44 Phil. 634

[G.R. No. 20214. March 17, 1923]

G.C. ARNOLD, PLAINTIFF AND APPELLANT, VS. WILLITS & PATTERSON, LTD., DEFENDANT AND APPELLEE.

D E C I S I O N

STATEMENT

For a number of years prior to the times alleged in the complaint, the plaintiff was in the employ of the International Banking Corporation of Manila, and it is conceded that he is a competent and experienced business man. July 31, 1916, C. D. Willits and I. L. Patterson were partners doing business in San Francisco, California, under the name of Willits & Patterson. The plaintiff was then in San Francisco, and as a result of negotiations the plaintiff and the firm entered into a written contract, known in the record as Exhibit A, by which the plaintiff was employed as the agent of the firm in the Philippine Islands for certain purposes for the period of five years at a minimum salary of $200 per month and travelling expenses. The plaintiff returned to Manila and entered on the discharge of his duties under the contract. As a result of plaintiff's employment and world war conditions, the business of the firm in the Philippines very rapidly increased and grew beyond the fondest hopes of either party. A dispute arose between the plaintiff and the firm as to the construction of Exhibit A as to the amount which plaintiff should receive for his services. Meanwhile Patterson retired from the firm and Willits became the sole owner of its assets. For convenience of operation and to serve his own purpose, Willits organized a corporation under the laws of California with its principal office at San Francisco, in and by which he subscribed for, and became the exclusive owner of, all the capital stock, except a few shares for organization purposes only, and the name of the firm was used as the name of the corporation. A short

time after that Willits came to Manila and organized a corporation here known as Willits & Patterson, Ltd., in and to which he again subscribed for all of the capital stock except the nominal shares necessary to qualify the directors. In legal effect, the San Francisco corporation took over and acquired all of the assets and liabilities of the Manila corporation. At the time that Willits was in Manila and while to all intents and purposes he was the sole owner of the stock of corporations, there was a conference between him and the plaintiff over the disputed construction of Exhibit A. As a result of which another instrument, known in the record as Exhibit B, was prepared in the form of a letter which the plaintiff addressed to Willits at Manila on November 10, 1919, the purpose of which was to more clearly define and specify the compensation which the plaintiff was to receive for his services. Willits received and confirmed this letter by signing the name of Willits & Patterson, By C. D. Willits. At that time both corporations were legally organized, and there is nothing in the corporate minutes to show that Exhibit B was ever formally ratified or approved by either corporation. After its organization, the Manila corporation employed a regular accountant whose duty it was to audit the accounts of the company and render financial statements both for the use of the local banks and the local and parent corporations at San Francisco. From time to time and in the ordinary course of business such statements of account were prepared by the accountant and duly forwarded to the home office, and among other things was a statement of July 31, 1921, showing that there was due and owing the plaintiff under Exhibit B the sum of P106,277.50. A short time previous to that date, the San Francisco corporation became involved in financial trouble, and all of its assets were turned over to a “creditors’ committee.” When this statement was received, the “creditors’ committee” immediately protested its allowance. An attempt was made without success to adjust the matter on a friendly basis and without litigation. January 10, 1922, the plaintiff brought this action to recover from the defendant the sum of P106,277.50 with legal interest and costs, and the written instruments known in the record as Exhibits A and B were attached to, and made a part of, the complaint.

For answer, the defendant admits the formal parts of the complaint, the execution of Exhibit A and denies each and every other allegation, except as specifically admitted, and alleges that what is known as Exhibit B was signed by Willits without the authority of the defendant corporation or the firm of

Willits & Patterson, and that it is not an agreement which was ever entered into with the plaintiff by the defendant or the firm, and, as a separate defense and counterclaim, it alleges that on the 30th of June, 1920, there was a balance due and owing the plaintiff from the defendant under the contract Exhibit A of the sum of P8,741.05. That his salary from June 30, 1920, to July 31, 1921, under Exhibit A was $400 per month, or a total of P10,400. That about July 6, 1921, the plaintiff wrongfully took P30,000 from the assets of the firm, and that he is now indebted to the firm in the sum of P10,858.95, with interest and costs, from which it prays judgment.

