

BANQUE GENERALE BELGE, S. A. DE AMBERES, BELGICA, DEUTSCH ASIATISCHE BANK, AND UNION COMMERCIALE D'OUTREMER, S. A., PLAINTIFFS AND APPELLANTS, VS. WALTER BULL & CO., INC. AND WA...

G.R. No. 48494. June 30, 1949

Ponente: PARAS, J.

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PARAS, J.:

On June 13, 1932, the plaintiffs filed a complaint in the Court of First Instance of Manila against the defendants. Under the first cause of action, the plaintiffs seek to terminate a commercial commission and to recover from the defendants all the properties covered by said commission. Under the second cause of action, it is prayed that the defendants be required to present monthly statements of accounts from September 1, 1931. Under the third cause of action, the plaintiffs seek to recover from the defendants the balances found due and owing to the plaintiffs. The defendant Walter Bull & Co., Inc. questions the personality of the plaintiff's; denies having violated the commercial commission mentioned in the complaint; and, by way of counter claim, seeks to recover from the plaintiffs the sum of P1,957.07 due to said defendant under the commission, and the sum of P283,786.49 as damages resulting from the preliminary attachment issued at the instance of the plaintiffs upon the commencement of their complaint. The other defendant, Walter Bull, also disputes the personality of the plaintiffs; alleges that said defendant was maliciously included in the complaint, as his participation in the commission mentioned in the complaint was in his official capacity as president and manager of the defendant corporation Walter Bull & Co., Inc.; and as counterclaim seeks to recover from the plaintiffs the sum of P75,000 as damages suffered by reason of the preliminary attachment obtained by the plaintiffs at the commencement of the action. After trial, the Court of First Instance of Manila rendered, on June 2, 1941, a decision absolving the defendants from the complaint, absolving the plaintiffs from the defendants' counterclaims, and ordering that the unsold goods covered by the commercial commission be delivered to the plaintiff's after payment of warehouse fees and other expenses, if any, with costs against the plaintiffs. From this judgment both the plaintiffs and the defendants appealed. The plaintiffs have assigned sixteen errors, while the defendants, five.

The record of this case is very voluminous. After examining the exhaustive briefs and memoranda of both parties, in the light of the evidence presented, we are constrained to uphold the appealed decision.

The commercial commission referred to in the complaint and identified in the record as Exhibit "A", was executed on November 16, 1931, between Banque Generale Belge, Dutsch Asiatische Bank, and Union Commerciale D'Outremer, represented by Attorney Alfredo Chicote, as principal, and Walter Bull & Co., Inc., represented by its president Walter Bull, as agent. The subject matter of the commission consisted of three sets of properties, namely, "Paramount" goods, "Tungsha" goods and "Mercantile Bank" goods, having a total value of P55,353.99.

We shall first consider the appeal of the plaintiffs. Their assignments of error may substantially be narrowed down to the general contentions that: (1) The defendants violated various conditions of the commission and committed

various misappropriations. (2) The total value of the goods covered by the commission was P70,226.53, and not P55,353.99 as found by the trial court. (3) The trial court should have ordered the payment to the plaintiffs of the sum of P4,387.44, the proceeds of the sale of goods belonging to the commission and deposited with the sheriff which was later delivered to the defendants upon the latter's filing of a bond. (4) The accounts presented by the defendants are erroneous and should have been disallowed.

The trial court was correct in holding that Walter Bull cannot personally be liable under the commission, inasmuch as he signed the contract in his official capacity as president and manager of the defendant corporation Walter Bull & Co., Inc. It is true that the contract provided that the commission was in consideration of Walter Bull and that if the latter should cease to be the manager of the corporation, the commission would ipso facto be terminated. But this stipulation did not personally bind Walter Bull to the contract, although it might in fact have led the plaintiffs to appoint the corporation as their agent. If the intention was to bind Walter Bull in his individual capacity, the contract should have so provided. It is elementary that a corporation has a personality separate and distinct from the persons composing it.

The capital mistake of the plaintiffs in supposing that the defendant corporation is liable to the plaintiffs upon liquidation of the commercial commission, is in assuming that the value of the properties covered by the commission is P70,226.43; and this mistake is obviously due to the fact that the plaintiffs have considered the value of the goods of the "Mercantile Bank" group as being P25,756.41 instead of, as correctly found by the trial court, only some P11,001.46.

