

# SPECIAL SIXTEENTH DIVISION

[ CA-G.R. CV NO. 100412, March 13, 2015 ]

**GREAT HARVEST ENTERPRISES, INC., PLAINTIFF-APPELLEE, VS.  
ANNIE TAN, DOING BUSINESS UNDER THE TRADE NAME AND  
STYLE A J & T TRADING, DEFENDANT-APPELLANT.**

## DECISION

**BUESER, J.:**

Before this Court on appeal is the Decision dated January 3, 2012<sup>[1]</sup> rendered by the Regional Trial Court of Quezon City, Branch 217 in the present complaint for collection of sum of money filed by plaintiff-appellee Great Harvest Enterprises, Inc. ("Appellee") against defendant-appellant Annie Tan, doing business under the name and style A J & T Trading ("Appellant"). The dispositive portion of the assailed Decision in favor of appellee reads in this wise:

*"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter:*

- 1. To pay the sum of P230,000.00 with interest thereon at the rate of 12% per annum starting from June 2, 1994 (when the case was filed) and until paid;*
- 2. To pay the sum of P50,000.00 as Attorney's fees; and*
- 3. Costs against the defendant.*

*SO ORDERED."*

### **The Facts**

The pertinent facts and antecedent proceedings, as borne by the records, are as follows:

On February 3, 1994, appellee engaged the services of the appellant for the delivery of four hundred thirty (430) bags of U.S. soya beans valued at Two Hundred Thousand Thirty Pesos (P230,000.00). Per agreement, appellant was tasked to transport said goods from the Tacoma Integrated Port Services, Inc. ("Tacoma") located at Port Area, Manila to the intended recipient, Selecta Feeds at Camarin, Novaliches, Quezon City.

At the port, the subject goods were loaded in appellant's hauling truck with Plate Number PLH 266. Said truck was then being driven by her employee, Rannie Sultan Cabugatan ("Cabugatan") as evinced by Tacoma Integrated Port Services, Inc. Waybill No. 24764<sup>[2]</sup> and Great Harvest Enterprises, Inc. Waybill No. 3886.<sup>[3]</sup>

However, upon arrival at the Selecta Feeds, the goods were rejected. Appellee then instructed Cabugatan to deliver and unload the rejected goods at the company's Malabon warehouse. Notwithstanding appellant's assurances, the goods did not arrive at said warehouse within the day.

In the evening of February 4, 1994, appellee was informed by its checker that the truck carrying its goods was parked at the Tacoma terminal. Immediately, appellee instructed the driver to remain within the terminal. Later however, the truck was nowhere to be found.

On February 7, 1994, after going over its internal control, appellee discovered that the subject goods had not been delivered by appellant. This prompted appellee to ask appellant about the missed delivery. Appellant, in turn, assured that proper verification would be made.

After repeated inquiries, appellant finally admitted to appellee the following day that the goods and the truck were missing. Appellant exerted efforts to locate her truck and the missing cargo.

On February 19, 1994, the National Bureau of Investigation (NBI) informed appellee that the missing truck had been found abandoned in Cavite. Unfortunately, the driver and the goods were nowhere to be found.

Consequently, appellee made demands for appellant to pay for the lost goods as contained in the Letters dated March 2, 1994<sup>[4]</sup> and April 26, 1994<sup>[5]</sup> sent by its counsel to the latter. Despite said demands, appellant did not pay appellee's claim. Neither did appellant make any arrangement to settle the same.

Aggrieved by the loss of the subject goods and the refusal of appellant to make proper restitution, appellee filed the present complaint for sum of money claiming that said loss was a result of appellant's negligence.<sup>[6]</sup>

Refuting the allegations of the complaint, appellant filed her Answer with Compulsory Counterclaim<sup>[7]</sup> and contended that the appellee has no cause of action against her. Appellant stressed that there was no hauling contract to begin with and that the agreement between her and appellee had been a mere accommodation on her part. Further, appellant claimed that she had no notice and had not given consent for the change in the goods' point of destination from Selecta Feeds to appellee's Malabon warehouse.

Appellant posited that she cannot be made liable for the hijacking incident. She was not at fault and said incident was beyond her control. She added that at the time of the hijacking, the driver had been acting under the authority of appellee and should therefore be considered as the employee of the latter. Given the foregoing, appellant contended that the resulting loss of the goods should be considered the sole responsibility of the appellee.

Moreover, it was claimed that appellant had done everything in her power to save the subject goods in contrast to appellant's lack of cooperation. On this point, appellant posited that appellee should be considered to have contributed to said loss.

After pre-trial, trial on the merits ensued. The parties presented their respective testimonial evidence and documentary exhibits. To prove its cause of action, appellee presented Benito Solis, Cynthia Chua and Ruben Basino as witnesses.

During the presentation of appellee's evidence, the appellant moved for the dismissal of the complaint, which was denied by the trial court. The proceedings below were then suspended since appellant elevated the dismissal of her motion before the Court of Appeals via a petition for certiorari.

Eventually, with the denial of said petition for certiorari, appellant proceeded to offer evidence to substantiate her claims and affirmative defenses. Aside from her own testimony and her documentary exhibits, appellant presented witnesses Marcelino Cruz, Efren Meneses, Jr. and Rochelle Gallardo.

In its Decision dated January 3, 2012, the court *a quo*, in the manner as afore-quoted, found merit in the complaint and granted appellee's entreaty. The trial court ruled that albeit verbal, there was a valid perfected contract between appellee and appellant for the transport of the subject goods. The trial court was also unimpressed with appellant's assertion that the diversion of the goods had been done without her knowledge and consent. Thus, having bound herself to said contract, appellant was declared liable for the loss of then subject goods.

Not content with the trial court's pronouncement, appellant filed the present appeal.

### **The Issue**

The main issue to be resolved in this appeal is whether the appellant is liable for the damages sustained by appellee due to the loss of the subject goods.

### **The Court's Ruling**

We find the present appeal bereft of merit.

Questioning the disquisitions of the trial court, appellant asserts that her contract with appellee was to deliver the goods to Selecta Feeds and that it was only upon the instance of the appellee that the driver had been directed to deliver the goods to the latter's Malabon warehouse. The loss of the subject goods, appellant points out, is therefore attributable to appellee's act of diverting the truck to another destination and its failure to provide security for said delivery.

For this reason, appellant contends that it is the appellee that should be declared negligent and liable for the loss of the subject goods. Appellant should thus be exempt from liability for said loss considering that under Article 1734 of the Civil Code of the Philippines, a common carrier, is exempted from liability if the loss is due to the act or omission of the shipper or the owner of the goods.

Also, appellant claims that the hijacking incident was beyond her control and as such, she should be free from liability. Appellant emphasizes that she had exercised extra-ordinary diligence in the selection of her driver Cabugatan and that she had acted in good faith after the loss of the hauling truck. At this juncture, appellant again harps on the efforts that she exerted to locate the missing truck.