

GONZALO PUYAT & SONS, INC., PETITIONER, VS. ARCO AMUSEMENT COMPANY (FORMERLY KNOWN AS TEATRO ARCO), RESPONDENT.*G.R. No. 47538. June 20, 1941*

Ponente: LAUREL, J.

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This is a petition for the issuance of a writ of certiorari to the Court of Appeals for the purpose of reviewing its decision in civil case G. R. No. 1023, entitled "Arco Amusement Company (formerly known as Teatro Arco), plaintiff-appellant, vs. Gonzalo Puyat and Sons, Inc., defendant-appellee."

It appears that the respondent herein brought an action against the herein petitioner in the Court of First Instance of Manila to secure a reimbursement of certain amounts allegedly overpaid by it on account of the purchase price of sound reproducing equipment and machinery ordered by the petitioner from the Starr Piano Company of Richmond, Indiana, U. S. A. The facts of the case as found by the trial court and confirmed by the appellate court, which are admitted by the respondent, are as follows:

"In the year 1929, the Teatro Arco, a corporation duly organized under the laws of the Philippine Islands, with its office in Manila, was engaged in the business of operating cinematographs. In 1930, its name was changed to Arco Amusement Company. C. S. Salmon was the president, while A. B. Coulette was the business manager. About the same time, Gonzalo Puyat & Sons, Inc., another corporation doing business in the Philippine Islands, with office in Manila, in addition to its other business, was acting as exclusive agents in the Philippines for the Starr Piano Company of Richmond, Indiana, U. S. A. It would seem that this last company dealt in cinematograph equipment and machinery, and the Arco Amusement Company desiring to equip its cinematograph with sound reproducing devices, approached Gonzalo Puyat & Sons, Inc., thru its then president and acting manager, Gil Puyat, and an employee named Santos. After some negotiations, it was agreed between the parties, that is to say, Salmon and Coulette on one side, representing the plaintiff, and Gil Puyat on the other, representing the defendant, that the latter would, on behalf of the plaintiff, order sound reproducing equipment from the Starr Piano Company and that the plaintiff would pay the defendant, in addition to the price of the equipment, a 10 per cent commission, plus all expenses, such as, freight, insurance, banking charges, cables, etc. At the expense of the plaintiff, the defendant sent a cable, Exhibit '3', to the Starr Piano Company, inquiring about the equipment desired and making the said company to quote its price without discount. A reply was received by Gonzalo Puyat & Sons, Inc., with the price, evidently the list price of \$1,700 f. o. b. factory Richmond, Indiana. The defendant did not show the plaintiff the cable of inquiry nor the reply but merely informed the plaintiff of the price of \$1,700. Being agreeable to this price, the plaintiff, by means of Exhibit '1', which is a letter, signed by C. S. Salmon dated November 19, 1929, formally authorized the order. The equipment arrived about the end of the year 1929, and upon delivery of the same to the plaintiff and the presentation of necessary papers, the price of \$1,700, plus the 10 per cent commission agreed upon and plus all the expenses and charges, was duly paid by the plaintiff to the defendant. Sometime the following year, and after some negotiations between the same parties, plaintiff

and defendant, another order for sound reproducing equipment was placed by the plaintiff with the defendant, on the same terms as the first order. This agreement or order was confirmed by the plaintiff by its letter Exhibit '2', without date, that is to say, that the plaintiff would pay for the equipment the amount of \$1,600, which was supposed to be the price quoted by the Starr Piano Company, plus 10 per cent commission, plus all expenses incurred. The equipment under the second order arrived in due time, and the defendant was duly paid the price, of \$1,600 with its 10 per cent commission, and \$160, for all expenses and charges. This amount of \$160 does not represent actual out-of-pocket expenses paid by the defendant, but a mere flat charge and rough estimate made by the defendant equivalent to 10 per cent of the price of \$1,600 of the equipment.