The principal violation of the commission imputed by the plaintiffs to the defendants consists in the charge that the defendants sold goods at prices below those specified in the commission. The defendants admit having made some such sales, but contend that they were known to and authorized by the plaintiffs; and the trial court found for the defendants. We are inclined to sustain the latter's theory. The Supporting testimony of Walter Bull is corroborated by a letter of the Union Commerciale D'Outremer (Exhibit "F") addressed to Chicote, authorizing the sale of goods at as low as 60 per cent of the inventory prices, in order to speed up liquidation. The fundamental reason is that the goods, if not actually in bad condition, were hard to conserve. C. Kelling, who had the "Paramount" goods for six months previous to the date when the commercial commission came into effect, had manifested that they were unsaleable garbage (*basuras invendibles*) and that the same were stored in a hot and unsuitable warehouse (Exhibit "I"). In a motion (Exhibit "13") filed in civil case No. 38764 by Chicote, the latter alleged that the stock consisting mainly of medicinal products and textiles were very difficult to conserve. It is true that the inventory (Exhibit "J") does not show that the goods in question were in bad condition, but the same is not conclusive. In the first place, the condition of the stock could not be determined from mere appearances of the containers. In the second place, the point is immaterial in view of the subsequent authority given by the plaintiffs to sell even at 60 per cent of the inventory prices.

Moreover, with respect to certain "Paramount" and "Tungsha" goods sold by the defendants prior to November 16, 1941, when the commission was entered into, it is evident that the prices specified in the inventory cannot control, notwithstanding the fact that the commission provided that the terms thereof retroacted to September 1, 1931. The reason is simple and it is that said prices could not have been known prior to the existence of the commission. We believe that the retroactive effect of the contract was intended to cover only the stock actually in existence at the time of the execution of the commercial commission.

The plaintiffs contend that the defendants simulated sales of certain goods to O. Lagman and A. Villanueva (employees of the defendant corporation) under invoices Nos. 208 and 209 in order to appropriate for themselves said goods. This contention was also properly overruled by the trial court. There is evidence to the effect that the alleged transfers were made with the knowledge and conformity of Chicote, the representative of the plaintiffs, as

an arrangement calculated to expedite sales. Under the arrangement, Lagman and Villanueva did not pay anything and the goods were nominally transferred back to the defendant corporation, for the latter to advertise and sell the same in its own name, the purpose being to boost sales and avoid conflicts with the Bureau of Internal Revenue. The operation resulted in the loss to the defendants of some P508.71 (Exhibit 287). The advertisements were published in several weeklies (Liwayway, Hiwaga and Sampaguita), in addition to pamphlets circulated by Bull. Furthermore, Chicote's nephew, Lalana, was the cashier and assistant accountant of the defendant corporation and must undoubtedly have informed Chicote of all the important operations and transactions of the defendant corporation. It appears also that the unsold goods covered by invoices No. 208 and No. 209 were returned to the credit of the plaintiffs.

With respect to the cash sales-evidenced by Exhibits L-9, L-10 and L-11 which the plaintiffs contend are also simulated, we agree with the trial court that they were known by Chicote and his nephew Antonio Lalana and were bona fide sales to third parties.

The failure of the defendant corporation to submit monthly statements of accounts or to pay to the plaintiffs the monthly balances is now of no moment, because said failure is at most merely a just cause for terminating the commercial commission. The important thing is that statements of accounts (Exhibits 471 and 472) were presented by the defendants within 30 days after the commencement of the trial, and that said statements (showing no balance in favor of the plaintiffs) have been approved by the trial court.

The plaintiffs contend that the defendants collected commissions on the sales and not, as stipulated in the contract, on the amounts actually collected. The charge is more apparent than real. It is admitted by the defendants that, at the suggestion of their accountant (J. Turiano Santiago), the entries in their books show the collection of their authorized commission of 10 per cent on the amounts of all sales, in order to avoid differences with the Bureau of Internal Revenue. However, in cases of uncollected accounts or returned merchandise, the defendants made corresponding book entries for readjustment. We are of the opinion that the trial court committed no error on this aspect of the case, especially when, even assuming that the accounting practice followed by the defendants was irregular, the result conformed to the agreement contained in the commercial commission. With respect to the other 5 per cent charge against the plaintiffs, also assailed by the latter, it may be pointed out that it represented a certain fixed amount plus 3 per cent (amounting in all to 5 per cent) paid to agents and resellers, and this is expressly authorized by the commission.

