

LEGASPI OIL CO., INC., PETITIONER, VS. THE COURT OF APPEALS AND BERNARD OSERAOS, RESPONDENTS.

G.R. No. 96505. July 01, 1993

Ponente: MELO, J.

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MELO, J.:

The petition for review on certiorari before us seeks to set aside the decision dated March 23, 1990 of the Court of Appeals in CA-G.R. CV No. 05828, penned by the Honorable Justice Abelardo Dayrit with whom Justices Javellana and Kalalo concurred, which dismissed petitioner's complaint for damages (p. 48, Rollo).

Petitioner does not dispute the facts of the case, as found by respondent Court of Appeals. The findings of the respondent Court are thus adopted, to wit:

From the evidence presented by the plaintiff, appellee [now petitioner Legaspi Oil Company, Inc.], it appears that defendant-appellant [now private respondent Bernard Oseraos] acting through his authorized agents, had several transactions with appellee Legaspi Oil Co. for the sale of copra to the latter. The price at which appellant sells the copra varies from time to time, depending on the prevailing market price when the contract is entered into. One of his authorized agents, Jose Llover, had previous transactions with appellee for the sale and delivery of copra. The records show that he concluded a sale for 70 tons of copra at P95.00 per 100 kilos on May 27, 1975 (Exhibit G-5) and another sale for 30 tons of P102.00 per 100 kilos on September 23, 1975 (Exhibit G-3). Subsequently, on November 6, 1975, another designated agent signed a contract in behalf of appellant for the sale of 100 tons of copra at P79.00 per 100 kilos with delivery terms of 25 days effective December 15, 1975 (Exhibit G-2). At this point, it must be noted that the price of copra had been fluctuating (going up and down), indicating its unsteady position in the market.

On February 16, 1976, appellant's agent Jose Llover signed contract No. 3804 for the sale of 100 tons of copra at P82.00 per 100 kilos with delivery terms of 20 days effective March 8, 1976 (Exhibit G, for the plaintiff). As compared to appellant's transaction on November 6, 1975, the current price agreed upon is slightly higher than the last contract. In all these contracts though, the selling price had always been stated as "total price" rather than per 100 kilos. However, the parties had understood the same to be per 100 kilos in their previous transactions.

After the period to deliver had lapsed, appellant sold only 46,334 kilos of copra thus leaving a balance of 53,666 kilos as per running account card (Exhibit "F"). Accordingly, demands were made upon appellant to deliver the balance with a final warning embodied in a letter dated October 6, 1976, that failure to deliver will mean cancellation of the contract, the balance to be purchased at open market and the price differential to be charged against appellant. On October 22, 1976, since there was still no compliance, appellee exercised its option under the contract and purchased the undelivered balance from the open market at the prevailing price of P168.00 per 100 kilos, or a price differential of P86.00 per 100 kilos, a net loss of P46,152.76 chargeable against appellant.

(pp. 43-44, Rollo.)

On November 3, 1976, petitioner filed a complaint against private respondent for breach of a contract and for damages.

After trial, the then Court of First Instance (now Regional Trial Court) of Albay in Civil Case No. 5529 rendered a decision holding herein private respondent (then defendant) Oseraos liable for damages in the amount of P48,152.76, attorney's fees (P2,000), and litigation costs.

Oseraos appealed to respondent Court which thereafter rendered a reversal decision on March 23, 1990, ordering the dismissal of the complaint.

Hence, the instant petition for review on certiorari.

The sole issue posed by the petition is whether or not private respondent Oseraos is liable for damages arising from fraud or bad faith in deliberately breaching the contract of sale entered into by the parties.

After a review of the case, we believe and thus hold, that private respondent is guilty of fraud in the performance of his obligation under the sales contract whereunder he bound himself to deliver to petitioner 100 metric tons of copra within twenty (20) days from March 8, 1976. However within the delivery period, Oseraos delivered only 46,334 kilograms of copra to petitioner, leaving an undelivered thus a balance of 53,666 kilograms. Petitioner made repeated demands upon private respondent to comply with his contractual undertaking to deliver the balance of 53,666 kilograms but private respondent elected to ignore the same. In a letter dated October 6, 1976, petitioner made a final demand with a warning that, should private respondent fail to complete delivery of the balance of 53,666 kilograms of copra, petitioner would purchase the balance at the open market and charge the price differential to private respondent. Still private respondent failed to fulfill his contractual obligation to deliver the remaining 53,666 kilograms of copra. On October 22, 1976, since there was still no compliance by private respondent, petitioner exercised its right under the contract and purchased 53,666 kilograms of copra, the undelivered balance, at the open market at the then prevailing price of P168.00 per 100 kilograms, a price differential of P86.00 per 100 kilograms or a total price differential of P46,152.76.

Under the foregoing undisputed circumstances, the actuality of private respondent's fraud cannot be gainsaid. In general, fraud may be defined as the voluntary execution of a wrongful act, or a wilful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission; the fraud referred to in Article 1170 of the Civil Code of the Philippines is the deliberate and intentional evasion of the normal fulfillment of obligation; it is distinguished from negligence by the presence of deliberate intent, which is lacking in the latter (Tolentino's Civil Code of the Philippines, Vol. IV, p. 110). The conduct of private respondent clearly manifests his deliberate fraudulent intent to evade his contractual obligation for the price of copra had in the meantime more than doubled from P82.00 to P168 per 100 kilograms. Under Article 1170 of the Civil Code of the Philippines, those who in the performance of their obligation are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. Pursuant to said article, private respondent is liable for damages.

The next point of inquiry, therefore, is the amount of damages which private respondent is liable to pay petitioner. As afore-mentioned, on account of private respondent's deliberate breach of his contractual obligation, petitioner was compelled to buy the balance of 53,666 kilos of copra in the open market at the then prevailing price of P168 per 100 kilograms thereby paying P46,152.76 more than he would have paid had private respondent completed delivery of the copra as agreed upon. Thus, private respondent is liable to pay respondent the amount of P46,152.76 as damages. In case of fraud, bad faith, malice, or wanton attitude, the guilty party is liable for all damages which may be reasonably attributed to the non performance of the obligation (*Magat vs. Medialdea*, 121 SCRA 418 [1983]). Article 1101 of the old Civil Code, later to be reproduced as Article 1170 of our present Civil

Code, was the basis of our decision in an old case, *Acme Films, Inc. vs. Theaters Supply Corporation*, (63 Phil, 657 [1936]), wherein we held:

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 defendants 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.

(at page 663.)

WHEREFORE, the instant petition is hereby GRANTED. The decision of the respondent Court of Appeals in CA--G.R. CV No. 05828 is ANNULLED and SET ASIDE and the decision of the trial court in Civil Case No. 5529 REINSTATED, with costs against private respondent.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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