

CHRYSLER PHILIPPINES CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND SAMBOK MOTORS CO. (BACOLOD), RESPONDENTS.

G.R. No. 55684. December 19, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Subject of this Petition for Review is the Decision of the then Court of Appeals in CA-G.R. No. 65328-R reversing the judgment of the then Court of First Instance of Rizal, Branch XX, in Civil Case No. 16624, and dismissing petitioner Chrysler Philippines Corporation's suit for Damages against private respondent Sambok Motors Company (Bacolod) arising from breach of contract.

Petitioner is a domestic corporation engaged in the assembling and sale of motor vehicles and other automotive products. Respondent Sambok Motors Co., a general partnership, during the period relevant to these proceedings, was its dealer for automotive products with offices at Bacolod (Sambok, Bacolod) and Iloilo (Sambok, Iloilo). The two offices were run by relatives. Miguel Ng was Assistant Manager for Sambok, Bacolod, while an elder brother, Pepito Ng, was the President.[1]

On September 7, 1972, petitioner filed with the Court of First Instance of Rizal, Branch XX, Pasig, Rizal, a Complaint for Damages against Allied Brokerage Corporation, Negros Navigation Company and Sambok, Bacolod, alleging that on October 2, 1970, Sambok, Bacolod, ordered from petitioner various automotive products worth P30,909.61, payable in 45 days; that on November 25, 1970, petitioner delivered said products to its forwarding agent, Allied Brokerage Corporation, for shipment; that Allied Brokerage loaded the goods on board the M/S Dona Florentina, a vessel owned and operated by Negros Navigation Company, for delivery to Sambok, Bacolod; that when petitioner tried to collect from the latter the amount of P31,037.56, representing the price of the spare parts plus handling charges, Sambok, Bacolod, refused to pay claiming that it had not received the merchandise; that petitioner also demanded the return of the merchandise or their value from Allied Brokerage and Negros Navigation, but both denied any liability.

In its Answer, Sambok, Bacolod, denied having received from petitioner or from any of its co-defendants, the automotive products referred to in the Complaint, and professed no knowledge of having ordered from petitioner said articles.

Upon a Joint Motion to Dismiss filed by petitioner and Allied Brokerage, the Trial Court, on October 23, 1975, dismissed the case with prejudice against Allied Brokerage for lack of cause of action, and also dismissed the latter's counter-claim against petitioner.

On July 31, 1978, the Trial Court rendered its Decision dismissing the Complaint against Negros Navigation for lack of cause of action, but finding Sambok, Bacolod, liable for the claim of petitioner, thus:

"PREMISES CONSIDERED, the Court renders judgment as follows:

(1) The complaint against defendant Negros Navigation is dismissed for lack of cause of action.

(2) Defendant Sambok Motors Co. (Bacolod) is ordered to pay plaintiff Chrysler Philippines Corporation:

(a) The sum of Thirty-One Thousand Thirty Seven Pesos and Fifty Six Centavos (P31,037.56) with interest at the rate of twelve percent (12) per annum from January 1, 1971 until fully paid;

(b) The sum of Five Thousand Pesos as and for attorney's fees and expenses of litigation;

(c) The costs of the suit.

(3) The counterclaim of defendant Negros Navigation and Sambok Motors Co. (Bacolod) are dismissed for lack of merit."

The case against Negros Navigation was dismissed for failure of petitioner and Sambok, Bacolod, to file the necessary notices and as claims as conditions precedent for a judicial action.[2]

On the other hand, the Trial Court found that the act of Sambok, Bacolod, "in refusing to take delivery of the shipment for no justifiable reason from Negros Navigation despite having received the Bill of Lading constituted wrongful neglect or refusal to accept and pay for the subject shipment, by reason of which defendant Sambok Motors may be held liable for damages."