"About three years later, in connection with a civil case in Vigan, filed by one Fidel Reyes against the defendant herein Gonzalo Puyat & Sons, Inc., the officials of the Arco Amusement Company discovered that the price quoted to them by the defendant with regard to their two orders above mentioned was not the net price but rather the list price, and that the defendant had obtained a discount from the Starr Piano Company. Moreover, by reading-reviews and literature on prices of machinery and cinematograph equipment, said officials of the plaintiff were convinced that the prices charged them by the defendant were much too high including the charges for out-of-pocket expenses. For these reasons, they sought to obtain a reduction from the defendant or rather a reimbursement, and failing in this they brought the present action."

The trial court held that the contract between the petitioner and the respondent was one of outright purchase and sale, and absolved that petitioner from the complaint. The appellate court, however,—by a division of four, with one justice dissenting—held that the relation between petitioner and respondent was that of agent and principal, the petitioner acting as agent of the respondent in the purchase of the equipment in question, and sentenced the petitioner to pay the respondent alleged overpayments in the total sum of \$1,335.52 or P2,671.04, together with legal interest thereon from the date of the filing of the complaint until said amount is fully paid, as well as to pay the costs of the suit in both instances. The appellate court further argued that even if the contract between the petitioner and the respondent was one of purchase and sale, the petitioner was guilty of fraud in concealing the true price and hence would still be liable to reimburse the respondent for the overpayments made by the latter.

The petitioner now claims that the following errors have been incurred by the appellate court:

"I. El Tribunal de Apelaciones incurrió en error de derecho al declarar que, según hechos, entre la recurrente y la recurrida existía una relación implícita de mandataria a mandante en la transacción de que se trata, en vez de la de vendedora a compradora como ha declarado el Juzgado de Primera Instancia de Manila, presidido entonces por el hoy Magistrado Honorable Marceliano Montemayor.

"II. El Tribunal de Apelaciones incurrió en error de derecho al declarar que, suponiendo que dicha relación fuera de vendedora a compradora, la recurrente obtuvo, mediante dolo, el consentimiento de la recurrida en cuanto al precio de \$1,700 y \$1,600 de las maquinarias y equipos en cuestión, y condenar a la recurrente a devolver a la recurrida la diferencia o descuento de 25 por ciento que la recurrente ha obtenido de la Starr Piano Company of Richmond, Indiana."

We sustain the theory of the trial court that the contract between the petitioner and the respondent was one of purchase and sale, and not one of agency, for the reasons now to be stated.

In the first place, the contract is the law between the parties and should include all the things they are supposed to have been agreed upon. What does not appear on the face of the contract should be regarded merely as "dealer's" or "trader's talk", which can not bind either party. (*Nolbrook v. Conner*, 56 So., 576, 11 Am. Rep., 212; *Bank v. Brosscell*, 120 111., 161; *Bank v. Palmer*, 47 111., 92; *Hosser v. Copper*, 8 Allen, 334; *Doles v. Merrill*, 173 Mass., 411.) The letters, Exhibits 1 and 2, by which the respondent accepted the prices of \$1,700 and \$1,600, respectively, for the sound reproducing equipment subject of its contract with the petitioner, are clear in their

terms and admit of no other interpretation than that the respondent agreed to purchase from the petitioner the equipment in question at the prices indicated which are fixed and determinate. The respondent admitted in its complaint filed with the Court of First Instance of Manila that the petitioner agreed to sell to it the first sound reproducing equipment and machinery. The third paragraph of the respondent's cause of action states: "3. That on or about November 19, 1929, the herein plaintiff (respondent) and defendant (petitioner) entered into an agreement, under and by virtue of which the herein defendant was to secure from the United States, and sell and deliver to the herein plaintiff, certain sound reproducing equipment and machinery, for which the said defendant, under and by virtue of said agreement, was to receive the actual cost price plus ten per cent (10%), and was also to be reimbursed for all out of pocket expenses in connection with the purchase and delivery of such equipment, such as cost[^] of telegrams, freight, and similar expenses." (Italics ours.)

