

SIULIONG & CO., INC., PLAINTIFF AND APPELLANT, VS. NANYO SHOJI KAISHA, DEFENDANT AND APPELLEE; AND NANYO SHOJI KAISHA, A CORPORATION, PLAINTIFF AND APPELLANT, VS. CHUA CHIN AND ...

G. R. Nos. 17395 and 17397. January 28, 1922

Ponente: JOHNS, J.

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JOHNS, J.:

Siuliong & Co., to whom we will hereafter refer as Siuliong, is a domestic corporation with its office and place of business in the city of Manila. Nanyo Shoji Kaisha, to whom we will refer as Kaisha, is a foreign corporation duly licensed to do business in the Philippine Islands with a place of business in the city of Manila. Chua Chin and Jao Pi, to whom we will refer as Jao Pi, are partners doing business at Manila at 260 Tetuan Street. April 7, 1920, Kaisha entered into a written contract with Jao Pi in and by which the corporation agreed to buy and the firm agreed to sell 3,000 piculs of "Ilocos Surtido" sugar at the agreed price of P21.50 per picul, delivery to be made on April 19, if the ships, can then be approached, otherwise the sugar will be placed in "cascos" at the expense of the company. April 17, 1920, Kaisha entered into a written contract with Siuliong to sell and deliver that company the same sugar in the month of April, 1920, at the agreed price of P25 per picul, or a profit of P3.50 per picul.

On the——day of July, 1920, for failure of Jao Pi to deliver the sugar under the contract, Kaisha commenced an action against that firm, in which it alleged the contract and the failure to deliver the sugar, the making of the contract with Siuliong and its corresponding failure to deliver the sugar. "That relying on defendants agreement and believing that he would comply with the said sale plaintiff on April 17, 1920, entered into a firm purchase and sale agreement with Siuliong & Co. of Manila to sell and deliver to them the said sugar, delivery to be made in April, 1920; the selling price being P25 per picul or at a profit to plaintiff of P3.50 per picul." That by reason of such failure, it is now liable to it in the sum of P24,000 damages, the difference between the agreed selling price and the market price at this date, said market price being P33 per picul. "That defendants failure to deliver sugar as agreed upon has caused plaintiff a direct loss of profit of P20,500 and a total damage of P34,500," for which it prays judgment with legal interest.

For answer, Jao Pi admit the execution of the contract, and, as a further and separate defense, allege that on April 24, 1920, the defendants in the city of Manila tendered the plaintiff 3,000 piculs of sugar of the grade known as the "Ilocos Surtido," which plaintiff refused to accept, and that the defendants kept the tender good from April 24, 1920, until May 16, 1920, and that, without any just cause, the plaintiff refused to accept the sugar, and that, by reason of such refusal, the defendants incurred expenses and losses amounting to P2,063.24. That plaintiff wrongfully procured an attachment by reason of which defendants were further damaged in the sum of P5,000, and the firm prays judgment against the plaintiff for the sum of P7,063.24.

Thereafter and on July 16, 1920, Siuliong commenced an action against Kaisha, alleging its contract and the failure to deliver the sugar. That "during the month of April, 1920, 'Ilocos Sugar' or 'Ilocos Surtido' was worth in

the Manila market thirty-three pesos (P33) per picul, wherefore plaintiff has been damaged in loss of sales, gains and profits through defendant's failure to deliver the said sugar according to its aforesaid contract in the sum of twenty- four thousand pesos (P24,000) Philippine currency," for which amount it prayed judgment against Kaisha.