The plaintiff admits that he withdrew the P30,000, but alleges that it was with the consent and authority of the defendant, and denies all other new matter in the answer.

Upon such issues a trial was had, and the lower court rendered judgment in favor of the defendant, as prayed for in its counterclaim, from which the plaintiff appeals, contending that the trial court erred in not holding that the contract between the parties is that which is embodied in Exhibits A and B, and that the defendant assumed all partnership obligations, and in failing to render judgment for the plaintiff, as prayed for, and in dismissing his complaint, and denying plaintiff's motion for a new trial.

JOHNS, J.:

In their respective briefs opposing counsel agree that the important questions involved are "what was the contract under which the plaintiff rendered services for five years ending July 31, 1921," and "what is due the plaintiff under that contract." Plaintiff contends that his services were performed under Exhibits A and B, and that the defendant assumed all of the obligations of the original partnership under Exhibit A, and is now seeking to deny its liability under, and repudiate, Exhibit B, The defendant admits that Exhibit A was the original contract between Arnold and the firm of Willits & Patterson by which he came to the Philippine Islands, and that it was therein agreed that he was to be employed for a period of five years as the agent of Willits & Patterson in the Philippine Islands to operate a certain oil mill, and to do such other business as might be deemed advisable, for which he was to receive, first, the traveling expenses of his wife and self from San Francisco to Manila,

second, the minimum salary of $200 per month, third, a brokerage of 1 per cent upon all purchases and sales of merchandise, except for the account of the coconut oil mill, fourth, one-half of the profits on any transaction in the name of the firm or himself not provided for in the agreement. That the agreement also provided that if it be found that the business was operated at a loss, Arnold should receive a monthly salary of $400 during such period. That the business was operated at a loss from June 30, 1920, to July 31, 1921, and that for such reason, he was entitled to nothing more than a salary of $400 per month, or for that period P10,400. Adding this amount to the P8,741.05, which the defendant admits he owed Arnold on June 30, 1920, makes a total of P19,141.05, leaving a balance due the defendant as set out in the counterclaim. In other words, that the plaintiff's compensation was measured by, and limited to, the above specified provisions in the contract Exhibit A, and that the defendant corporation is not bound by the terms or provisions of Exhibit B, which is as follows:

"WILLITS & PATTERSON, LTD.

MANILA, P. I., *Nov. 10, 1919*.

"CHAS. D. WILLITS, Esq.,

"*Present*.

"DEAR MR. WILLITS: My understanding of the intent of my agreement with Willits & Patterson is as under:

"*Commissions*. Willits & Patterson, San Francisco, pay me a commission of one per cent on all purchases made for them in the Philippines or sales made to them by Manila and one per cent on all sales made for them in the Philippines, or purchases made from them by Manila. If such purchases or sales are on an f. o. b. basis the commission is on the f. o. b. price; if on a c. i. f. basis the commission is computed on the c. i. f. price.

"These commissions are credited to me in San Francisco.

"I do not participate in any profits on business transacted between Willits & Patterson, San Francisco, and Willits & Patterson, Ltd., Manila.

"*Profits*. On all business transacted between Willits & Patterson, Ltd. and others than Willits & Patterson, San Francisco, half the profits are to be credited to my account and half to the Profit & Loss account of Willits & Patterson, Ltd., Manila.

"On all other business, such as the Cooperative Coconut Products Co. account, or any other business we may undertake as agents or managers, half the profits are to be credited to my account and half to the Profit & Loss account of Willits & Patterson, Ltd., Manila.

"Where Willits & Patterson, San Francisco, or Willits & Patterson, Ltd., Manila, have their own funds invested in the capital stock or a corporation, I of course do not participate in the earnings of such stock, any more than Willits & Patterson would participate in the earnings of stock held by me on my own account.

"If the foregoing conforms to your understanding of our agreement, please confirm below.

