the money to purchase the horse, and the actual possession of the horse by the defendant are conclusive proof of the allegations set forth in the complaint.

On the contrary, the judge has made a careful study of the testimony presented by both sides, and has found it to be more favorable to the defendant and there is no error whatever in the finding. Such preponderance of the evidence is corroborated by the statements contained in the brief of the appellee and based upon the testimony of the plaintiff herself, to wit; that the plaintiff was the partner of the defendant in a certain business carried on by them from 1901 until the month of October, 1905, and that during such period of time they repeatedly liquidated their accounts; that from the time of the dissolution of their partnership actions were instituted twice to bring about the final liquidation of accounts of their business, and if the defendant was indebted to the plaintiff in the sum of 510 pesos, it would seem strange that this sum was not included in one of the liquidations and made the subject of one of the actions brought against the defendant, the plaintiff allowing the period from 1902 to 1906, when the complaint in this case was filed, to elapse without seeking to recover this sum, if it was really due.

In view of the foregoing, and not admitting any of the errors assigned, we affirm the judgment appealed from, with the costs of this instance against the appellant. So ordered.

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

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