

CARLOS DE LIZARDI, ADMINISTRATOR OF THE ESTATE OF LIM JOCSING, PLAINTIFF AND APPELLEE, VS. F. M. YAPTICO, DEFENDANT AND APPELLANT.

G.R. No. 9954. March 22, 1915

Ponente: TORRES, J.

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TORRES, J.:

Appeal filed through bill of exceptions by counsel for the defendant from the judgment of January 30, 1913, whereby the Honorable Adolph Wislizenus, judge, sentenced him to pay to the plaintiff the sum of P10,320, with legal interest at the rate of 6 per cent a year from the date of the filing of the complaint, and the costs.

On June 5, 1913, counsel for Carlos de Lizardi, administrator of the property of the deceased Lim Jocsing, appointed in the proceedings for the settlement of his intestate estate, filed a complaint in writing in the Court of First Instance of Cebu alleging: That on October 13, 1912, said Lim Jocsing, then living, placed on board the steamer Bais, lying at Malitbog, Leyte, a certain quantity of abaca valued at P15,000, consigned to the defendant F. M. Yaptico to be sold in Cebu, Lim Jocsing insuring said abaca for the sum of P15,000 with an insurance company whose agent in Cebu was the defendant himself and paying the premium on the insurance policy; that on or about October 15, 1912, by reason of the wrecking of the said steamer Bais in its voyage to Cebu, Lim Jocsing perished in the sea and at the same time all the abaca he had on board was lost; that the defendant Yaptico collected the insurance, amounting to P15,000, and appropriated this sum to his own use, refusing to return it to the plaintiff; wherefore, judgment is prayed against the defendant by sentencing him to pay the sum of P15,000 to the plaintiff administrator of the property of Lim Jocsing.

In his answer the defendant F. M. Yaptico admitted as a fact that Lim Jocsing had delivered for him and loaded on board the steamer Bais a certain quantity of abaca valued at P10,320, and under an express contract made between him and Lim Jocsing the abaca the latter delivered on board the Bais became the property of Yaptico; he also admitted that said shipment of abaca had been insured in his own name by the defendant, who paid the corresponding premium; that this abaca was lost as a consequence of the wrecking of the said steamer, on which occasion the said Lim Jocsing perished; that he likewise admitted the fact of having collected the insurance on the abaca; but he denied that said insurance belonged to Lim Jocsing, and furthermore denied all other allegations in the complaint not specifically admitted in his answer.

Under date of October 20, 1913, defendant filed a motion asking leave to amend the first paragraph of his answer, because the value of the abaca loaded by Lim Jocsing upon the steamer Bais, as billed to the defendant, was only P9,460, but was insured for P10,320. This motion was denied by the court, as the facts set forth in the amendment might be the object of proof on trial.

After trial and examination of the evidence adduced by both parties, the court found that the abaca loaded by Lim Jocsing on the steamer Bais on October 13, 1912, was his property, wherefore it rendered the decision above mentioned. Defendant excepted thereto and in writing asked for a reopening of the case and moved for a new trial.

This motion was denied, with exception on the part of the appellant, who presented his bill of exceptions, which was approved and forwarded to the clerk of this court.

There is no question whatsoever as to the facts. Manuel Perez Lim Jocsing, a Chinese merchant of the town of Malitbog, Leyte, secured from the firm of F. M. Yaptico, called also Chiat Seng, of Cebu, the opening of an account current on its books and furthermore the extension to him of a credit of P15,000 to be employed in the purchase of abaca and copra, this credit to be guaranteed by all his business (Exhibit B, pp. 60, 61). On October 9, 1912, the Chinaman Manuel telegraphed several times to the Yaptico firm asking it to send him one of its steamers, with money and certain goods he had ordered that same day (Exhibit 16, p. 47; Exhibit 18, p. 48; Exhibit 19, p. 52, Exhibit 22, p. 55; and Exhibit 23, p. 57) ; wherefore Yaptico sent the steamer Bais to Malitbog, carrying 850 sacks of rice and other goods the value whereof amounted to P7,127, and also the sum of P4,000 in cash consigned to the said Chinaman Lim Jocsing (Exhibit C, p. 62).

