2 Phil. 235

[G.R. No. 38. May 15, 1903]

PASTELLS & REGORDOSA, PLAINTIFFS AND APPELLANTS, VS. HOLLMAN & CO., DEFENDANTS AND APPELLEES.

D E C I S I O N

LADD, J.:

This action is brought to recover the purchase price of goods sold the defendants, who are a firm doing business in Manila, by the plaintiffs, who are manufacturers in Barcelona, Spain. The defense is that the goods were in fact sold not to the defendants but to one Ferrer, who acted for them as *comisionista* in Barcelona, and that Ferrer contracted for the goods in his own name and not in the name of the defendants.

It is claimed by the plaintiffs that Ferrer's agency for the defendants was not that of an agent (*comisionista*), but rather that of a special agent (*mandatario singular*), under article 292 of the Code of Commerce.

The article cited provides in part that "merchants may intrust to other persons besides factors the permanent management in their name and for their account of one or more of the branches of the business they are engaged in, by virtue of a written or verbal agreement; partnerships must incorporate such agreement in their by-laws, and individuals must make it known, by public notices or by means of circulars, to their correspondents."

No evidence has been produced to show that any appointment of Ferrer to act as special agent of the defendants had been notified to the public in the manner prescribed in this article, and there is nothing in the case from which it can fairly be inferred that his relations with the defendants wen1 of that character. The nature of his agency is determined by article 244 of the Code of Commerce, which provides that "the agency which has for its object an act or operation of commerce, or where the principal or the agent is a merchant or a commercial broker, shall be considered a mercantile commission." Here the principal was

a merchant, and the transactions were of a commercial character, and the rules of the Code as to mercantile commission must therefore govern.

These rules, so far as they relate to the present ease, are as follows:

> "Article 245: The agent (*comisionista*) may discharge the commission by contracting in his own name or in that of his principal."
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> "Article 246: When the agent contracts in his own name, it shall not be necessary for him to state who is the principal, and he shall be directly liable, as if the business were for his own account, to the persons with whom he contracts, said persons not having any right of action against the principal, nor the latter against the former, without prejudice to rights of action of the principal and agent against each other."
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> "Article 247: If the agent contracts in the name of the principal, he must state that fact, and if the contract is in writing he must state it therein or in the subscribing clause, giving the name, surname, and domicile of said principal.
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> "In the case indicated in the preceding paragraph, the contract and the actions arising therefrom shall be effective between the principal and the person or persons who may have contracted with the agent, but the latter shall be liable to the persons with whom he contracted, so long as he does not prove the commission, if the principal should deny it, without prejudice to the obligation and respective actions between the principal and agent."

There is, we think, no sufficient evidence that the goods in question were ordered directly by the defendants. Accepting, then, the defendants' contention that the orders were given by Ferrer, the determinative question is whether in so doing he acted in his own name or in that of his principals.

There is no direct evidence in the case as to what was said by Ferrer or by the plaintiffs when these particular goods were ordered, or what took place between them at the time. We must determine the nature of the contract, as a matter of inference, from such evidence as we have showing what the relations were between the parties prior and subsequent to the transactions in question, and how they regarded the transactions at the time; the burden is of course upon the plaintiff to overcome the presumption, which would control in the

absence of evidence to the contrary, that the agent, being an agent, contracted in his own and not in his principal's name.

The evidence bearing on this question consists almost entirely of correspondence between the plaintiffs and defendants, and between the plaintiffs and an agency or branch house of the defendants at St. Gall, Switzerland

The goods in question were ordered November 27, 1897, and December 21 and 23, 1897. The correspondence between the plaintiffs and the defendants commences in March, 1807, and terminates in February, 1898; that between the plaintiffs and the St. Gall agency of the defendants commences in January, 1898, and terminates in February, 1899, some months before this action was brought.

Objection has been made to the admission of the letters of the defendants to the plaintiffs, dated March 18 and 30, 1897, on the ground that these letters were not presented by the plaintiffs with the complaint in accordance with article 487 of the old Code of Civil Procedure, and are not comprehended within any of the exceptions established in article 489. We think this objection is well taken.

Excluding from consideration these letters, the material portions of the remainder of the correspondence are as follows:

In a letter of November 28, 1897, from the defendants to the plaintiffs, they say: "Since our last of the 12th of October last, we are without direct intelligence from you; on the other hand, we have received through Senor Ferrer several invoices relating to our orders of 40,000 and 20,000 meters of *rayadillo*, quality Nos. 394 and 3.47, respectively." They then go on to complain that a larger amount was sent than the orders called for, and state that they "place the excess at the disposition of Senor Ferrer;" they say, "with your authorization and that of said Senor Ferrer we will try to find another purchaser and will sell the 7,900 meters," etc. In this letter they specify the invoices of the goods referred to as having been received by them, which are of various dates in May, July, August, and September, 1897, and which are to "H. & C. I. F."

In a letter of December 7, 1897, from the defendants to the plaintiffs they say: "We do not doubt that you give the 2 per cent for prompt payment on all invoices, and it was undoubtedly only through mistake that Senor Ferrer in some of them has not indicated said discount of 2 per cent, inasmuch as our house of St. Gall has always paid immediately upon receipt of the bills of lading."

