43 Phil. 505

[G. R. No. 16936. June 22, 1922]

WARNER, BARNES & CO., LTD., PLAINTIFF AND APPELLEE, VS. DIONISIO INZA, DEFENDANT AND APPELLANT.

D E C I S I O N

ROMUALDEZ, J.:

About April 9, 1920, the firm of Figueras Hermanos, acting as agent of Dionisio Inza, sold through its manager, E. Sunyer, to the partnership of Warner, Barnes & Co., Ltd., the latter acting through its agent I. Robinson, 4,000 piculs of centrifugal sugar of 96 degrees, belonging to said Dionisio Inza, at P37.50 per picul. Neither delivery of the sugar, nor payment of its price, was then made.

Two days later, that is, on the 12th of the same month, in pursuance to the contract, Dionisio Inza handed to Warner, Barnes & Co., Ltd., several quedans covering 2,862.23 piculs of the sugar sold, together with his bill, which is Exhibit 1. On that same day the partnership of Warner, Barnes & Co., Ltd., through its agent Robinson, proposed to Dionisio Inza to pay the price of the sugar at a future date but not later than the 15th day of the following month of May, with interest at the rate of 8 per cent per annum on the price of the sale.

According to Warner, Barnes & Co., Ltd., this proposition was accepted in its entirety by Dionisio Inza. The latter, however, claims that while it is true that such a term was agreed upon, yet he imposed the condition that if no payment was made to him before the 15th day of May, the date stipulated, he would be free to dispose of the sugar.

About the 13th day of that same month of April, Dionisio Inza took back from Warner, Barnes & Co.> Ltd., the quedans which he had sent on the preceding day, and the quedans never again came into the possession of Warner, Barnes & Co., Ltd.

On May 17, 1920, Warner, Barnes & Co., Ltd., sent Dionisio Inza a check for P108,286.22 in

payment of the 2,862.23 piculs of sugar covered by the aforesaid quedans, and the interest on the price of said quantity of sugar at 9 per cent per annum, the rate having been raised by Warner, Barnes & Co., Ltd., of its own accord in view of the fact that it was the interest then charged by the banks at Iloilo. In the same letter of remittance of this check, Warner, Barnes & Co. asked that said quedans be sent them.

Dionisio Inza refused to receive the check and to send the quedans, alleging that the sale was rescinded by the failure of Warner, Barnes & Co., Ltd., to pay the price on the 15th day of May, as stipulated.

On the 18th of that same month of May, Warner, Barnes & Co. again made demand on Dionisio Inza for the surrender of the quedans, not only of those returned to him but of all the quedans covering the 4,000 piculs of sugar which were sold. This Dionisio Inza again refused to do.

On the 26th of that same month, the attorneys, Montinola, Montinola & Hontiveros, on behalf of Warner, Barnes & Co., made demand on Dionisio Inza who persisted In his refusal.

On June 1, 1920, Warner, Barnes & Co. filed a complaint, which was amended on the 26th of July following, alleging that Dionisio Inza had not fulfilled the contract, and that it suffered damages in the sum of P66,000, which was the difference between the value of the 4,000 piculs of sugar at fifty-four pesos (P54) per picul (the price of this commodity on June 1, 1920), and the value of this same sugar at the agreed price of thirty-seven pesos and fifty centavos (P37.50) per picul; and praying that judgment be rendered in its favor and against Dionisio Inza for damages in the said amount.

Dionisio Inza answered with a general denial.

After trial, the court rendered judgment against the defendant, as prayed for in the complaint.

The defendant brought the case on appeal to this court, assigning seven errors which, he alleges, were committed by the trial court, as follows: (*a*), In rendering judgment against him; (*b*) in denying his motion for new trial; (c) in holding that the defendant was under the obligation to bring the quedans to the plaintiff and then get payment of the price stipulated; (*d*) in not finding that the plaintiff was bound to pay, on or before the 15th of May, the bill sent to it on April 12th, as a condition precedent to the perfection of the sale of the sugar; (*e*) in finding that the price of sugar in the month of May, 1920, in the Iloilo market was P50

per picul; (*f*) in not holding that the contract on which the judgment was based was invalid, the same not having been reduced to writing; and (*g*) in recognizing the plaintiff as a juridical entity with capacity to sue in the Philippines.

The first error is a consequence of the rest. The disposition of the second is necessarily to be included in that of the others.

