

[G.R. No. 2354. December 05, 1905]

GEORGE W. SIMMIE, PLAINTIFF AND APPELLEE, VS. H. BRODEK, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This was an action by the plaintiff against the defendant to recover the sum of 1,350 pesos for services performed by the plaintiff for the defendant in the purchase of a one-half interest in the launch called *Fred L. Dorr*. The evidence shows that the defendant was the owner of a one-half interest in the said launch prior to the time of the alleged contract and that one A. J. Washburn was the owner of the other half. The plaintiff claims that he entered into a contract with the defendant by the terms of which he was to purchase the half interest owned by the said Washburn for a sum not to exceed 3,500 pesos. He further claims that he was to receive for such services a sum equal to the difference between 3,500 pesos and whatever sum less than that amount for which he could purchase the said launch. He further claims that by virtue of this agreement he entered into a contract with the said Washburn to pay to the latter the sum of 2,150 pesos, and that therefore there was due from the defendant to him the difference between 3,500 pesos and 2,150 pesos, or the sum of 1,350 pesos.

The defendant filed a general denial to the petition of the plaintiff.

After hearing the evidence adduced in said cause, the inferior court rendered a judgment against the defendant and in favor of the plaintiff in the sum of 1,350 pesos and the costs of the suit. The evidence adduced during the trial on the part of the plaintiff shows the

following facts:

First. That on or about the 20th day of January, 1904, one Fred L. Dorr, an employee of the defendant, went to the plaintiff and requested him, the plaintiff, to purchase the one-half interest of the launch called *Fred L. Dorr* of its then owner, Mr. Washburn, for the defendant, which authority was couched in the following language:

“You buy the launch (*Fred L. Dorr*) and we will go up to 3,500 pesos. Anything you can make under that you can have.”

To which statement the plaintiff replied:

“All right; I will go, but I want to know if you mean business.”

And he, the said Fred L. Dorr, said:

“Certainly we mean business. Here is my carromata; jump in it and go out and see Mr. Washburn and I will wait for you up in the Santa Cruz mess where you eat.”

In accordance with this arrangement, the plaintiff saw the said Washburn and returned to see the doctor, the defendant, and told the said Dorr that he would guarantee the purchase of the said launch for the sum of 3,500 pesos. The said Dorr thereupon informed the plaintiff that they, the said Dorr and the plaintiff, would together go and see the defendant the next morning. The next morning these two, Dorr and the plaintiff, went to see the defendant, when the plaintiff explained to the defendant all that he had done with reference to the purchase of the one-half interest in the said launch. At this conference between the plaintiff and defendant the latter authorized the plaintiff to have Mr. Washburn make out a bill of sale for the one-half interest in the said launch and immediately thereafter he arranged with Mr. Washburn to prepare the bill of sale in accordance with this understanding. At this

last conference between the plaintiff and defendant the former told the latter what his arrangement with Mr. Washburn was—that is, that he, the plaintiff, was to pay said Washburn the sum of 2,000 pesos for his one-half interest in the said launch, and 150 pesos attorney's fees, making a total of 2,150 pesos, which the said Washburn was to receive for his interest.

After this last conference, which took place about 2 o'clock in the afternoon, the defendant informed the plaintiff that if he would return to his office about 3 o'clock the same afternoon they would fix the matter up. The plaintiff returned to the office of the defendant about 3 o'clock, in accordance with this prearrangement, but failed to find the defendant, but was informed that everything pertaining to the purchase of the launch was all right and that the contract for the purchase of the launch would be fixed up in the morning.

After the foregoing arrangement with the defendant it appears from the proof that the defendant, through his attorneys, purchased the said one-half interest in the said launch of Mr. Washburn without the further intervention of the plaintiff for the sum of 3,500 pesos.

The claim of the plaintiff that he entered into a contract with the defendant for the purchase of the one-half interest in the said launch is affirmed by the testimony of one D.H. Ward. Mr. Ward testified that after the completion of the sale by Mr. Washburn directly to the defendant, he, Ward, informed the defendant that the plaintiff was also trying to purchase the said launch, to which information the defendant replied that Mr. Simmie, the plaintiff, was acting for him.

The defendant denies that he in any way authorized the plaintiff to purchase the said launch for him.

The judge of the inferior court in his sentence states that—

“The said Dorr was summoned as a witness in said cause but was not introduced. If it was true, as stated by the plaintiff, that Dorr acted as agent for the defendant in making the

said contract with plaintiff, he, the defendant, could have introduced the said Dorr to corroborate his statement with reference to it.”

The evidence discloses further that there were certain liens of indebtedness against the said launch, one in favor of Mr. Macondray for the sum of 1,800 pesos, more or less, and another, in favor of Mr. Hargis, in the sum of 400 pesos. The defendant claims that the settlement of these two claims was to be included in the amount of 3,500 pesos to be paid for said launch. The evidence discloses that prior to the last conference between the plaintiff and defendant that he, the plaintiff, had entered into an arrangement with Mr. Macondray by which he was to receive the sum of 1,000 pesos in full of his claim of indebtedness against the said launch and that Mr. Hargis was to receive the sum of 400 pesos for his claim. The plaintiff, during this last conference, informed the defendant that these two claims could be settled for these two amounts and that therefore the total cost to the defendant in the purchase of the said interest in the said launch would amount to 4,900 pesos. The plaintiff, during this conference, indicated to the defendant that his commission would be 1,350 pesos. It appears from the evidence also that the said Dorr, prior to the last conference between the plaintiff and defendant, had said to the plaintiff that they would pay Mr. Macondray the sum of 1,000 pesos in liquidation of his claim and Mr. Hargis 400 pesos in liquidation of his claim against the said launch. This fact, in our opinion, entirely refutes the claim of the defendant, that the claims of Macondray and Hargis were to be included in the sum of 3,500 pesos. If the claims of Macondray and Hargis were to have been included in the 3,500 pesos, then the amount at which these claims between the plaintiff and the said claimants were to have been settled would have had no importance whatever to the defendant.

From the testimony presented during the trial of this cause we deduce the following facts:

1. That the defendant was the half owner of the launch *Fred L. Dorr* on the 20th day of January, 1904.
2. That Fred L. Dorr entered into a verbal contract with the plaintiff to

purchase the other half interest in the said launch for a sum not to exceed 3,500 pesos and to pay to the said plaintiff for his services an amount equal to the difference between whatever sum he could purchase the said interest in the said launch for less than 3,500 pesos.

3. That the said Fred L. Dorr in making this verbal agreement with the plaintiff acted as the agent of the said defendant.
4. That in accordance with said contract, the plaintiff purchased from Mr. Washburn, for the defendant, the one-half interest in said launch Fred L. Dorr, for the sum of 2,150 pesos.
5. That the claims of Macondray and Hargis were to be paid by the defendant in addition to the price to be paid for the one-half interest in said launch.
6. That the amount due the plaintiff from the defendant for the services rendered by the former in the purchase of the said one-half interest in said launch is the difference between the sum of 3,500 pesos and 2,150 pesos, or the sum of 1,350 pesos.

Therefore the judgment of the inferior court is affirmed and it is hereby adjudged that the plaintiff recover from the defendant the sum of 1,350 pesos and the costs. After the expiration of twenty days a judgment shall be entered in accordance with this order and the cause returned to the court below for the execution thereof. So ordered,

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