

ACME FILMS, INC., PLAINTIFF AND APPELLANT, VS. THEATERS SUPPLY CORPORATION, DEFENDANT AND APPELLANT.

G. R. No. 42999. October 30, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are two appeals taken, the one by the plaintiff company Acme Films, Inc., and the other by the defendant company Theaters Supply Corporation, from the judgment of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, denying the defendant's counterclaim, judgment is rendered sentencing said defendant to pay to the plaintiff the sum of P50 corresponding to the promissory notes for the months of February and March, 1934, with interest thereon at 8 per cent per annum plus 10 per cent thereof as attorney's fees, without costs. So ordered."

In support of its appeal, the plaintiff-appellant Acme Films, Inc., assigns the following alleged errors as committed by the court a quo in its said judgment, to wit:

- In finding that the consideration of the promissory notes sued upon herein was plaintiff's obligation to supply defendant cinematographic films, and in failing to find that such notes have absolutely no bearing, relation or connection with plaintiff's undertaking to supply defendant with such films.
- In holding that the cancellation of plaintiff's agreement to supply defendant with the said cinematographic films effected the cancellation of such of said promissory notes as might fall due after April, 1934.
- In failing to award judgment in favor of plaintiff and against defendant in accordance with the prayer of plaintiff's complaint, and in denying plaintiff's motion for new trial and motion for reconsideration."

The defendant-appellant Theaters Supply Corporation, in turn, assigns in support of its appeal the following alleged errors as committed by the court a quo in its said judgment, to wit:

- The lower court erred in not ordering the plaintiff to pay the defendant the sum of P550 representing the damages suffered by the defendant by reason of plaintiff's arbitrary breach of a contract, in manifest disregard of
- The lower court erred in holding that Bosque's testimony in connection with the damages is vague and general, and that it is well settled that an affirmation of this kind relative to damages suffered, being a mere conclusion, proves nothing.
- The lower court erred in denying the defendant-appellant's motion for a new trial."

This case originated in a complaint filed by the plaintiff Acme Films, Inc., against the defendant Theaters Supply Corporation, praying: (a) That the defendant company be ordered to pay to it the sum of P175; (6) that the defendant company pay the sum of P17.50 as attorney's fees, and (c) that it be granted any other just and equitable

remedy.

The defendant company, answering the complaint, denies each and every allegation contained therein and as a cross-complaint prays that the plaintiff company be ordered to pay it the sum of P550 by way of damages for breach of contract, plus legal interest thereon from the date of the filing of the complaint, until fully paid, with costs to said plaintiff.

The following facts, which have not been denied by the defendant company, were established by the plaintiff company during the trial, to wit:

On December 29, 1933, the defendant-appellant executed and delivered to the plaintiff-appellant eight promissory notes for the sum of P25 each, payable on successive dates, with interest at 8 per cent per annum on the unpaid balance of P175, seven of which promissory notes (Exhibits A to E, inclusive) had been unpaid. Said promissory notes are of the same tenor and contain the same conditions, except the date of maturity, as follows:

"Manila, P. I., Dec. 29, 1933

"Note No. 2

"On or before February 28, 1934, for value received, I promise to pay to the order of Acme Films, Inc., at its main office in the City of Manila, P. I. the sum of pesos twenty-five only (P25) Philippine Cy. with interest at the rate of eight per centum (8%) per annum on the unpaid balance of P175. This is one of a series of eight (8) promissory notes for an aggregate total of P200 (two hundred pesos) all executed on this date. In case of non-payment of this note of maturity all succeeding notes shall forthwith become due and payable at the election of the payee, in which case, we also promise to pay to said Acme Films, Inc. an additional sum equivalent to ten per centum (10%) of the whole amount then remaining unpaid for and as attorney's fees in addition to costs provided by law.

"THEATERS SUPPLY CORPORATION

"BY G. G. BOSQUE"

The defendant-appellant paid the promissory note upon maturity thereof in January, 1934; but did not do so with respect to the amount of the promissory note which matured on February 8, 1934, nor the corresponding interest thereon, the payment of each of the remaining promissory notes having ipso facto matured, as per agreement.

In support of its cross-complaint the defendant-appellant attempted to prove that it entered into "Booking Contracts" with the plaintiff-appellant (Exhibits 1 to 5, inclusive); that the plaintiff company failed to supply the following films: on April 4, 1934, the films "Night Rider", All Talking Comedy, -Novelty & Cartoon and Pathe News; on April 5, 1934, the films "Monster Walks", "Whispering Shadow", AH Talking Novelty and Pathe News; on April 11, 1934, the films "Skyway", All Talking Comedy, Novelty & Cartoon and Pathe News; on April 12, 1934, the films "Crashing Broadway", "Whispering Shadow" and Novelty & News; on April 18, 1934, the films "Mounted Fury", All Talking Comedy, Cartoon & Novelty and Path4 News; on April 19, 1934, the films "The Phantom", "Whispering Shadow", All Talking Comedy and Cartoon & Pathe News; on April 25, 1934, the films "Son of Oklahoma", All Talking Comedy, All Talking Novelty and Cartoon & Pathe News; on March 27, 1934, the films "Phantom Broadcast", "Whispering Shadow 1" and Pathe News; on March 28, 1934, the films "Phantom Broadcast", "Whispering Shadow 1" and Path6 News; on the same date, March 28, 1934, the films "Blind Adventure", All Talking Comedy, Cartoon and Pathe News; and on March 29, 1934, the films "Lucky Devils", "Whispering Shadow" and Pathe News; that among the films to be shown which the plaintiff failed to supply, there were serials; that such serials had to be advertised in advance, said advertisements consisting not only in the printing of programs but also in the exhibition of posters which paraded around the poblacion where

