

MADRIGAL & CO., PLAINTIFF AND APPELLANT, VS. W. F. STEVENSON & CO., DEFENDANT AND APPELLEE.

G.R. No. 5315. January 15, 1910

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff seeks to recover damages alleged to have been sustained by reason of the failure of defendant to fulfill an alleged contract to deliver to plaintiff 2,000 tons of coal in the month of July, 1908, at a price stipulated.

Plaintiff alleges that on the 7th day of April, 1908, it entered into a verbal contract with one Armstrong, a broker, who was acting for and on behalf of defendant, whereby plaintiff agreed to buy of defendant and defendant to sell to plaintiff 2,000 tons of Duckenfield coal, to be delivered in the month of July, 1908, at the rate of P8.50 per ton; and that this contract was later reduced to writing in a memorandum executed in duplicate, one copy of which was signed by plaintiff and the other by defendant.

Defendant denies that it ever entered into any such contract, or that the broker Armstrong had authority to enter into any such contract for or on its behalf, and alleges that, on the contrary, the only authority it gave to Armstrong was to buy 2,000 tons of Duckenfield coal, at P8.50 per ton, to be delivered to it, the defendant, in the month of July; and defendant alleges further that the memorandum of the contract signed by defendant and introduced in evidence by the plaintiff is not a memorandum of a contract of sale by the defendant and purchase by plaintiff, but a memorandum of a proposed contract of purchase by defendant and sale by the plaintiff, wherein defendant signed as purchaser, and not as vender.

Plaintiff company is a retail coal dealer; defendant company is a wholesale merchant, whose business consists in part of the import of coal. On April 4, 1908, defendant received cable instructions from its London office to buy in the local market 2,000 tons of Duckenfield coal for July delivery provided it could be bought at about ^8.50 per ton. On the 6th of April, defendant's agent, a Mr. Corbet, who was in charge of its coal department, informed Mr. Armstrong, of the brokerage firm of Armstrong & Mackay, that his company was in the market for 2,000 tons of Duckenfield coal, provided it could be bought for July delivery at a price not exceeding P8.50 per ton. Armstrong understood Corbet to say that the defendant company was in the market to sell upon the terms indicated, and on the afternoon of the same day he called at the office of the defendant company and submitted a paper in words and figures, as follows:

"Coal contract between Messrs. Madrigal & Co., buyers, and Messrs. W. F. Stevenson & Co., sellers.

"Date of sale, Manila, 7th April, 1908.

"Quantity, 2,000 (two thousand) tons of 2,240 lbs.

"Description, Duckenfield.

"Delivery in July this year.

"Shipment, P8.50 per ton, eight pesos & fifty cents, of 2,240 lbs.

"Weight to be taken.

"Duty for account of sellers.

"Payable on delivery.

"The act of God, enemies, restraints, rulers, or princes, fire and all and every other dangers and accidents of the seas, rivers, and navigation during the voyage, and riots, commotions by keelmen, strikes or lockouts of pitmen, or other hands, frost, floods, or any other accidents or causes beyond the control of the sellers which may prevent or

hinder the loading or unloading the cargo always excepted.

" (Signed) Brokers Armstrong & Mackay.

"Accepted,.....buyers.

"Accepted,.....sellers."