For answer, after a general denial, and, as a special defense, Kaisha alleges that it sold and agreed to deliver the sugar to the plaintiff in reliance upon a similar contract made by it with Jao Pi, against whom the defendant has brought suit for the failure of that firm to comply with its, contract, so that it might in turn deliver the sugar to the plaintiff, and that "this defendant is seeking to recover the damages sustained by it on account of such failure for the purpose of reimbursing the plaintiff herein for such sum as it has been damaged on account of the failure of this defendant to deliver the sugar embraced in the contract described in the complaint," and it prayed that the case against it may be consolidated with its case against the firm of Jao Pi. It is further alleged that on April 30, 1920, the defendant offered the plaintiff certain Ilocos sugar amounting to about 3,000 piculs, which the plaintiff refused to accept, claiming that it was of poor quality, wet and not up to the standard of "Ilocos Surtido;" that, by reason of such refusal, the defendant was damaged in the sum of P10,500, for which it prayed judgment against Siuliong.

In its case against Jao Pi, among other things, Kaisha pleads the written contract, and that, on April 17, 1920, and relying thereon, it entered into a contract with Siuliong to sell and deliver the same sugar in the month of April, 1920, for P25 per picul. That on April 24th, the firm tendered to the plaintiff 3,000 piculs of sugar, which was wet to the extent of 75 per cent and in bad condition, and that, after an inspection thereof by Siuliong, that company refused to accept the sugar and, for such reason, the plaintiff refused to accept it, "and consequently has failed to keep its contract with Siuliong, and is now liable to them in the sum of P12,000 damages, the difference between the agreed selling price and the market price at this date said market price being P29 per picul." "That defendants have refused and still refuse to deliver 3,000 piculs of sugar to plaintiff of the quality known as 'Ilocos Surtido,' and that such failure has caused a direct loss of profit to plaintiff of P10,500, and a total damage of P22,500," for which it prays judgment against the Jao Pi firm, "with interest and costs.

The cases were consolidated and tried as one.

After the taking of testimony, the trial court rendered judgment in favor of the Kaisha company and against the Jao Pi firm for P10,500 and costs, and dismissed the case of Siuliong against Kaisha, for the reason that there was no evidence tending to show any "loss of sales, gains and profits, through defendant's failure to deliver the said sugar, according to the aforesaid contract."

In the case of Kaisha vs. Jao Pi, No. 17397, both parties appeal, the defendants claiming that upon the facts judgment should be rendered in their favor, and the plaintiff contending that the amount of its judgment should be increased to the amount of its liability, if any, to Siuliong.

In the case No. 17395, in which Siuliong is plaintiff, and judgment was rendered for the defendant, plaintiff appeals, claiming that it should have judgment for the difference between the contract price and the market price of sugar at the date it was to be delivered.

The trial court found that both contracts were made, as alleged, and that Jao Pi violated their contract with Kaisha, and that Kaisha violated its contract with Siuliong, and that the sugar which was tendered by Jao Pi was not of the grade or quality specified in the contract. Upon that question we agree with the trial court. After the original contract was made, sugar continued to rise in price. James Mitchell, a sugar dealer of twenty years' experience, testified that this grade of sugar was P28 per picul on the 16th of April, and the evidence show that at times in the month of April, it was P33 per picul. Yet the stubborn fact remains that later Jao Pi sold the sugar, which they tendered, in the open market for P23.50 per picul. If the sugar, which was tendered, was "Ilocos Surtido" sugar, by

their own admissions, Jao Pi sold the sugar for P19,500, less than its market value on April 26, 1920. This fact is conclusive that the sugar which Jao Pi tendered was not "Ilocos Surtido" sugar. Otherwise, they would not have sold the sugar in the open market for P19,500, less than its market value on April 26th. In addition to this, the evidence of the disinterested witnesses strongly support the findings of the trial court that the sugar, which was tendered, was far below the grade of "Ilocos Surtido."

Jao Pi having violated their contract with Kaisha, and Kaisha having violated its contract with Siuliong, the remaining question is one of the damages, if any, which each vendee is entitled to recover from its respective vendor. By their contract, Jao Pi agreed to deliver the 3,000 piculs of sugar to Kaisha on a specified date, to wit: April 19, 1920. Relying upon this contract, and upon the 17th of April, 1920, Kaisha sold the same amount and quality of sugar to Siuliong for April delivery. It is very apparent that the parties then contemplated that, concurrent with the delivery of the sugar by Jao Pi to Kaisha, Kaisha would deliver the same sugar to Siuliong. In other words, that the one delivery would be concurrent with, and contingent upon, the other, and that both deliveries would constitute one and the same transaction.