Having received the goods and the money sent by the defendant, said Lim Jocsing in his turn on October 13, 1912, loaded upon the Bais 430 piculs of abaca consigned to the defendant in Cebu, which abaca at the rate of P22 a picul was worth P9,460, and this amount was charged to the defendant, while it was also credited on the account current of Lim Jocsing, as appears from the extract of accounts entered on page 46 of the record.

Aside from the consignment of abaca, copra was also loaded upon the said steamer, and these articles of merchandise were insured at P15,000 for and in the name of Chiat Seng—that is, the defendant Yaptico, in two insurance companies, whose agent in Cebu was the defendant himself (Exhibit 14, p. 45).

It is an indisputable fact that the defendant Yaptico collected the sum of P10,320, the insurance on 430 piculs of abaca at the rate of P24 a picul, which sum he retains in his possession on the ground that the abaca insured and lost through the wrecking of the said steamer belonged to him.

We have therefore to decide who was the owner of the abaca carried on board the Bais when it was wrecked, and who is entitled to collect the insurance on that abaca.

The question resolves itself into an interpretation of the contract entered into between the parties (Exhibit B, pp. 60 and 61 of the record), which gave rise to the commercial relations between Manuel Perez Lim Jocsing of Malitbog, Leyte, and the firm of F. M. Yaptico of Cebu. This contract, which is written in Chinese characters, was executed about the year 1909 by the said Lim Jocsing in favor of the firm F. M. Yaptico, or Chiat Seng, and by virtue thereof the defendant opened for him in its books an account current and at the same time extended to him a credit of P15,000 to be employed in the purchase of abaca and copra, which was his principal business in the Island of Leyte, Lim Jocsing guaranteeing said credit with the business he had established.

In the said contract appears the stipulation, among other things, that all the abaca and copra which Lim Jocsing might secure should be delivered to the defendant Yaptico and the value thereof should be credited on the shipper's account, said Lim Jocsing obligating himself to ship these articles only in Yaptico's steamers and to pay the latter the freight charges set forth in the contract. Lim Jocsing bound himself to send and deliver to Yaptico at least 10,000 piculs of abaca annually, but no quantity of copra was fixed, and if the abaca secured did not amount to 10,000 piculs he would pay the difference, and he obligated himself to pay to the defendant a commission of 20 centavos for each picul sent; but the warehouse charges, fire insurance, and other expenses the abaca might occasion while it was stored in Cebu would be for the account of the shipper Lim Jocsing. In the fourth paragraph it was agreed that whenever Yaptico should send a steamer to Lim Jocsing to get the abaca and copra he would also furnish the latter money and merchandise in value approximating the amount of abaca and copra delivered. The fifth paragraph of the contract reads literally: "The abaca and copra that I may deliver to be received on board by his agent shall be for the account of Yaptico, except in case I should otherwise expressly provide in writing."

In the remaining paragraph it was agreed how the account should be liquidated and the debt paid to Yaptico.

Plaintiff claims that all the abaca and copra delivered and loaded upon Yaptico's steamer and sent to him in Cebu belonged to Lim Jocsing, who forwarded them in order that the defendant might sell them on commission, not only because the Yaptico firm is a commission firm and this kind of transactions forms a large part of its business, but also from the context of the said contract (Exhibit B) it appears that Lim Jocsing would pay a commission of 20 centavos to Yaptico for each picul of abaca or copra sent to the latter; that these articles of merchandise should be shipped only in the defendant's steamers at the freight rates stipulated; that furthermore said Lim Jocsing obligated himself to bear the expenses of storage, insurance, etc., upon the goods while they were stored in Cebu; and therefore the defendant Yaptico had on various occasions telegraphed to Lim Jocsing in Malibog the prices quoted for abaca and copra in the Cebu market and at other times communicated to him by telegraph the sales of his abaca or copra, giving the grade of the article, the selling price, and the buyer's name (Exhibit 16, p. 47; Exhibit 17, p. 49; Exhibit 20, p. 50; and Exhibit 25, p. 53).