Under the third assignment of error, the defendant contends that the sale in question is governed by the provisions of the Civil Code, and that under article 1171 of the said Code, the plaintiff was under the obligation to pay the defendant the price of the sugar before the delivery thereof by the latter, the payment to be made by the plaintiff at the domicile of the defendant.

As to whether or not the delivery of the thing sold was a condition precedent to the payment of the price, it must not be overlooked that, even if we regard the sale as of a civil, and not of a mercantile, nature, a period was stipulated for the making of payment, and this brings the case within the exception provided in article 1466 of the Civil Code, that is, that the sugar should have been delivered even before its price was paid (Florendo vs. Foz, 20 Phil., 388). If we hold the sale in question to be mercantile, still it was the duty of the plaintiff to deliver the sugar before he could demand payment of its price, and only after such delivery, or, in default thereof, its judicial deposit, would the plaintiff have been under the obligation to pay the price (arts. 337 and 339, Code of Commerce).

Concerning the place of payment, it is true that the general rule is that in obligations not specified in article 1171 of the Civil Code cited by the defendant such place is the domicile of the debtor. The delivery, however, of the thing sold is governed by the special provisions of the Civil Code, as well as of the Code of Commerce.

In the case before us, the defendant was bound to place the sugar at the disposal of the plaintiff (art. 1462, Civil Code), or have it at the latter’s disposal within twenty-four hours after the contract (art. 337, Code of Commerce).

The evidence shows that the defendant did not place the sugar at the disposal of the plaintiff, nor have it at the latter’s disposal even within the twenty-four hours following April 13, 1920, the date on which he took back from the plaintiff the quedans covering a part of the sugar sold. It cannot be said that the sugar referred to in said quedans remained in the possession of the plaintiff, notwithstanding that they were taken back by the defendant, who, as a matter of fact, disposed of them without the consent of the plaintiff.

It was, therefore, incumbent upon the defendant to deliver the sugar sold to the plaintiff, and not having done so, he was in default in the fulfillment of his obligation as vendor.

The third assignment of error is, therefore, groundless. Coming to the fourth assignment of error, the defendant alleges that the evidence should have been held sufficient to establish the fact that the payment of the price on or before the 15th day of May was a condition precedent to the perfection of the sale.

Before determining whether the term proven by the evidence to have been agreed upon for the payment of the price of the sugar lasted until May 15, 1920, or the end of that month, it should be noted that the sale became perfected on the day of the making of the contract, before the delivery of the thing sold, or the payment of the price, upon the mere fact of the parties having agreed as to the thing which was the subject-matter of the contract and as to the price (art. 1450, Civil Code).

With reference to the term agreed upon for the payment of the price of the sugar, the defendant says that he imposed the condition that if his bill (for the sugar covered by the quedans which he had taken back) was not paid, he would sell the sugar where he could. This is denied by the plaintiff's evidence. It was incumbent upon the defendant to prove it, as it was a part of his affirmative defense, and the record does not afford any justification for finding that such a condition was sufficiently established.

As to whether or not the term for the payment of the price lasted until the 15th of May, or the end of said month, the preponderance of evidence shows that it lasted until the 15th of May, 1920, but as we have stated, such term was not coupled With the condition that default of payment would cause the rescission of the sale.

We find that the trial court did not commit the fourth error assigned.

Turning to the fifth assignment of error, we find that the evidence shows that the plaintiff had purchased the sugar of the defendant to resell it in America.

It appears that the price of sugar on the 15th of May, 1920, was P45 per picul. The difference between this price and that stipulated by the parties, which was P37.50 per picul, is the measure of the damages sustained by the plaintiff.

From what we have stated it follows that it is improper to take into account the price of sugar in the Iloilo market on any date other than the 15th of May, 1920, when the defendant

could have delivered the sugar to the plaintiff without incurring any responsibility under the contract. And the evidence does not show any other price of merchantable sugar in the said market on the aforesaid date of May 15, 1920.

We find the lower court erred in taking the price of P54 per picul as the basis for measuring the damages; wherefore, we conclude that the fifth assignment of error is well grounded.

There having been 4,000 piculs of sugar on each of which plaintiff suffered damages in the amount of P7.50, the total amount of the damages is P30,000.

The judgment appealed from is modified, and the defendant condemned to pay the plaintiff the sum of P30,000 as damages. No special pronouncement as to costs is made. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, and *Johns, JJ.,* concur.

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