Sambok, Bacolod, appealed. On November 26, 1980, respondent Appellate Court set aside the appealed judgment and dismissed petitioner's Complaint, after finding that the latter had not performed its part of the obligation under the contract by not delivering the goods at Sambok, Iloilo, the place designated in the Parts Order Form (Exhibits "A", "A-1" to "A-6"), and must, therefore, suffer the loss. In other words, respondent Appellate Court found that there was misdelivery.

Hence, this Petition for Review on Certiorari, with the following errors assigned to respondent Court:

"I

"The Respondent Court of Appeals erred in finding that the issue of misshipment or misdelivery of the automotive spare parts involved in the litigation was raised by the private respondent Sambok Motors Co. (Bacolod) in the Trial Court.

II

"The Respondent Court of Appeals erred in refusing to apply the provisions of Section 18, Rule 46 of the Revised Rules of Court quoted below, that since the question of misshipment or misdelivery was not raised by the private respondent in the Trial Court, this issue cannot for the first time be raised on appeal.

'Section 18. Questions that may be raised on appeal. - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.'

III

"The Respondent Court of Appeals erred in finding that the private respondent gave the alleged instruction to the petitioner to ship the automotive spare parts to Iloilo City and not to Bacolod City.

IV

"The Respondent Court of Appeals erred in finding that the defendant Negros Navigation notified the private respondent of the arrival of the shipment at Bacolod City.

V

"The Respondent Court of Appeals erred in reversing the decision of the Trial Court that the act of the private respondent in refusing to take delivery of the automotive spare parts that it purchased from the petitioner after having been notified of the shipment constitutes wrongful neglect resulting in the loss of the cargo for which it should be liable in damages to the petitioner."

To our minds, the matter of misdelivery is not the decisive factor for relieving Sambok, Bacolod, of liability herein. While it may be that the Parts Order Form (Exhibits "A", "A-1" to "A-6") specifically indicated Iloilo as the destination, as testified to by Ernesto Ordonez, Parts Sales Representative of petitioner[3], Sambok, Bacolod, and Sambok, Iloilo, are actually one. In fact, admittedly, the order for spare parts was made by the President of Sambok, Pepitong, through its marketing consultant. Notwithstanding, upon receipt of the Bill of Lading, Sambok, Bacolod, initiated, but did not pursue, steps to take delivery as they were advised by Negros Navigation that because some parts were missing, they would just be informed as soon as the missing parts were located.[4]

It was only four years later, however, or in 1974, when a warehouseman of Negros Navigation, Severino Aguarte, found in their off-shore bodega, parts of the shipment in question, but already deteriorated and valueless.[5]

Under the circumstances, Sambok, Bacolod, cannot be faulted for not accepting or refusing to accept the shipment from Negros Navigation four years after shipment. The evidence is clear that Negros Navigation could not produce the merchandise nor ascertain its whereabouts at the time Sambok, Bacolod, was ready to take delivery. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them.[6]

From the evidentiary record, Negros Navigation was the party negligent in failing to deliver the complete shipment either to Sambok, Bacolod, or to Sambok, Iloilo, but as the Trial Court found, petitioner failed to comply with the conditions precedent to the filing of a judicial action. Thus, in the last analysis, it is petitioner that must shoulder the resulting loss. The general rule that before delivery, the risk of loss is borne by the seller who is still the owner, under the principle of "res perit domino"[7], is applicable in petitioner's case.

In sum, the judgment of respondent Appellate Court, will have to be sustained not on the basis of misdelivery but on non-delivery since the merchandise was never placed in the control and possession of Sambok, Bacolod, the vendee.[8]

WHEREFORE, we hereby affirm the Decision of the then Court of Appeals in CA-G.R. No. 65328-R, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

Relova, J., no part.

[1] Exhibit "6", Deposition, Miguel Ng, p. 4.

[2] CFI Decision, Rollo, p. 140.

[3] T.s.n., June 6, 1975, p. 581.

[4] Folio of Exhibits, pp. 22-23, Deposition of Miguel Ng.

[5] Rollo, pp. 136-137.

[6] Article 1522, Civil Code.

[7] Article 1504, Civil Code.

[8] Article 1497, Civil Code.

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