Mr. Stevenson, the manager of the defendant company, believing this document to be a memorandum of the terms of a proposed contract between his company and the plaintiff company, whereby plaintiff was to sell and defendant to buy coal in accordance with its stipulations, signed the name of the defendant company in the blank space opposite the word "buyer," in token of his acceptance. This memorandum was immediately delivered to Armstrong, who in turn delivered it to Madrigal & Co. Two days afterwards, on April 9, Armstrong forwarded to the defendant company a duplicate of the above set out memorandum, with the name of the plaintiff company signed in the blank space opposite the word "buyer," just as the name of the defendant company was signed in the duplicate memorandum delivered by it to the broker. Corbet, defendant company's agent, immediately returned this memorandum to the broker, calling his attention to the fact that plaintiff had attached its name in the blank space for the buyer instead of the seller, and requesting the broker to have the memorandum corrected, and the name of the plaintiff attached thereto as seller instead of buyer. On the same day Armstrong communicated with the plaintiff company, and informed it of defendant company's claim that it was the buyer and not the seller, and that it had signed the memorandum upon that understanding. A few days later, on the 13th of April, plaintiff company addressed a communication to the defendant company, calling defendant's attention to the fact that the latter's name was attached to the memorandum signed by it in the blank space reserved for the buyer, and asking defendant company to correct the alleged error. In reply, defendant company, which had already stated its position to the broker, referred the plaintiff to the broker for explanation of its position. No further action appears to have been taken by either party until the month of July, when plaintiff formally demanded of defendant the fulfillment of its alleged contract for the sale of coal on the terms set out in the memorandum. Defendant, denying that it ever entered into a contract for the sale of coal on the terms set out in the memorandum, refused to make delivery, and this action was instituted for the recovery of alleged damages resulting therefrom.

All of the above set-out facts are practically admitted, except that plaintiff denies or rather questions the findings of the trial court that Corbet, the defendant's agent, when he originally treated with the broker, proposed a purchase and not a sale of coal; and that when the signature of Stevenson & Co. was attached to the memorandum of the transaction, it was attached in good faith as buyer and not as seller.

In support of its contentions in this regard, plaintiff relies on the deposition of the broker who states that he understood Corbet to propose a sale; and upon the language of the title of the memorandum, which expressly states that it is a memorandum of a contract between Madrigal & Co., buyer, and Stevenson & Co., seller. But Corbet positively asserts that he told the broker that his firm was in the market as a buyer, and the broker admitted that he may have been, or rather must have been, mistaken; and the signature of defendant company on the memorandum, as buyer, rebuts the inference sought to be drawn from the title, which defendant's manager states he did not observe at the time when he attached the company's signature. Certainly in the absence of other evidence the signature of defendant company as buyer upon the memorandum is not sufficient in itself to sustain a finding that it was attached there as seller.

The truth appears to be, as stated above, that both plaintiff and defendant throughout the transaction were dealing

in good faith and that the confusion arose through the mistake of the broker. The bona fides of the plaintiff company is not questioned, and that of the defendant company is made clear by the evidence of the circumstances under which it entered on the transaction, and its conduct immediately thereafter. The proven copy of the cable from its London office, dated April 4, leaves no room for doubt that it was in the market as a buyer, and its cable to its London office immediately after the signing of the broker's memorandum announcing its fulfillment of the instructions received in the former cable clearly disclose its understanding of the transaction; and all doubt of its good faith throughout would seem to be dispelled by its prompt action in calling attention to what it believed to be plaintiff's mistake in signing the broker's memorandum as purchaser, and the return of the memorandum to the broker immediately after receiving it and observing that plaintiff's signature was attached thereto as buyer. This, especially, in view of the fact that these transactions took place early in the month of April, and the proposed delivery of coal was not to be made until the following July.

We are satisfied that the weight of the evidence discloses that neither the defendant company nor any of its agents authorized the broker Armstrong to make the alleged sale on its behalf, and that no verbal contract for the sale of coal was entered into by the defendant company with the plaintiff company as alleged by the latter; and that the broker's memorandum signed by the defendant company neither in intent nor by its express terms constituted a promise or agreement by the defendant company to sell and deliver coal.

As the trial court well says, "the minds of the parties never met upon a contract of sale by defendant to plaintiff," or, in other words, there was no mutual consent by the parties to the alleged contract, and, therefore, there was no contract, and the trial court properly declined to allow damages for an alleged breach. (Art. 1261, Civil Code; see also cases cited on this subject, 9 Cyc., 245.) The judgment of the trial court should be, and is therefore, affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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