Nizuchi Yoshimura, of the Kaisha company, testified that, before the offer of delivery was made, he notified the defendants of the sale of the sugar to Siuliong.

When Jao Pi announced on April 24th that they were ready to deliver the sugar, it was then examined and inspected by both Kaisha and Siuliong, and Siuliong rejected the sugar because it was not of the grade or quality specified in the contract, and, for such reason, Kaisha also rejected the sugar. The fact that the sugar was examined by both parties before its delivery is conclusive evidence that Jao Pi knew that Kaisha had sold the sugar to Siuliong, and that upon its receipt by Kaisha, the sugar was to be delivered to Siuliong. Again, from the very nature of the transaction, Jao Pi must have known that Kaisha bought the sugar for sale and not consumption. The amount was 3,000 piculs, and Kaisha was engaged in the buying and selling of sugar.

Under their contract, Jao Pi were to deliver the sugar April 19th at the agreed price of P21.50 per picul, and under its contract, Kaisha was to deliver the sugar to Siuliong in the month of April for P25 per picul. Under the facts, we are of the opinion that it was the purpose and intent of all parties that both deliveries should be concurrent. There is no evidence that any portion of the contract price was ever paid, and, hence, the market price should be fixed as of the date when delivery should have been made.

The rule is well stated in Ruling Case Law, vol. 24, sec. 337:

"Determination of market value; time and place generally.-It is ordinarily the rule that the market price or value at the time and place of delivery is to be taken as the criterion for fixing the general damages, and it has been pointed out that this is undoubtedly the rule both in England and in this country as respects time where the price has not been paid in advance. Where, however, the price of the commodity contracted to be delivered has been paid prior to the time for delivery, a somewhat different rule obtains according to some of the authorities, and it has been held that in such case the buyer is not confined in his recovery to the difference between the contract and market price on the day of delivery, but he may recover the higher market price between the day for delivery and the time suit is brought or the time of trial provided the plaintiff does not unreasonably delay the institution of his suit * * *."

Cyc, vol. 35, p. 465, says:

"The elements of substantial damages are many and vary according to the particular circumstances of the case. It is, however, elementary that only such damages may be recovered as are direct, certain, or liquidated, and which result naturally and directly from the breach, and which may reasonably be regarded as within the contemplation of the parties at the time of the sale as the probable consequence of a breach. * * *"

"Although in some cases it is said that the damages are to be determined as of the time and place of sale, the rule as it is generally stated is that the damages are to be determined as of the time and place of delivery."

The above rules are in harmony with the Civil Code.

"ART. 1106. The payment of damages shall include not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize, subject to the provisions contained in the following articles.

"ART. 1107. The losses and damages for which a debtor in good faith is liable are those foreseen, or which might have been foreseen, at the time of constituting the obligation, and which are a necessary consequence of the failure to comply with it.

"In case of fraud or intentional wrong (dolo) the debtor shall be liable for all damages which clearly originate from the failure to fulfill the obligation."