It is insisted by the plaintiffs that the defendants were without authority to continue with the commission after the filing of the complaint. This is clearly erroneous. The purpose of the complaint is to obtain a judicial declaration terminating the contract, and as long as the court had not given the signal for the defendants to stop, the latter were not legally bound to do so. The record does not show that the defendants were preliminarily ordered to refrain from performing the contract. Although the goods covered by the commission had been attached, they were nevertheless released after the dissolution of the attachment, its logical consequence being the return of the goods to the defendants from whom they were levied upon. Moreover, there seems to be no ground for plaintiffs' criticism, as it appears that the defendants had offered to turn over to Alfredo Chicote, plaintiffs' representative, all unsold merchandise, but the latter refused.

We find no merit in the various criticisms of the plaintiffs directed to the proposition that the defendants, in their statements of accounts, charged against their principals unauthorized or unnecessary expenses. Indeed, a preponderance of the evidence supports the view that the defendants limited the expenses of the commission to the items specified in the contract, namely: P100 for rental of office; premiums for fire insurance; sales taxes; personnel expenses not exceeding P200 a month; P50 for delivery and collection expenses.

As regards the plaintiffs' claim that the amount of P4,387.44 representing the proceeds of sales by the sheriff during the existence of the attachment, and later delivered to the defendants upon the filing by the latter of a bond, should have been ordered by the trial court to be returned to the plaintiffs, it is sufficient to state that said amount, which consisted of the proceeds of sales not only of the goods belonging to the commission but also of those belonging to the defendant corporation, had been absolved and included in the statement of accounts (Exhibit 472) presented by the defendants before the trial court. Upon the approval thereof by the court, it became unnecessary for it to make any pronouncement on the matter.

The "Mercantile Bank" goods came to be the subject of the commercial commission, after the defendants had paid to the Mercantile Bank of China the sum of P7,500, the amount of the latter's liens on the property. It is alleged by the plaintiffs that they were opposed to the transaction and that the same was in fact carried out for the sole benefit of the defendants. This contention is unfounded. The evidence shows that Alfredo Chicote was furnished by the Bank Commissioner with a copy of his motion (Exhibit 1-6) to sell said goods to the defendant corporation for the benefit of the Union Commerciale D'Outremer and that he stamped his conformity to said motion. It also appears that the sum of P5,540.93 was paid with the last cash balance in favor of the plaintiffs and the remaining sum of P1,959.07 with money of the defendant corporation. The result is that, practically speaking, it cannot be contended by the plaintiffs that there never was any cash balance in their favor, since, in lieu of the amount of P5,540.93 representing proceeds of previous sales under the commission, the plaintiffs were credited with the "Mercantile Bank" goods.

The foregoing discussion disposes of the fundamental contentions of the plaintiffs which make it superfluous for us to further deal with various accessory details or items mentioned in the voluminous briefs and memoranda of the parties. It follows also that the statements of accounts presented by the defendants and approved by the court are in order.

We now come to the appeal of the defendants. In view of the result reached as to plaintiffs' appeal, it is unnecessary for us to consider the defense set up by the defendants in the lower court, having reference to the personality of the plaintiffs to sue. Neither is it necessary to inquire into the action of the trial court in disallowing the sum of P1,957.07 appearing in the statements of accounts presented by the defendants as being due in favor of the defendant corporation, for the reason that the point has not been made the subject of any assignment of error by the defendants.

The errors assigned by the defendants are directed to the failure of the trial court to award damages in favor of the defendants as a result of the preliminary attachment obtained by the plaintiffs at the commencement of the action. The defendants have made an elaborate discussion tending to establish the amount of alleged damages which the trial court found to be too speculative. We are nevertheless convinced that the plaintiffs, in obtaining the preliminary attachment, acted in good faith, and this circumstance is fatal to any award for damages. It is true that the defendants have been absolved from the complaint, but this does not go to show that the plaintiffs acted with malice in attaching defendants' properties. The result of this action cannot affect the bona fide belief of the plaintiffs in the justness of their claim against the defendants.

The appealed judgment is therefore affirmed, without costs. So ordered.

Moran, C.J., Ozaeta, Feria, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PARAS, J.:

I certify that Mr. Justice Perfecto voted to affirm the decision.

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