Finally, the plaintiff Lizardi produced in evidence various documents he had found among the papers belonging to the deceased Lim Joes ing, some of which are invoices for goods sent him by the defendant Yaptico; various extracts from Lim Jocsing's account current, which under the contract (Exhibit B) the defendant sent him monthly, in which extracts Lim Jocsing is credited with the value of the sales of copra and abaca (Exhibit 6, 7, 8, and 12); some statements of sale of abaca sent to Lim Jocsing by the defendant showing the quantity, grade, price, and buyer's name (Exhibits 9, 10, and 11). All these documents are drawn up in Chinese, but their corresponding translations into Spanish are attached to the originals. In the said statements of sale it appears that Lim Jocsing paid the expenses of the abaca sold in Cebu, consisting of freight charges, drying, insurance, internal-revenue tax, and defendant's commission, expenses that by the terms of the contract (Exhibit B) Lim Jocsing was obligated to meet.

It is now alleged by the plaintiff that in view of these facts the conclusion is inevitable that the abaca which Ldm Jocsing sent to the defendant Yaptico for sale on commission did not become the letter's property, but continued to belong to the said Lim Jocsing, and the trial court so held.

Defendant maintains that by the clear and explicit terms of the fifth paragraph of the contract (Exhibit B) it is understood without any effort whatsoever that all the abaca shipped and delivered on board his steamers became his property, unless Lim Jocsing expressly provided otherwise in writing. It cannot be denied that Lim Jocsing did not expressly provide in writing for the shipment of the abaca that he delivered on board the steamer Bais on October 13, 1912, according to the agreement. He merely delivered it to the steamer's supercargo, without providing in writing for the disposition of the abaca in a special manner under the terms of the contract.

The witness Benito Tan Unchuan, who examined the Spanish translation of the contract Exhibit B, at the request of plaintiff's counsel, affirmed that it is faithful and exact. The fifth paragraph of this contract sets forth in a clear and positive manner, without leaving room for any reasonable doubt, that the intention of the contracting parties was that the abaca and copra which should be delivered and received on board the defendant's steamers would be on account—that is to say, on account and at the risk of Yaptico, unless Lim Jocsing otherwise expressly provided in writing. It is clear that the merchandise which was shipped on defendant's account and at his risk would be in his charge and under his responsibility, because once received it became his property; and in case of loss, as has occurred, the defendant would be the only one prejudiced as the owner thereof.

Upon this understanding of the contract the parties had dealings during the three or four years they maintained commercial relations, for the manager of the Yaptico firm asserted that whenever Lim Jocsing had abaca or copra to forward, he sent him money and goods of a value equal to that of said merchandise which Lim Jocsing was to

receive and the latter obligated himself in such case to transfer the goods by sale to the defendant, since the collection and acquisition thereof were made with money of the defendant, and for these reasons he had an agent, named Go Tiu, who at the same time was the supercargo of the Bais, for the purpose of receiving any abaca and copra Lim Jocsing might deliver. On the occasions when the latter did not need money from the defendant the abaca or copra was sold to other persons, not to the defendant, the merchandise in such cases being insured in the name of the shipper Lim Jocsing (sten. notes, p. 23). In fact, the insurance policies, Exhibits E, F, and G, demonstrate that in the months of February, April, and May, 1912, Lim Jocsing insured in his own name certain shipments of abaca and copra forwarded to the defendant in Cebu to be sold by him and these must have been acquired by Lim Jocsing with his own money; but the other policies, Exhibits H and I, must undoubtedly have been for the insurance of the abaca and copra collected and acquired with money of the defendant, for they were issued in favor of Chiat Seng—that is, the defendant.

It is, therefore, a fact proven that, under clause 5 of the contract before mentioned, under the terms of which the contracting parties acted, the abaca and copra delivered by Lim Jocsing on board the steamer Bais for the defendant became the latter's property, nor can the plaintiff be permitted to maintain a different theory from that which clearly and indisputably appears in the fifth paragraph of the contract, Exhibit B, for it is provided in article 1281 of the Civil Code that:

"When the terms of an obligation stated in a written contract are clear and leave no room for doubt, the plain meaning of the wording thereof should be observed, it not being lawful to include therein things and cases different from those which the interested parties intended to contract for." (Azarraga vs. Rodriguez, 9 Phil. Rep., 637.)