"Yours faithfully,

(Sgd.) "G. C. ARNOLD

"Confirmed:

"WILLITS & PATTERSON

"By (Sgd.) CHAS. D. WILLITS"

There is no dispute about any of the following facts: That at the inception C. D. Willits and I. L. Patterson constituted the firm of Willits & Patterson doing business in the City of San Francisco; that later Patterson retired from the firm, and Willits acquired all of his interests and thereafter continued the business under the name and style of Willits & Patterson; that the original contract Exhibit A was made between the plaintiff and the old firm at San Francisco on July 31, 1916, to cover a period of five years from that date; that plaintiff entered upon the discharge of his duties and continued his services in the Philippine Islands to someone for the period of five years; that on November 10, 1919, and as a result of conferences between Willits and the plaintiff, Exhibit B was addressed and signed in the manner and form above stated in the City of Manila. A short time prior to that date Willits organized

a corporation in San Francisco, in the State of California, which took over and acquired all of the assets of the firm's business in California then being conducted under the name and style of Willits & Patterson; that he subscribed for all of the capital stock of the corporation, and that in truth and in fact he was the owner of all of its capital stock. After this was done he caused a new corporation to be organized under the laws of the Philippine Islands with principal office at Manila, which took over and acquired all the business and assets of the firm of Willits & Patterson in the Philippine Islands, in and to which, in legal effect, he subscribed for all of its capital stock, and was the owner of all of its stock. After both corporations were organized the above letter was drafted and signed. The plaintiff contends that the signing of Exhibit B in the manner and under the conditions in which it was signed, and through the subsequent acts and conduct of the parties, was ratified and, in legal effect, became and is now binding upon the defendant.

It will be noted that Exhibit B was executed in Manila, and that at the time it was signed by Willits, he was to all intents and purposes the legal owner of all the stock in both corporations. It also appears from the evidence that the parent corporation at San Francisco took over and acquired all of the assets and liabilities of the local corporation at Manila. That after it was organized the Manila corporation kept separate records and account books of its own, and that from time to time financial statements were made and forwarded to the home office, from which it conclusively appears that plaintiff was basing his claim for services upon Exhibit A, as it was modified by Exhibit B. That at no time after Exhibit B was signed was there ever any dispute between plaintiff and Willits as to the compensation for plaintiff's services. That is to say, as between the plaintiff and Willits, Exhibit B was approved, followed and at all times in force and effect, after it was signed November 10,, 1919. It appears from an analysis of Exhibit B that it was for the mutual interests of both parties. From a small beginning, the business was then in a very flourishing condition and growing fast, and the profits were very large and were running into big money.

Among other things, Exhibit A provided: "(*a*) That the net profits from said coconut oil business shall be divided in equal shares between the said parties hereto; (*b*) that Arnold should receive a brokerage of 1 per cent from all purchases and sales of merchandise, except for the account of the

coconut mills; (*c*) that the net profits from all other business should be divided in equal half shares between the parties hereto."

Under the above provisions, the plaintiff might well contend that he was entitled to one-half of all the profits and a brokerage of 1 per cent from all purchases and sales, except those for the account of the coconut oil mills, which under the volume of business then existing would run into a very large sum of money. It was for such reason and after personal conferences between them, and to settle all disputed questions, that Exhibit B was prepared and signed.

The record recites that "the defendant admits that from July 31, 1916 to July 31, 1921, the plaintiff faithfully performed all the duties incumbent upon him under his contract of employment, it being understood, however, that this admission does not include an admission that the plaintiff placed a proper interpretation upon his right to remuneration under said contract of employment."

It being admitted that the plaintiff worked "under his contract of employment" for the period of five years, the question naturally arises, for whom was he working? His contract was made with the original firm of Willits & Patterson, and that firm was dissolved and it ceased to exist, and all of its assets were merged in, and taken over by, the parent corporation at San Francisco. In the very nature of things, after the corporation was formed, the plaintiff could not and did not continue to work for the firm, and, yet, he continued his employment for the full period of five years. For whom did he work after the partnership was merged in the corporation and ceased to exist?

It is very apparent that, under the conditions then existing, the signing of Exhibit B was for the mutual interests of both parties, and that if the contract Exhibit A was to be enforced according to its terms, that Arnold might well contend for a much larger sum of money for his services. In truth and in fact Willits and both corporations recognized his employment and accepted the benefits of his services. He continued his employment and rendered his services after the corporations were organized and Exhibit B was signed just the same as he did before, and both: corporations recognized and accepted his services. Although the plaintiff was president of the local corporation, the testimony is

conclusive that both of them were what is known as a one man corporation, and Willits, as the owner of all of the stock, was the force and dominant power which controlled them. After Exhibit B was signed it was recognized by Willits that the plaintiff's services were to be performed and measured by its terms and provisions, and there never was any dispute between plaintiff and Willits upon that question.

