

43 Phil. 414

[ G. R. No. 16879. June 01, 1922 ]

**SALAME BERBARI, PLAINTIFF AND APPELLANT, VS. GENERAL OIL CO., INC.,  
DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**OSTRAND, J.:**

On July 29, 1918, the parties to this action entered into the following contract:

“CONTRACT OF LEASE OF SERVICES BETWEEN THE ‘GENERAL OIL COMPANY, INC’  
AND SALAME BERBARI

*“Know all men by these presents: That we, the ‘General Oil Company, Inc.’, a corporation duly organized in accordance with the laws of the Philippine Islands, as party of the first part, and Salame Berbari, of legal age, resident of this capital, as party of the second part,*

“DO DECLARE AND COVENANT :

“That we have agreed to enter into a contract of hire of services, and do hereby enter into it, with the following clauses and conditions, to wit:

“1. Mr. Salame Berbari, who asserts that he possesses knowledge of the manufacture of coconut oils, as well as ability to manage a factory for the manufacture of the said oils, binds himself from today to render services to the General Oil Company, Inc., as manager of the factory which the said corporation is to establish in the city of Manila, and also to perform such services and duties as the board of directors may assign him from time to time, exercising the powers that the same may give him expressly, subject always to the orders and

instructions of the board of directors of the corporation.

"2. From the termination of the construction and installation of the factory and during the time in which this contract is in force, Mr. Salame Berbari is to devote all his time and attention exclusively to the business of the company.

"3. Should the board of directors so see fit, the president of the corporation may execute a power of attorney in favor of Mr. Salame Berbari, giving him such powers as may then be deemed proper and necessary.

"4. In consideration of the services which Mr. Salame Berbari is to render, as aforesaid, and as compensation therefor, he is to receive during the time in which this contract is in force, the following sums:

"(a) Ten per centum (10%) of the true profits as determined in this contract, after deducting fifteen per centum (15%) of the value of the factory, together with its machinery, installation, appliances, and equipment of the business as well as the value of the lands and buildings of the corporation.

"(b) Besides the preceding ten per centum (10%) he is to receive a salary of three hundred pesos (P300) monthly from the date the oil factory of the corporation begins to function and go into full operation.

"(c) As compensation for the labor, management, and services which Mr. Salame Berbari is bound to perform from today, as well as all those heretofore already performed by him, up to the moment that the oil factory of the corporation goes into full work and operation, the corporation is to pay him the lump sum of five hundred pesos (P500).

"5. It is expressly stipulated that the corporation, through its board of directors, has the right to make all the expenses it may deem necessary for the better running and development of its business, this contract not to be construed as giving Mr. Salame Berbari any right whatever to control the amount of said expenses, intervene in, or contest, the same, since this contract is not one of partnership or joint account, but of lease of services; provided that nothing herein stipulated shall in any way limit the rights which Mr. Berbari may have as stockholder or director of the corporation,

"6. The duration of this contract is one year *from the date that the factory be declared in full work and operation.*

"7. This contract may be renewed from year to year should Mr. Berbari so desire and the board of directors resolve to renew it.

*"In testimony whereof* the parties hereto have signed the present instrument in quadruplicate, each copy being to one single effect, in the city of Manila, Philippines, this..... of July, 1918.

"BY GENERAL OIL  
COMPANY, INC.  
(Sgd.) "JOSEPH G. BRIMO,  
*"President.*  
"SALAME BERBARI.

"Countersigned:  
(Sgd.) "JOSE  
MORENO LACALLE,  
*"Secretary.*

"Signed in the presence of:  
(Sgd.) "F. BASCONCILLO.  
"NORBERTO ANICETA."

Numerous difficulties appear to have presented themselves in connection with the construction and installation of the factory, and the work progressed so slowly that in November, 1918, the defendant agreed to increase the sum mentioned in subsection (c), paragraph 4 of the contract, to P750. The factory was never completed as planned, but limited operations could have been commenced in April, 1919. As to the responsibility for the delays the parties do not agree and the evidence upon that point is very conflicting. Reading the record one gains the impression that neither the plaintiff nor the officers of the defendant corporation possessed much experience in the construction of a coconut oil factory.

On May 5, 1919, plaintiff filed his original complaint in this case, claiming the P750 for his work on said factory up to February 1, 1919, and salary of P300 per month from February 1, 1919, to April 30, 1919, and P19,740 as his part of the profits which could have been made in the operation of said factory from February 1, 1919, to the date of the filing of said suit.

After the filing of said original complaint against the defendant corporation, the plaintiff continued to render service to the defendant until about May 15, 1919, when he received a

letter from the acting secretary of defendant notifying him that his services were no longer required.

Thereafter, on or about May 27, the plaintiff filed a supplementary complaint demanding wages for a year from February 1, 1919, at the rate of P300 per month, and increasing his claim for damages for loss of profits to P76,650 in addition to the P750 for his services prior to the time the factory should have been ready for operation. The total amount claimed by plaintiff was therefore P81,000.

The defendant in its answer set up a counterclaim for P96,600 by way of damages for losses caused by the plaintiff's alleged negligence and lack of skill in the service for which he was employed.

The trial court rendered a judgment in favor of the plaintiff for P750 as compensation for services rendered, disallowing his claim for future salary and for damages and dismissing the defendant's counterclaim. From this judgment only the plaintiff appealed.

The evidence is very fully discussed in the well-considered decision of the court below and a further discussion of it here can serve no useful purpose. Suffice it to say that we find no reversible error in the judgment appealed from. There is no evidence, properly speaking, in support of plaintiff's rather fantastic estimate of his loss of profits; the testimony as to what might have been the earnings of the mill had it run at full capacity and under favorable conditions is, under the circumstances, purely speculative. In addition to the reasons stated by the trial court for disallowing the plaintiff's claim for one year's salary from February 1, 1919, we may add the further reason that while it is true that had the plaintiff waited until the expiration of his term of employment, holding himself in readiness during that period to accept the same or similar employment, the measure of damages might then have been the full amount of the salary called for by the contract. But this measure cannot be applied in the present case where the plaintiff brought the action almost at the beginning of the period for which he claims wages and where it appears affirmatively that he shortly afterwards left this country for foreign parts. There is no other evidence in the record upon which we can base a finding as to the amount of damages by reason of loss of wages.

The judgment appealed from is affirmed with the costs against the appellant. So ordered.

*Araullo, C. J., Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.*

Date created: June 05, 2014