

6 Phil. 641

[G.R. No. 2686. November 08, 1906]

C. HEINSZEN & CO., PLAINTIFFS AND APPELLEES, VS. FIDELITY AND DEPOSIT COMPANY OF MARYLAND, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This was an action brought by the plaintiff against the defendant in the Court of First Instance of the city of Manila to recover the sum of \$6,000, gold, upon a bond given by the defendant to the plaintiff to secure the fidelity of one Samuel G. Samuels against any loss that might result to the plaintiff by any act of larceny or embezzlement on the part of the said Samuels.

The plaintiff entered into a contract with the said Samuels which, among other things, contained the following conditions:

“That the said party of the second part (Samuels) is to act solely and strictly as the agent and representative of the said first party (the plaintiff) in a fiduciary capacity, and is to be at all times responsible for the production of any property of the said first party entrusted to his care and custody, or the proceeds thereof; and further is to give to said first party, as a guaranty of his fiduciary responsibility, a bond to the satisfaction of the said first party in the sum of \$6,000, United States currency.

“The said party of the second part further agrees to, either personally or through satisfactory fiscal agents in the city of Manila, furnish, at stated intervals, or whenever reasonably possible, exact statements of the condition of the property entrusted to his care, custody, and control, together with itemized lists of the property received, the property sold, and the property remaining on hand with

remittances covering such statements in full for any goods disposed of.

“It being the full intendment and meaning of this contract that said second party shall act as the duly authorized agent and representative of said first party, with full responsibility, financially and personally, for the production, on reasonable demand, of all such property entrusted to him or the monetary cost thereof, saving only such property as may be lost by perils of the sea, damage by fire, or other unavoidable causes.”

In accordance with the above-quoted provisions of said contract, the defendant executed and delivered to the plaintiff its bond, having full knowledge of the conditions of said contract, thereby promising to respond in the sum of \$6,000, United States currency, for such pecuniary loss as the plaintiff should sustain by any act of larceny or embezzlement on the part of the said Samuels in the performance of the duties of the office or position in the service of the said plaintiff.

This bond was subsequently canceled by the defendant; however, the proof shows that during the time that it continued in force and effect the plaintiff furnished the said Samuels, under said contract, property not accounted for amounting to 15,419.97 pesos, Mexican currency.

The action was brought upon the bond by the plaintiff to be reimbursed in this amount to the extent of the bond.

After hearing the evidence, the judge of the lower court rendered judgment against the defendant and in favor of the plaintiffs for the sum of \$6,000, gold, or its equivalent, P12,000, Philippine currency, with interest thereon at the rate of 6 per cent per annum from the 5th day of May, 1903. From this decision the defendant appealed to this court, assigning the following errors:

“First. That the court committed an error in dictating a sentence against the defendant.

“Second. That the court committed an error in denying the motion for a new trial.”

The defendant and appellant, however, in its brief, insists upon the following

only:

“First. That the debt incurred by the said Samuels to the plaintiffs herein was not incurred under the contract between them.

“Second. That the said Samuels had not committed either larceny or embezzlement of any of the merchandise or funds belonging to the plaintiffs.”

Upon these two assignments of error we find the following facts.

First. That all of the merchandise which was delivered by the plaintiffs to the said Samuels and not accounted for was delivered under and by virtue of the contract which existed between them; that said contract for the faithful performance of which the said bond was given required said Samuels to account to the plaintiffs herein whenever called upon so to do; that the said Samuels, after receiving merchandise from time to time during the existence of the said bond, failed and refused to account to the said plaintiffs for the same and that the said Samuels appropriated to his own use of the value of said merchandise so delivered by the said plaintiffs to him an amount equal to 15,419.97 pesos, Mexican currency.

Second. Admitting the facts proven by the plaintiffs, which were not denied by the defendant, they are sufficient to warrant the conviction of the said Samuels of the crime mentioned in the bond executed by the defendant to the plaintiffs.

Therefore the judgment of the lower court is hereby affirmed with interest on the sum of P12,000, Philippine currency, at 6 per cent per annum from the 5th of May, 1903, and for the costs of this instance. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the case be returned to the lower court for execution. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