The controversy first arose after the corporation was in financial trouble and the appointment of what is known in the record as a "creditors' committee." There is no claim or pretense that there was any fraud or collusion between plaintiff and Willits, and it is very apparent that Exhibit B was to the mutual interests of both parties. It is elementary law that if Exhibit B is a binding contract between the plaintiff and Willits and the corporations, it is equally binding upon the creditors' committee. It would not have any higher or better legal right than the corporation itself, and could not make any defense which it could not make. It is very significant that the claim or defense which is now interposed by the creditors' committee was never made or asserted at any previous time by the defendant, and that it never was made by Willits, and it is very apparent that if he had remained in control of the corporation, it would never have made the defense which is now made by the creditors' committee. The record is conclusive that at the time he signed Exhibit B, Willits was, in legal effect, the owner and holder of all the stock in both corporations, and that he approved it in their interest, and to protect them from the plaintiff having and making a much larger claim under Exhibit A. As a matter of fact, it appears from the statement of Mr. Larkin, the accountant, in the record that if plaintiffs cause of action was now founded upon Exhibit A, he would have a claim for more than P160,000.

Thompson on Corporations, 2d ed., vol. I, section 10, says:

> "The proposition that a corporation has an existence separate and distinct from its membership has its limitations. It must be noted that this separate existence is for particular purposes. It must also be remembered that there can be no corporate existence without persons to compose it; there can be no association without associates. This separate existence is to a certain extent a legal fiction. Whenever necessary for the interests of the public or for the

> protection or enforcement of the rights of the membership, courts will disregard this legal fiction and operate upon both the corporation and the persons composing it."

In the same section, the author quotes from a decision in 49 Ohio State, 137[1]; 15 L. R. A., 145, in which the Supreme Court of Ohio says:

> " 'So long as a proper use is made of the fiction, that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question; but where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored, and the question determined whether the act in question, though done by shareholders,—that is to say, by the persons uniting in one body,—was done simply as individuals, and with respect to their individual interests as shareholders, or was done ostensibly as such, but, as a matter of fact, to control the corporation, and affect the transaction of its business, in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so, because, the stockholders having a dual capacity, and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity, the absence of the formal evidence of the character of the act cannot preclude judicial inquiry on the subject. If it were otherwise, then in that department of the law fraud would enjoy an immunity awarded to it in no other.' "
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> "Where the stock of a corporation is owned by one person whereby the corporation functions only for the benefit of such individual owner, the corporation and the individual should be deemed to be the same." (U. S. Gypsum Co. *vs*. Mackay Wall Plaster Co., 199 Pac., 249.)

Ruling Case Law, vol. 7, section 663, says:

> "While of course a corporation cannot ratify a contract which is strictly *ultra vires*, and which it in the first instance could not have made, it may by ratification render binding on it a contract, entered into on its behalf

by its officers or agents without authority. As a general rule such ratification need not be manifested by any vote or formal resolution of the corporation or be authenticated by the corporate seal; no higher degree of evidence is requisite in establishing ratification on the part of a corporation, than is requisite in showing an antecedent authorization.

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"SEC. 666. The assent or approval of a corporation to acts done on its account may be inferred in the same manner that the assent of a natural person may be, and it is well settled that where a corporation with full knowledge of the unauthorized act of its officers or agents acquiesces in and consents to such acts, it thereby ratifies them, especially where the acquiescence results in prejudice to a third person.

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"SEC. 669. So, when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be inferred from the manner in which he has been permitted by the directors to transact its business."

"SEC. 656. In accordance with a well-known rule of the law of agency, notice to corporate officers or agents within the scope or apparent scope of their authority is attributed to the corporation."

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"SEC. 667. As a general rule, if a corporation with knowledge of its agent's unauthorized act receives and enjoys the benefits thereof, it impliedly ratifies the unauthorized act if it is one capable of ratification by parol."

