

44 Phil. 87

[ G. R. No. 18999. November 24, 1922 ]

**ALBERT BRYAN, PLAINTIFF AND APPELLANT, VS. THOMAS HANKINS AND J. BIALOGLOWSKI, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

STATEMENT

October 20, 1920, in Manila, the defendants made a bill of sale to the plaintiff of the motor schooner Sultan for the agreed purchase price of P55,000 of which the plaintiff paid P20,000, and executed to the defendants one promissory note for P18,000 maturing on April 26, 1921, and another for P17,000 on July 26, 1921, and the possession of the schooner was delivered to the plaintiff. It was at once taken to Iloilo where it was for the first time inspected March 11, 1921, by the inspector of hulls and boilers of Iloilo. As a result of the inspection, it was found to be unseaworthy, and was ordered to be placed on the slipways for immediate repairs. On March 16, 1921, the plaintiff commenced this action in which he alleges the execution of the contract and the promissory notes and "that said defects in the vessel existed at the time of the-delivery to plaintiff; that said defects rendered said vessel unfit for the use of plaintiff; that if plaintiff had had knowledge of such defects he would not have bought said vessel; that said defects were hidden and plaintiff could not perceive them; that defendants warranted said vessel to be in seaworthy condition; that said vessel was not in such condition when delivered to plaintiff," and "tenders into court and places at the court's disposal said motor schooner Sultan and prays that said contract of sale be rescinded; that pending the trial of this case defendants be restrained from negotiating said promissory notes; that upon trial said restraining order be made permanent and that said promissory notes be cancelled; that plaintiff have judgment for the sum of twenty thousand pesos (P20,000) heretofore paid to defendants, interest from the date of filing this complaint, and costs of suit."

For answer, the defendants make a general denial, and, as a counterclaim, allege the

making of the promissory notes, and "that since the execution and delivery of the aforesaid promissory notes, plaintiff has repudiated them and announced his intention not to pay the same when they fall due, and in view of his action in bringing this suit, defendants are compelled to counterclaim for them here and now."

Wherefore, they pray judgment for P35,000, general relief and costs.

The trial court rendered judgment for the plaintiff for P10,000 without costs, from which both parties appeal, the plaintiff contending that the court erred in not rendering judgment in his" favor for P20,000, and the defendants contending that the court erred in not holding: (1) "That the plaintiff failed to present his claim for hidden defects within the time allowed by article 342 of the Code of Commerce;" (2) In deciding "that the motor schooner *Sultan* was unseaworthy and suffering from hidden defects at the time of the sale in October, 1920;" (3) In not holding that the plaintiff "by his conduct at the time of the sale waived any right to an implied warranty against hidden defects;" (4) In not rendering judgment for the defendants for P35,000.

Johns, J.:

The trial court made a clear analysis of the facts from which it appears that at the time the contract was made an order had been issued by the customhouse in Manila to the defendants, requiring that the vessel should be taken to the shipyard for inspection and examination. The plaintiff contends that at the time of the purchase it was agreed that he should have immediate possession of the vessel, and take it to Iloilo where it would be inspected upon its arrival. The defendants contend that the plaintiff agreed to purchase it without any inspection. The defendant Bialoglowski testified in substance that, if the validity of the sale depended upon inspection of the boat in another port, he would never have made it, because it would have been prejudicial to the interests of the defendants.

It appears that the inspector of vessels was not at Iloilo at the time of the arrival of the vessel, and that from one cause or another, and without the fault of the plaintiff, the examination was not made until the 11th of March, 1921, when the collector of customs of Iloilo, through the plaintiff, wrote a letter to the defendants specifying the necessary requirements as follows:

"1.Ninety per cent of the total frames of the vessel must be renewed.

"2. Replace all defective thick strake of ceiling where marked,

"3. Renew defective deck planking where marked.

"4. Renew defective deck beams.

"5. Repair defective hatchway, hatch cover and overhaul hatch battering apparatus.

"6. Repair all defective bulwark-stanchion.

"7. Replace defective bulwark planking.

"8. Renew defective booms.

"9. Overhaul steering gear.

"10. Place the vessel on slipways or high blocks for outside, keel and bottom planking inspection.

"11. Draw tail shaft for inspection.

"Any other materials of the hull of this vessel, which, during the course of repair, may be found defective, must be put in good condition."

Although there is some conflict in the testimony as to the physical condition of the vessel, it is conclusive that the whole vessel was more or less affected with dry rot, and that its timbers did not have any textile strength, and that it would cost more to repair it than it would be worth after it was repaired. The plaintiff knew but little, if anything, about the construction of a vessel. The defendants claimed and represented that the vessel was new, and that its construction was commenced in 1919 and completed in the month of July, 1920, and that prior to its delivery to the plaintiff, that it had only been in operation for five months, and that with the exception of the sternpost, stem post and hull, *palosapis* lumber was used in its construction.