the films were to be shown, and in the employment of bands of music to go through the different streets of the poblacion announcing the showing of said films ; that by reason of the plaintiff's failure to supply the films which it was bound to supply under the Booking Contracts (Exhibits 1 to 5), the defendant company was forced to take films from the Universal Pictures Corporation, paying therefor five per cent more than what it paid to the plaintiff company under the contracts in question; that on" March 26, 1935, the plaintiff company wrote a letter (Exhibit 6) to the defendant company notifying the latter that all subsequent booking contracts were cancelled; that the defendant on said date wrote a letter (Exhibit 7) stating that while it was willing to discontinue negotiating with the appellant, it should be understood that the cancellation became effective on April 1, 1934, and that any serial already commenced must continue to be shown until the end; that notwithstanding this letter the plaintiff company failed to supply the films stated in the cross-complaint thereby causing damages to the defendant in the sum of P400 to P550.

The first question to be decided in the appeal of the plaintiff company, Acme Films, Inc., which is raised in the first assignment of alleged error, is whether or not the court a quo erred in arriving at the conclusion that the cause or consideration of the promissory notes which are the subject matter of the complaint was the plaintiff company's obligation to supply the defendant with cinematographic films.

A simple reading of the promissory notes in question shows that they were issued for value received, and that upon maturity of each note the grantor would pay eight per cent per annum on the unpaid balance of P175. If under the promissory notes in question the defendant company bound itself to partially pay an amount already received plus interest at eight per cent on the unpaid balance, the obligation to supply cinematographic films could not have been the cause or consideration of the execution thereof, but a pre-existent debt. Furthermore, as the booking contract became effective only on February 24, 1934, which supply began on said date and on March 3 and 20, 1934, respectively, there could be no unpaid balance of P175, because the supply of films in question was based on a commission on the proceeds of their exhibition on the dates above-stated, which commission was undoubtedly payable after each exhibition.

We therefore hold that the first assignment of alleged error is well founded.

The second Question to be decided is that raised by the plaintiff-appellant in its second assignment of alleged error, consisting in whether or not the court a quo erred in holding that the cancellation of said plaintiff-appellant's agreement to supply the defendant-appellant with the cinematographic films in question produced ipso facto the cancellation of the promissory notes the payment of which would mature after the month of April, 1934.

If, as already stated, the obligation contracted by the plaintiff-appellant to supply the defendant-appellant with cinematographic films was not and could not be the cause or consideration of the issuance of said promissory notes, it is logical to conclude that the cancellation of the booking contract could not result in the cancellation of the promissory notes the maturity of which would take place after said cancellation, there being no relation of cause and effect between both contracts.

With respect to the defendant-appellant's appeal, the first question to be decided is that raised in its first assignment of alleged error, consisting in whether or not the court a quo erred in not ordering the plaintiff to pay to the defendant the sum of P550 as damages suffered by the latter for the arbitrary breach of contract by the plaintiff.

It is not denied that the plaintiff company failed to supply the defendant with the cinematographic films which were the subject matter of the contracts entered into on March 20, 1934 (Exhibits 1 and 2), and two films under the contract of March 24, 1934 (Exhibit 3), one of said films being a serial entitled "Whispering Shadow". Guillermo Garcia Bosque testified that because the plaintiff company had failed to supply said films, the

defendant had to resort to the Universal Pictures Corporation and ask for films to replace those which said plaintiff had failed to supply under the contract, having had to pay therefor five per cent more than for those films contracted with said plaintiff Acme Films, Inc., and that the total cost thereof, including the printing of programs, posters paraded through the streets with bands of music to announce the showing of the films which the plaintiff company failed to supply, amount to from P400 to P550. The plaintiff company did not submit evidence to rebut the testimony of said witness and the fact that the estimate of the expenses is approximate does not make said estimate inadmissible. It was incumbent upon the plaintiff company to submit evidence in rebuttal, or at least ascertain the amount of the different items in cross-examination. There being no evidence to the contrary, it is logical to admit that the defendant company spent at least the sum of P400.

Inasmuch as the plaintiff company had failed to comply with a part of its booking contract, and as the defendant company had suffered damages as a result thereof, the former is liable to indemnify the damages caused to the latter, in accordance with the provisions of article 1101 of the Civil Code.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That the defendant company is bound to pay to the plaintiff company the sum of P175 representing the total amount of the seven matured and unpaid promissory notes, plus interest at eight per cent per annum on said sum of P175 from February 28, 1934, until fully paid, and an additional sum equivalent to ten per cent of said sum of P175 as attorney's fees; and (2) that the plaintiff company, in turn, is bound to pay to the defendant company the sum of P400, as damages suffered by the latter for breach by the former of its booking contract, plus interest thereon at six per cent per annum from July 29, 1934, the date of the filing of the cross-complaint, until fully paid.

Wherefore, the appealed judgment is reversed and the defendant company Theaters Supply Corporation is ordered to pay the sum of P175 to the plaintiff company, plus the corresponding interest thereon at eight per cent per annum from February 28, 1934, until fully paid, and a sum equivalent to ten per cent of said sum of P175 as attorney's fees; and the plaintiff company Acme Films, Inc., in turn, is ordered to pay the sum of P400 to the defendant company Theaters Supply Corporation, plus legal interest thereon at six per cent per annum from the date of the filing of the cross-complaint, until fully paid, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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