In its article on corporations, Corpus Juris, in section 2241 says:

> "Ratification by a corporation of a transaction not previously authorized is more easily inferred where the corporation receives and retains property under it, and as a general rule where a corporation, through its proper officers or board, takes and retains the benefits of the unauthorized act or contract of an officer or agent, with full knowledge of all the material facts, it thereby ratifies and becomes bound by such act or contract, together with all the liabilities and burdens resulting therefrom, and in some jurisdictions this rule is, in effect, declared by statute. Thus the corporation is liable on the ground of ratification where, with knowledge of the facts, it, accepts the benefit of services rendered under an unauthorized contract of employment * * *."

Applying the law to the facts.

Mr. Larkin, an experienced accountant, was employed by the local corporation, and from time to time and in the ordinary course of business made and prepared financial statements showing its assets and liabilities, true copies of which were sent to the home office in San Francisco. It appears upon their face that plaintiff's compensation was made and founded on Exhibit B, and that such statements were made and prepared by the accountant on the assumption that Exhibit B was in. full force and effect as between the plaintiff and the defendant. In the course of business in the early part of 1920, plaintiff, as manager of the defendant; sold 500 tons of oil for future delivery at P740 per ton. Due to a break in the market, plaintiff was able to purchase the oil at P380 per ton or a profit of P180,000.

It appears from Exhibit B under the heading of "Profits" that:

> "On all business transacted between Willits & Patterson, Ltd. and others than Willits & Patterson, San Francisco, half the profits are to be credited to my account and half to the Profit & Loss account of Willits & Patterson, Ltd., Manila."

The purchasers paid P105,000 on the contract and gave their notes for P75,000, and it was agreed that all of the oil purchased should be held as

security for the full payment of the purchase price. As a result, the defendant itself received the P105,000 in cash, P75,000 in notes, and still holds the 500 tons of oil as security for the balance of the purchase price. This transaction was shown in the semi-annual financial statement for the period ending December 31, 1920. That is to say, the business was transacted by and through the plaintiff, and the defendant received and accepted all of the profits on the deal, and the statement which was rendered gave him a credit for P90,737.88, or half the profit as provided in the contract Exhibit B, with interest.

Although the previous financial statements show upon their face that the account of plaintiff was credited with several small items on the same basis, it was not until the 23d of March, 1921, that any objection was ever made by anyone, and objection was made for the first time by the creditors' committee in a cable of that date.

As we analyze the facts Exhibit B was, in legal effect, ratified and approved and is now binding upon the defendant corporation, and the plaintiff is entitled to recover for his services on that writing as it modified the original contract Exhibit A.

It appears from the statement prepared by accountant Larkin founded upon Exhibit B that the plaintiff is entitled to recover P106,277.50. It is very apparent that his statement was based upon the assumption that there was a net profit of P180,000 on the 500 tons of oil, of which the plaintiff was entitled to one-half.

In the absence of any other proof, we have the right to assume that the 500 tons of oil was worth the amount which the defendant paid for them at the time of the purchase or P380 per ton, and the record shows that the defendant took and now has the possession of all of the oil to secure the payment of the price at which it was sold. Hence, the profit on the deal to the defendant at the time of the sale would amount to the difference between what the defendant paid for the oil and the amount which it received for the oil at the time it sold the oil. It appears that at the time of the sale the defendant only received P105,000 in cash, and that it took and accepted the promissory notes of Cruz & Tan Chong Say, the purchasers, for P75,000 more which have not been collected and may never be. Hence, it must follow that the amount evidenced by

the notes cannot now be deemed or treated as profits on the deal and cannot be until such time as the notes are paid.

The judgment of the lower court is reversed, and a money judgment will be entered here in favor of the plaintiff and against the defendant for the sum of P68,527.50, with interest thereon at the rate of 6 per cent per annum from the 10th day of January, 1922. In addition thereto, judgment will be rendered against the defendant in substance and to the effect that the plaintiff is the owner of an undivided one-half interest in the promissory notes for P75,000, which were executed by Cruz & Tan Chong Say, as a part of the purchase price of the oil, and that he is entitled to have and receive one-half of all the proceeds from the notes or either of them, and that also he have judgment against the defendant for costs. So ordered.

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

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[1] State *ex rel. vs.* Standard Oil Co.

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