In a letter of December 31, 1897, from the plaintiffs to the defendants, authority is given to sell the excess of cloth, in accordance with the proposition in the defendants' letter of November 28, 1897. In this letter the plaintiffs also notify the defendants of the shipment by the steamer P. *de Satrustegui* of certain goods, which are identified in the letter by the numbers of the orders, and which appear to be the same for which recovery is sought in this action, "the shipment of which," they say, "D. Ignacio Ferrer has looked after, and therefore he also attends to the forwarding of the samples, and to this end will send seasonably and as you have stipulated, the vouchers and bills of lading with invoices, of which we have made six copies, five for Senor Ferrer, and one copy of each invoice we have delivered to D. A. G. Engler, whom we have had the pleasure of saluting as your representative."

In a letter of January 12,1898, from the St. Gall agency of the defendants to the plaintiffs, the latter are requested to "note that all shipments of orders of our friends in Manila not already effected are to be made in accordance with the instructions of Senor D. Amadeo G. Engler, with whom please enter into correspondence."

In a letter of February 16, 1898, from the plaintiffs to the St. Gall agency, receipt is acknowledged of a letter enclosing "check in our favor on Messrs. Vidal, Quadros & Co. for 14,748.50 pesetas, which we place to your credit with thanks."

In a letter of March 5, 1898, from the St. Gall agency to the plaintiffs, a check is enclosed for 4,033.05 pesetas, to pay invoices per *Leon XIII,* the receipt of which is acknowledged by the plaintiffs in a letter of March 8, 1898, in which they state that "they have credited the same on account."

In a letter of March 21, 1898, from the St. Gall agency to the plaintiffs, a check for 2,301.85 pesetas is inclosed, and in a letter of May 4,1898, another for 7,570.15 pesetas.

August 6, 1898, the St. Gall agency notifies the plaintiffs that Engler has ceased to attend to their business in Spain, and they are asked to "direct themselves in the future to us or to our friends in Manila."

The latter correspondence is without special significance.

The conclusions which are to he drawn from these letters, and which are not affected by any other evidence in the case, are to our minds decisive in favor of the contention of the plaintiffs.

The letter of November 28, 1897, from the defendants to the plaintiffs, clearly shows the existence of direct mercantile relations between the parties prior to the transactions in question. It is claimed that the fact that in this letter the defendants appear to regard the authorization of Ferrer, as well as that of the plaintiffs, as necessary in order that they may dispose of the excess of *rayadillo* above the order, shows that the sale in this instance must have been to Ferrer, for otherwise, it is said, he would have had no interest in the resale which would have required the defendants to obtain his consent thereto. We think the language used by the defendants is not inconsistent with the theory that the sale was to them, through Ferrer as *comisionista.* In case the goods were resold at a loss, it might be that Ferrer's dealings with the vendors had been such that the loss would have to be borne by him. As between him and the vendors, it would depend upon circumstances upon which one the loss would fall. Therefore, both might he interested in the resale, and it might be expedient to obtain authority from both.

The letter of December 7, 1897, from the defendants to the plaintiffs, shows that the course of dealing between the parties, prior to the transactions in question, was for the St. Gall agency to make payment for invoices on receipt of the bills of landing. The letter from the plaintiffs to the St. Gall agency of February 16, 1898, and those from the latter to the former, of March 5, 1898, March 21, 1898, and May 4, 1898, show that the direct relations between the parties continued subsequently to the transactions in question, remittances being made from the St. Gall agency to the defendants to pay for goods shipped to Mainla.

The letter of December 31, 1897, from the plaintiffs to the defendants, is insignificant as being a direct communication with reference to the very goods in question, and as showing that the invoices of these goods were forwarded by the plaintiffs through Ferrer to the defendants.

Had the defendants been unknown to the plaintiffs at the time the goods in question were purchased, it would require the clearest evidence that the agent contracted in their name, in order to bind them. But a very different case is presented. It is shown that the parties were known to each other and had had direct dealings immediately prior to the sale, and that immediately subsequent thereto they were also in direct relations, credit being extended to the defendants by the plaintiffs. Then there is the further fact that the plaintiffs communicated directly with the defendants with reference to the goods in question, which they might have done, but naturally would not have done if the sale had been to the agent and the credit had been extended exclusively to him. In the absence of any evidence pointing to. a different conclusion, we think these facts are sufficient to repel the

presumption that the agent, in these particular transactions, acted in his own name, and that the plaintiffs are therefore entitled to judgment.

In addition to the letters of the defendants to the plaintiffs of March 18 and 30, 1897, already mentioned, we have excluded from consideration the various notarial certifications offered in evidence by the plaintiffs, to the admission of which the defendants have objected.

The defendants' claim to indemnification under article 545 of the old Code of Civil Procedure, by reason of the failure of the plaintiffs to take evidence within the extraordinary period therefor which had been granted them, is disallowed for the reasons stated in the judgment of the court below.

The judgment of the court below is reversed, and judgment will be entered for the plaintiffs in the sum of 13,510.75 Spanish pesetas, with interest from February 16, 1898, and costs of first instance. So ordered.

Torres, Cooper, Willard, and *Mapa, JJ.,* concur.

Arellano, C. J., and *McDonough, J.,* did not sit in this case.

Date created: April 15, 2014