"Persons who enter into a contract which is not contrary to law, to good morals, or to public policy are bound by the terms of their agreement." (Santos vs. Marquez, 13 Phil. Rep., 207; Alcantara vs. Alinea, 8 Phil. Rep., III; Icaza vs. Perez, 5 Phil. Rep., 166.)

Moreover, in the first paragraph it was stipulated that, when Lim Jocsing sent his products to the defendant, the latter was to credit the former's account with the value of the abaca and copra forwarded. Hence it follows that upon receiving the goods and crediting Lim Jocsing's account current with the value thereof the defendant made himself the real owner of the merchandise delivered and therefore had a right to protect his interests by insuring it as he did. If the abaca lost in the wrecking of the Bais had not been insured, upon whom would the loss have fallen? Under the paragraph of the contract cited, Lim Joesing would not have lost the value of the abaca because upon receipt of the goods on board the steamer the defendant had to place the value thereof to the credit of Lim Jocsing, and whether the shipment arrived at Cebu or not its value was already entered on his account, wherefore the one who would have suffered the loss in that case would have been the defendant; but as he insured it in his name and on his account to provide against accident and as the abaca belonged to him, it is just that he collect the value of the insurance thereon.

True it is that Lim Jocsing was on board the Bais with the abaca in question when it was lost; and that when he was going in person to Cebu with his abaca, the shipment was not Yaptico's, but his own, because he had acquired it with his own money; but it is not proven in the record that Lim Jocsing had disposed by letter of the abaca which disappeared, the value whereof was Yaptico's, and therefore once delivered on board the steamer to the supercargo, according to the fifth paragraph of the contract, the abaca should be regarded as sold to Yaptico and as belonging to him, with the value of the insurance.

This theory is in conformity with the terms of the contract and is reasonable, for when the defendant extended credit to Lim Jocsing he furnished him in cash the sum of P15,000 and, furthermore, obligated himself to send money and goods of approximately the same value as the abaca and copra he should receive from Lim Jocsing, so

that the latter might secure more, thus furnishing in advance the value of the goods which Lim Jocsing obligated himself to deliver to the party who was furnishing him in advance the value of the shipment, and these goods, consisting of copra and abaca, forwarded and delivered to the agent of the defendant, became the reimbursement or payment of the sum advanced; wherefore it is only just that the defendant, as owner of the money or of the value of the shipment, should be regarded as the owner thereof and consequently of the insurance, the premiums on which he had paid.

Plaintiff argues that it is ridiculous and in conflict with the other clauses of the said contract, Exhibit B, to suppose that the abaca and copra shipped on the defendant's steamer would be his property and yet that Lim Jocsing should be obligated to pay the freight charges, insurance, storage, and other expenses, for if Lim Jocsing had not been the owner of said articles then he would not have been obligated to bear those expenses.

The fact that Lim Jocsing had to reimburse these expenses does not conflict with the property rights of the defendant Yaptico in the abaca and copra received from Lim Jocsing, taking into consideration that the latter was doing business with capital or money of the defendant Yaptico, without payment of any premium or interest; wherefore nothing is more just than that the creditor should benefit from the freight charges on his boats, from the commission on the sales, and that he be indemnified for the expenses of storage, fire insurance, and so forth, because the defendant advanced his money without getting any profit from the operations of buying up abaca and copra carried on by the said Lim Jocsing.

The circumstance that the defendant Yaptico kept Lim Jocsing informed of the price of the abaca and copra sold in Cebu, even of the goods delivered on board to the supercargo, does not indicate ownership rights, but merely the interest Lim Jocsing had in knowing the price of the sales, since the result of the latter would appear in the account current and the amount the sale produced would be deducted from the sum advanced to him by the defendant.

As owner of the abaca the defendant Yaptico was interested in its preservation and had the right to insure it against any risk or accident prejudicial to his interests, and since the loss of the abaca would have injured Yaptico as the owner of both the fiber and the money with which it was acquired, nothing is more just than that when it was insured the insurance should accrue to his benefit and in payment of the value of the abaca, which he had already advanced.

For these reasons the judgment appealed from must be reversed, and we should absolve the defendant Yaptico from the complaint, as we hereby do, without special finding as to costs. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, Trent, and Araullo, JJ., concur.

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