The evidence shows that where this kind of lumber is used and is thoroughly seasoned, with proper care and treatment, the life of a boat will be from ten to twelve years, but where *palosapis* lumber used is green and is painted and covered with coal tar, its life is very short, and it is very apparent that the lumber used here was green and that even at the time

of the sale the vessel had but little actual value.

The defendants knew or should have known of the quality of the lumber used in the construction of the vessel. The plaintiff did not, and its actual condition could not be determined without a physical inspection. In other words, the defects in the lumber and materials used in the construction of the vessel were hidden and concealed and unknown to the plaintiff until the official inspection was made in Iloilo on March 11, 1921.

The trial court found and the evidence tends to show that the plaintiff purchased the vessel for use in his own personal business, and not "for the purpose of resale." The defendants vigorously contend that the transaction comes within the terms of article 342 of the Code of Commerce, first, because it is a commercial transaction, and, second, because it involves the sale and transfer of a ship. That article provides:

"A purchaser who has not made any claim based on the inherent defects in the article sold, within the thirty days following its delivery, shall lose all rights of action against the vendor for such defects."

The articles in the Code of Commerce previous to article 342 clearly show that article 342 refers to the sale and purchase of merchandise, and there are strong reasons for holding that a vessel is not merchandise within the meaning of article 342, title VI, of the Code of Commerce.

Article 325 provides:

"A purchase and sale of personal property for the purpose of resale, either in the form purchased or in a different form, for the purpose of deriving profit in the resale, shall be considered commercial."

As the trial court found, the vessel was not purchased "for the purpose of resale."

Article 325 says that "A purchase and sale of personal property for the purpose of resale \* \* \* shall be considered commercial."

Hence, under the rules of construction, it follows that merchandise which is not

purchased “for the purpose of resale” is not a commercial transaction within the meaning of the Code of Commerce, and that, as to a vessel, the thirty-day limitation does not exist. The reason for the rule is apparent. Where merchandise is purchased for a resale, in the ordinary course of business, it could be sold and resold within the thirty-day limitation, and, in the absence of the limitation, would lead to endless litigation. Hence, the law imposes upon the purchaser the duty of examining the merchandise within thirty days. Where the merchandise is not purchased for the purpose of a resale and is not resold, and it continues to remain in the possession of the purchaser, the reason for the rule does not exist, because the purchaser is the only party in interest and is the only person who could be injured.

As we analyze the evidence the instant case comes under the provisions of article 1484 of the Civil Code, which provides:

“The vendor is liable for any hidden defects which the thing sold may have should they render it unfit for the use for which it was intended, or if they should diminish its adaptability to such use to such an extent that had the vendee had knowledge thereof he would not have bought it or would have given a lower price for it; but such vendor shall not be liable for patent or visible defects, or for those which are not visible, if the vendee should be an expert who by reason of his trade or profession should easily perceive them.”

And article 1485, which provides:

“The vendor is liable to the vendee for any latent faults’ or defects in the thing” sold, even if they were unknown to him.

“This provision shall not apply if the contrary has been stipulated and the vendor was not aware of such latent faults or defects.”

The plaintiff purchased the vessel for his own personal use, and it involved an investment of P55,000. The testimony is conclusive that at the time of its inspection at Iloilo, it was unseaworthy and it had but little, if any, commercial value.

The defects of its construction were hidden and concealed and were unknown to the plaintiff until the official inspection was made, when he promptly brought this action. The proof is conclusive that such hidden defects rendered the vessel unfit for the use for which it was intended, and that the plaintiff did not have any knowledge of such defects, and that no sane man would ever have purchased it with such knowledge.

Article 1485 expressly provides that the vendor is liable to the vendee for any latent faults or defects of the thing sold, even if they were unknown to him.

In their answer, and as a counterclaim, the defendants seek to recover upon the promissory notes only, and do not plead any other defense. But the evidence shows that the plaintiff actually used the vessel in his business for a little more than four months and a half. Testimony was also offered without any protest or objection that, if the sale had not been made, the defendants could and would have leased the vessel to Mr. Rius at a stipulated rental of P2,000 per month. Evidence of the rental value of the vessel was not admissible under the pleadings, but it went in without protest or objection, and the fact remains that the plaintiff actually used the vessel for nearly five months, and the evidence shows that the value of such use was about P10,000.

The trial court, in legal effect, found that the plaintiff was entitled to recover the P20,000 which he had paid on the contract, and that he should be charged with the use of the rental value of the vessel during the time that he used it and had it in his possession, the reasonable value of which was P10,000, and, for that reason, rendered a corresponding judgment in favor of the plaintiff for the sum of P10,000. All things considered, the judgment of the trial court is affirmed, without costs to either party. So ordered.

*Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.*