5 Phil. 507

[G.R. No. 2151. January 06, 1906]

SALVADOR BROCAL, PLAINTIFF AND APPELLEE, VS. JUAN VICTOR MOLINA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

One Seldner made three different contracts with th.e defendant for the sale to the latter of certain merchandise. This merchandise Seldner procured to be sent to Manila from the United States after the contracts were made.

1. The price of the goods involved in the first contract was $1,641.95. The defendant received and paid for goods amounting to $446.32. The remainder of the goods, amounting in value to $1,195.63, he failed to take or pay for. At the request of the defendant, Seldner sold these goods for account of the defendant for $1,052.95, at a loss, therefore, of $142.68. Seldner paid freight and duties on the goods, which by the terms of the contract, the defendant was required to pay. Upon this contract, which is set out in the first cause of action, the defendant is bound to pay $306.53, the amount claimed therein as damages for his failure to take and pay for the goods.
2. The second contract related to watches of the value of $359.28, which the plaintiff did not take nor pay for. Seldner sold a part of them, and received therefor $355, a loss, therefore, of $4.28. It appears, however, that this sum of $355 was the price of a part of the watches only. How many watches Seldner still has, which he did not sell, does not appear. It does not appear but that those still kept by him would reimburse him for the price of the whole, and the money paid by him for duties. It is not proved, therefore, that any damage was suffered by him by reason of the failure of the defendant to take and pay for the watches. There can be no recovery upon this second cause of action.
3. The third cause of action relates to two orders given by the defendant to Seldner for

merchandise. Concerning one of these amounting to $182.40, there is no dispute, since the defendant received and paid for these goods.

The contest between the parties arises over the order amounting to $385.69. The merchandise arrived in Manila in January or February, 1903. It remained in the custom-house until some time in June of that year. The defendant then paid the duties, and the goods were taken to the office of the plaintiff, where they were kept until the 8th of October of that year. On that day the defendant stated to Seldner that he was prepared to take and pay for them, but when the boxes were opened and examined it appeared that fifty-eight pairs of shoes were missing. The defendant thereupon refused to take or pay for any of the goods. Seldner then sold the goods to third persons at a profit, but it does not appear at what profit, and he now seeks to recover in this cause of action the value of the fifty-eight pairs of shoes which were lost.

We do not think the evidence in the case is sufficient to show that the defendant is responsible for this loss. He never had possession of the goods. It does not appear whether the fifty-eight pairs of shoes were lost while the goods were in the store of Seldner, or while they were in the custom-house, or during the voyage, nor does it appear whether they were ever placed in the boxes in the United States. That the goods remained so long in the custom-house and in the office of Seldner was due, perhaps, to the failure of the defendant to take and pay for them, but, as has been said, there is no proof that the fifty-eight pairs disappeared during that time. There is no proof, therefore, that this failure of the defendant was the cause of the loss.

4. The complaint contains a fourth cause of action, which is for services rendered by Seldner in selling the goods after the defendant had refused to take them.

For the reasons above stated, there can be no recovery for any such services rendered in connection with the goods mentioned in the second and third causes of action. As to the goods mentioned in the first cause of action, we think it is proved that they were sold by Seldner at the request of the defendant. Seldner was in the commission business, and the defendant, under the circumstances, was bound to pay him a reasonable price for his services. In view of all the evidence in the case we fix that price at the sum of $50.

5. This action was brought by Salvador Brocal. The complaint alleges the making of various contracts between Seldner and the defendant, and the performance of services by Seldner in a sale of the goods. It then alleges a sale and assignment of all the

causes of action by Seldner to the plaintiff. At the trial it appeared that the plaintiff paid Seldner nothing for this assignment, and that Seldner was still the owner of the claim, and was the real party in interest in the suit. In his answer the defendant set up a counterclaim for damages suffered by him by reason of Seldner's failure to deliver the goods to him within the time required by the contract. During the trial and after it had appeared that Seldner was the real party in interest, the following colloquy took place between counsel and the court:

"Counsel for Defendant. I can not get judgment against Mr. Seldner unless he is made a party to this suit. "Counsel for Plaintiff. I have no objection. I ask the court that Mr. Phil Seldner be made a party to the suit.

"Counsel for Defendant. I object at this time.

"The Court. Upon application of the plaintiff's attorney to make Phil Seldner a party plaintiff, the court is of the opinion that he is a necessary party, being a party in interest, and it is ordered by the court that he be made a party plaintiff in this case.

"Counsel for Defendant. Exception."

Upon the next day the following proceedings took place during the trial:

"Counsel for Defendant. I desire to make a motion this morning, that it having been conclusively shown by the evidence of the plaintiff that the original plaintiff, Salvador Brocal, has no interest whatever in this controversy, I move that his, name be eliminated from the complaint. There is liable to be confusion about the matter.

"The Court. There will be no confusion in the rendering of the judgment, as far as the proof is concerned. I will reserve my decision on that until the final disposition of the case.

"Counsel for Defendant. Saving me an exception."

The court does not seem to have made any ruling upon this question, but in his final

decision he ordered judgment against the defendant in favor of Seldner. The original plaintiff, Brocal, took no exception to this judgment, and has not appealed. The effect of the first order of the court was to add Seldner as a party plaintiff, so that at the time judgment was rendered there were two plaintiffs in the case, Seldner and Brocal. Judgment was rendered in favor of one only of these plaintiffs, Seldner. Brocal might have objected to this judgment, but he did not. The assignment of error, based upon the addition of Seldner as a plaintiff in the case, can not be sustained. Section 110 of the Code of Civil Procedure expressly provides that the court, at any stage of the proceedings, may amend any pleading by adding the name of any party, either plaintiff or defendant. That was all that was done in this case.

The court below ordered judgment for the plaintiff, Seldner, for f619.47, and interest from the date of the presentation of the complaint. We do not think that the plaintiff is entitled to recover more than $356.53, with interest as aforesaid.

The judgment of the court below is reversed, and after the expiration of twenty days the case should be remanded, with instructions to the court below to enter judgment in favor of plaintiff, Seldner, and against the defendant, for the sum of $356.53, money of the United States, with interest thereon at the rate of 6 per cent per annum from the 11th day of November, 1903, until the satisfaction thereof, and for the costs. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.,* concur.

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