In the absence of its contract with Siuliong, Kaisha's measure of damages would be the difference between the contract price of P21.50 per picul, and the market value of the sugar at the time and place of delivery. If Jao Pi had delivered the sugar under the terms and provisions of their contract, they would not have been liable for any damages. For their failure to deliver the sugar, Kaisha was not able to keep its contract with Siuliong, and in the very nature of things, Jao Pi knew when they violated their contract with Kaisha, that such failure would force Kaisha to violate its contract with Siuliong. The performance of the one contract was contingent upon the performance of the other. Jao Pi are liable to Kaisha not only for the difference between P21.50 per picul and P25 per picul, but also for any damages which Siuliong sustained by reason of the failure of Jao Pi to deliver the sugar under their contract with Kaisha. If Jao Pi had delivered the sugar according to their contract, then Kaisha could have performed its contract, and neither party would be liable for any damages. Under the facts shown here, the failure of Jao Pi to deliver the sugar under their contract resulted in the failure of Kaisha to perform its contract with Siuliong. Of course, if Jao Pi had performed their contract with Kaisha and Kaisha had then failed to fulfill its contract with Siuliong, Jao Pi would not then be liable for the amount of any damages which Siuliong sustained through a breach of its contract by Kaisha. But that is not this case. Here, the breach of the contract by Jao Pi was the direct and proximate cause of the breach of the contract by Kaisha, and it was the direct and proximate cause of the damages which Siuliong sustained by reason of the breach. Under the written contract, Jao Pi were to deliver the sugar on April nineteenth, and, as we construe the record, all parties contemplated that the delivery to Siuliong should be concurrent with the delivery to Kaisha. Hence, Jao Pi would be liable to Kaisha for the difference between P21.50 per picul and P25 per picul, and for any further damages which Kaisha sustained by reason of such failure. The trial court found that, because there was no evidence tending to show any "loss of sales, gains and profits through defendant's failure to deliver the sugar according to the aforesaid contract," Siuliong was not entitled to recover any damages. This was error. It is true that outside of the evidence of the market value of the sugar, there was no testimony as to the loss of sales, or gains and profits which Siuliong would have made. But there is abundant evidence of the market value of sugar as of the date and place of delivery, and, under the Code and the authorities above cited, it is the market price or value at the time and place of delivery, from which the amount of damages, if any, is ascertained. Although the evidence is not clear as to the market value of that grade of sugar on April nineteenth, the date of delivery under the first contract, it tends to show that it was worth about P29 per picul. Again, on April 24th, Jao Pi offered to deliver about that amount of sugar under their contract, then and now claiming that it was of the grade of "Ilocos Surtido," and the evidence shows that both vendees were then ready and willing to carry out the contract as of that date, if the sugar was of the specified grade, and that it was rejected for the sole reason that it was below that grade. From this it appears that all parties recognized the force of, and were ready and willing to carry out, their respective contracts, as of date April twenty-fourth, and the only reason why the contracts were not kept and performed was because the

tendered sugar was below the specified grade.

This would tend to show a novation of the original contract as to the date of delivery, and the evidence is clear that sugar of this grade was of the market value of P30 or P31 per picul on that date.

Be that as it may, all things considered, we hold that the market price of "Ilocos Surtido" sugar at the time and place of delivery under the contract was P29 per picul.

In the case of Siuliong, plaintiff, vs. Kaisha, defendant, No. 17395, the judgment of the lower court will be reversed, and one entered here in favor of the plaintiff and against the defendant for P12,000, with interest thereon from April 19, 1920, at the rate of 6 per cent per annum, and the costs of the action.

In the case of Kaisha, plaintiff, vs. Jao Pi, defendants, No. 17397, the judgment of the lower court will be modified, and one entered here in favor of the plaintiff and against the defendants for P22,500, with interest thereon from April 19, 1920, at the rate of 6 per cent per annum, and the costs of the action.

In the case of Nanyo Shoji Kaisha vs. Chua Chin and Jao Pi, Siuliong & Co. is subrogated to the judgment therein rendered to the amount of its judgment against Nanyo Shoji Kaisha, and that amount of such judgment shall be for the use and benefit of Siuliong & Co. At such time as the judgment of Siuliong & Co. is fully satisfied, it shall operate as a full and complete satisfaction of the interest which it may have in the judgment of Nanyo Shoji Kaisha against Chua Chin and Jao Pi. So ordered.

Johnson, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

Araullo, C. J., did not take part. Judgment reversed in case No. 17395, and modified in case No. 17897.

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