We agree with the trial judge that "whatever unforeseen events might have taken place unfavorable to the defendant (petitioner), such as change in prices, mistake in their quotation, loss of the goods not covered by insurance or failure of the Starr Piano Company to properly fill the orders as per specifications, the plaintiff (respondent) might still legally hold the defendant (petitioner) to the prices fixed of \$ 1,700 and \$1,600." This is incompatible with the pretended relation of agency between the petitioner and the respondent, because in agency, the agent is exempted from all liability in the discharge of his commission provided he acts in accordance with the instructions received from his principal (section 254, Code of Commerce), and the principal must indemnify the agent for all damages which the latter may incur in carrying out the agency without fault or imprudence on his part (article 1729, Civil Code).

While the letters, Exhibits 1 and 2, state that the petitioner was to receive ten per cent (10 %) commission, this does not necessarily make the petitioner an agent of the respondent, as this provision is only an additional price which the respondent bound itself to pay, and which stipulation is not incompatible with the contract of purchase and sale. (See *Quiroga vs. Parsons Hardware Co.*, 38 Phil., 501.)

In the second place, to hold the petitioner an agent of the respondent in the purchase of equipment and machinery from the Starr Piano Company of Richmond, Indiana, is incompatible with the admitted fact that the petitioner is the exclusive agent of the same company in the Philippines. It is out of the ordinary for one to be the agent of both the vendor and the purchaser. The facts and circumstances indicated do not point to anything but plain ordinary transaction where the respondent enters into a contract of purchase and sale with the petitioner, the latter as exclusive agent of the Starr Piano Company in the United States.

It follows that the petitioner as vendor is not bound to reimburse the respondent as vendee for any difference between the cost price and the sales price which represents the profit realized by the vendor out of the transaction. This is the very essence of commerce without which merchants or middleman would not exist.

The respondent contends that it merely agreed to pay the cost price as distinguished from the list price, plus ten per cent (10%) commission and all out-of-pocket expenses incurred by the petitioner. The distinction which the respondent seeks to draw between the cost price and the list price we consider to be spacious. It is to be observed that the twenty-five per cent (25%) discount granted by the Starr Piano Company to the petitioner is available only to the latter as the former's exclusive agent in the Philippines. The respondent could not have secured this discount from the Starr Piano Company and neither was the petitioner willing to waive that discount in favor of the respondent. As a matter of fact, no reason is advanced by the respondent why the petitioner should waive the 25 per cent discount granted it by the Starr Piano Company in exchange for the 10 per cent commission offered by the respondent. Moreover, the petitioner was not duty bound to reveal the private arrangement it had with the Starr Piano Company relative to such discount to its prospective customers, and the respondent was not even aware of such an arrangement. The respondent, therefore, could not have offered to pay a 10 per cent commission

to the petitioner provided it was given the benefit of the 25 per cent discount enjoyed by the petitioner. It is well known that local dealers acting as agents of foreign manufacturers, aside from obtaining a discount from the home office, sometimes add to the list price when they resell to local purchasers. It was apparently to guard against an exorbitant additional price that the respondent sought to limit it to 10 per cent, and the respondent is estopped from questioning that additional price. If the respondent later on discovers itself at the short end of a bad bargain, it alone must bear the blame, and it cannot rescind the contract, much less compel a reimbursement of the excess price, on that ground alone. The respondent could not secure equipment and machinery manufactured by the Starr Piano Company except from the petitioner alone; it willingly paid the price quoted; it received the equipment and machinery as represented; and that was the end of the matter as far as the respondent was concerned. The fact that the petitioner obtained more or less profit than the respondent calculated before entering into the contract of purchase and sale, is no ground for rescinding the contract or reducing the price agreed upon between the petitioner and the respondent. Not every concealment is fraud; and short of fraud, it were better that, within certain limits, business acumen permit of the loosening¹ of the sleeves and of the sharpening of the intellect of men and women in the business world.

The writ of certiorari should be, as it is hereby, granted. The decision of the appellate court is accordingly reversed and the petitioner is absolved from the respondent's complaint in G. R. No. 1023, entitled "Arco Amusement Company (formerly known as Teatro Arco), plaintiff-appellant, vs. Gonzalo Puyat and Sons, Inc., defendant-appellee," without pronouncement regarding costs. So ordered.

Avanceña, C. J., Diaz, Moran and Horrilleno, JJ., concur.

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