

5 Phil. 717

[G.R. No. 2020. March 15, 1906]

**GERMANN & CO., PLAINTIFFS AND APPELLANTS, VS. LUIS R. YANGOO ET AL.,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

WILLARD, J.:

In the early part of December, 1898, or prior thereto negotiations were commenced between the plaintiffs and Fernando Canon for the sale of machinery for an electric-light plant to be established in Malolos. In these negotiations Canon pretended to represent the Philippine Electric Company as a director thereof. The only evidence in the case to show that any such company ever existed is proof that on the 19th day of December, 1898, articles of association of a company of that name were signed at Malolos by some of the defendants. The machinery was sent to Malolos and an electric-light plant established there. The plaintiffs have never been paid for a part of the price of the materials so furnished by them, and they brought this action against the defendants as individuals to recover the part unpaid. The theory of the plaintiffs is that the organization of the company was illegal, and that the members who composed it are individually responsible for this debt.

An important question of fact is whether the contract was made by the plaintiffs, and whether the materials and machinery were actually delivered at Malolos, before or after the 19th of December, 1898. The appellants, the plaintiffs below, insist that the finding of the court below to the effect that the machinery was delivered before that date, is not sustained by the evidence, claiming that the documentary proof presented shows conclusively that the machinery was not delivered until after that date. An examination of that evidence, however, shows as we think, conclusively, that the contract for all the material was made, and all of it except a few missing parts, was actually delivered at Malolos prior to the 18th day of December.

The amended complaint alleges that the contract itself was made on or about the 10th day

of December, 1898. It also alleges that the materials were delivered in Malolos on or about the 15th day of December, 1898. The documentary evidence in the case shows conclusively that these allegations of the complaint are true. One of these proofs is the letter of the 18th of December, 1898, iwhich is as follows:

“SRES. GERMAIN Y COMPAÑIA, *Manila*.

“*Manila, 18 de Diciembre de 1898.*

“MUY SEÑORES MIOS: Despue”s de acusar a Vdes. recibo de sus cartas fechadas 15 de Diciembre, dos de 17 de Diciembre con sus correspondientes facturas y las cajas en ellas anunciadas, tengo el prof undo disgusto de anunciarles, corroborando y ampliando mi telegrama que con respecto al locomovil nos faltan los accesorios siguientes: A. un tubo “de hierro de alimentaci6n. B. la valvula y la tapa o tapon metalico de escape. C un grifo para la lubricacion con su tornillo regulador. Dejo a su consideracion la importancia de estas faltas que comprometen hondamente nuestra empresa, debo dar luz el 23 del presente.

“No han llegado a nuestro poder las cien lamparas de incandescencia de cien voltas (cincuenta de diez bujfas y cincuenta de diez y seis bujias que hemos pedido verbalmente y por escrito.

“El portador es nuestro maquinista, a quien puede V. entregar los accesorios del locomovil.

“Agradecemos infinito el ofrecimiento de ayudarnos por medio de su ingeniero y tendremos siempre en cuenta en caso necesario.

“Reiteramos, sin embargo, la absoluta necesidad de los accesorios del locomovil.

“Se repite de Vdes. atentos y S. S.

“Q. B. S. M.,

“COMPAÑIA FILIPINA DE ELECTRICIDAD,

“El Director, F. Canon.”

The contract having been made and the goods having been delivered before the 19th day of December, it is necessary to consider what evidence there is to show that the defendants, other than Canon, are liable for the amount sued for in this case. One of the plaintiffs testified that he never saw or talked with any one of the defendants except Canon. There was no evidence of any acts whatever done by any of the defendants except three of them prior to said date. The defendant Paredes testified that he knew that Canon had bought the materials. The mere fact that he knew this is not sufficient to charge him with any responsibility for their payment. The defendant Buencamino testified to a conversation between himself and Canon some time in October with reference to the installation of an electric-light plant in Malolos, but there is nothing in his conversation which in any way indicates that Buencamino authorized Canon to make any contracts in his (Buencamino's) behalf. The defendant Cruz Herrera also testified to a conversation had between himself and Canon prior to the 19th of December, but there is nothing in his conversation which in any way conferred any power upon Canon to represent this defendant in the purchase of these materials. It appears conclusively from the evidence that prior to the 19th day of December no one of the defendants except Canon ever made any contract with the plaintiff in regard to these materials, and no one of them ever authorized Canon or any one else to make any such contract in their behalf.

It remains to be considered if the signing of the articles of association on the 19th day of December imposed liability upon these defendants to pay for this machinery. The evidence shows that there was only one meeting of the proposed stockholders of this company, and that was the meeting held upon this day. They then made and signed these articles of association. No other meetings were ever held, and there was no evidence that any action whatever was taken by the company or any of its members, these defendants, after that day. No copy of the articles of association was presented at the trial. One of the defendants testified from recollection as to some of the provisions of these articles. His testimony was to the effect that by the terms of the articles the company was not to commence operations until the month of January or February, 1899. We do not think it a question of importance whether the company was legally organized or not, for there is nothing in the record to show that the company, or any of these defendants, ever ratified, expressly or impliedly, the

contract made between Canon and the plaintiffs for the purchase of the materials, and there is no evidence to show that any one of the defendants or the company ever took possession of the materials, or used them. It was proven that the electric-light plant so furnished by the plaintiffs was in operation in the month of January, but there is nothing to show that Canon had ever turned over the property to the company or to any of the defendants, and as has been said, nothing to show that the defendants ever assumed control or charge of it.

The court below allowed the defendants Buencamino and Cruz Herrera to testify as to certain conversations had between themselves and their codefendant Canon, and the appellants claim that this was error. Whether it was or not it is not necessary to decide, for that testimony could not in any way have prejudiced the rights of the plaintiffs, and therefore is no ground for reversal. (Sec. 503, Code of Civil Procedure.) Even eliminating that evidence from the case there remains no evidence to impose any liability upon the defendants other than Canon.

The court below in its decision ordered judgment against the plaintiffs and in favor of the defendants, except Canon, and as to him the judgment contained the following clause:

“Se declara expresamente en esta sentencia que se deja sin determinar su responsabilidad personal para con los demandantes.”

In failing to enter judgment either for or against Canon we think the court below erred. He was one of the defendants in the case, and the plaintiffs in their complaint ask for judgment against him as well as against the other defendants. It was the duty of the court to decide the issue thus presented.

An examination of the evidence in the case shows that Canon was responsible for the amount still remaining unpaid on the contract, and judgment should have been entered in favor of the plaintiffs and against him for that amount.

The judgment of the court below as to all of the defendants except Canon is affirmed, and the case is remanded to the court below, with directions to that court to enter judgment in favor of the plaintiffs and against Canon for the amount claimed in the complaint, with costs. No costs will be allowed to any party in this court. After the expiration of twenty days let judgment be entered in accordance herewith, and the case remanded to the lower court for proper procedure. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

Date created: April 29, 2014