

## **LUIS F. JOSE, PLAINTIFF AND APPELLANT, VS. CONSOLIDATED INVESTMENTS, INC., AND JESUS S. NAVA, DEFENDANTS AND APPELLEES.**

*G.R. No. L-5023. September 18, 1953*

Ponente: BAUTISTA ANGELO, J.

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### **BAUTISTA ANGELO, J.:**

Plaintiff filed this action in the Court of First Instance of Manila to recover from the defendant Consolidated Investments, Inc. the sum of P81,234.44 for certain extraordinary and expert services rendered in securing a settlement of said defendant's war profits tax liability from the Bureau of Internal Revenue, plus the sum of P10,000 as damages.

Jesus S. Nava, the other defendant, was made a party because, being likewise entitled to collect the amount of compensation claimed in the complaint, he refused to join as party plaintiff out of a feeling of delicacy, being still in the employ of defendant corporation.

Plaintiff avers in his complaint that, in connection with an overdraft line of P200,000 which defendant corporation tried to negotiate with the Philippine Trust Co., the latter sent a communication to the former stating, among other things, that, upon advice of its legal counsel, there was need to secure a certificate of clearance from the Bureau of Internal Revenue regarding its war profits tax liability before favorable action on the request for said loan could be taken; that defendant corporation, upon receipt of said communication, took steps to explain and clarify the requirements contained in said communication but failed to satisfy the bank regarding the requirement as to its assessable income to determine its tax liability; that thereafter the matter was indorsed to the plaintiff who, together with Jesus S. Nava, was requested to render the service; that because the service required of the plaintiff was extraordinary and at that time he was employed by defendant corporation as accountant with a monthly salary of P250, he at first declined to do the work but the Vice-President and Manager of the corporation, Agapito P. R. Raagas, prevailed upon him to render the service with the understanding that he would be paid the usual fees payable in such cases; that in view of this assurance, plaintiff actually entered upon the performance of the work and succeeded in obtaining in behalf of the corporation the clearance required by the Philippine Trust Co., with the help of Jesus S. Nava; that according to the books of the corporation, its total assessable income for the period covering from December 8, 1941 to February 26, 1945 was P831,029.32, giving allowance to deductible items, and the tax that would have been assessed thereon under the provisions of the War Profits Tax Law, Republic Act No. 55, was P649,925.49, excluding penalties and surcharges, but because of the service he has rendered the corporation was cleared of that liability with the exception of P50 which it paid as compromise tax for its failure to file the return in due time; that as a result of the success of the defendant corporation in securing its exemption from the payment of that tax because of his services, the corporation obtained the overdraft line of P200,000 it applied for from the Philippine Trust Co.; that the usual fees collectible in the settlement of war profit tax cases is 50 per cent of the amount saved in the from of tax if the exemption is obtained through the courts, or 25 per cent thereof if effected extrajudicially; that the fees to which he would have been entitled for his service was 25 per

cent of the total net tax saved by the corporation amounting to P649,875.49, but he is only collecting 12½ per cent because the other half belong to his co-workers, Jesus S. Nava; and that the 12½ per cent of the net tax belonging to him amounts to P81,234.44, which is the amount he is now seeking to recover, plus the sum of P10,000 as damages.

On March 24, 1948, copies of the summons and of the complaint were served on both defendants, but instead of answering the complaint they both filed a motion to dismiss on the ground that the complaint fails to state a cause of action. Plaintiff opposed these motions which were both denied. Then both defendants filed separately their answers giving respectively the reasons why the relief prayed for by the plaintiff should not be granted. Issues having been joined, the court set the case for hearing on January 19, 1949, but when this date came, neither of the defendants nor their attorneys appeared and so plaintiff moved that they be declared in default not only for their failure to appear but also because their answers had been filed out of time. Whereupon, the court commissioned the clerk of court to hear and receive the evidence for the plaintiff.

After the case had been submitted for decision but before the court had been able to render it, counsel for defendant corporation filed a motion praying that the proceedings so far had be set aside and that a date be set for the presentation of the evidence. This motion was vigorously objected to by plaintiff, but the court granted the motion considering the reasons alleged therein to the effect that the case involved a big amount of money and the failure of defendant's counsel, Atty. Claro M. Recto, to appear was due not to his negligence but to some other independent causes beyond his control.

We will only relate for purposes of this case the reasons and defenses set up by defendant corporation in its answer to refute the claim for extra compensation set out by plaintiff in his complaint and will omit those set up by defendant, Jesus S. Nava, considering that the latter is only a nominal defendant who was made a party in view of his refusal to join as party plaintiff.

Defendant corporation denied that it ever agreed to pay the plaintiff any extra compensation for the services he has rendered in connection with the negotiation to secure the clearance of said defendant of its liability under the War Profits Tax Law. Defendant avers that plaintiff was then employed by it as accountant with a regular salary and that all the work done or services rendered by him in connection with the war profits tax return of said corporation were done or undertaken by him as part of his duties as salaried accountant and not in view of an understanding he had with the manager that he would be paid the usual fees payable in war profits tax cases if the succeeded in obtaining the exemption of said corporation from the payment of said tax liability. Defendant further avers that the action of plaintiff is premature inasmuch as the alleged clearance given by the Bureau of Internal Revenue to the corporation was conditional in the sense that it would still be subject to payment of the tax if upon further investigation said corporation would finally be found liable thereof. Defendant finally avers that Agapito P. R. Raagas, who is alleged to have promised plaintiff an extra compensation for his services, has never been authorized by the corporation to engage his services in the manner alleged in the complaint.

After both parties had presented their respective evidence, the court rendered decision dismissing the complaint without costs. From this decision plaintiff has appealed.

The issues now posed by appellant are: (1) "whether default does not lie against defendant Consolidated Investments, Inc. simply because its chief counsel is Atty. Claro M. Recto, although its answers to the complaint was filed 48 days too late", and (2) whether plaintiff is entitled to remuneration or fees for the "extraordinary services" he has rendered in behalf of defendant corporation.

The claim of counsel that the lower court lifted the declaration of default of defendant corporation simply because its chief counsel is Atty. Claro M. Recto is not exactly correct. If his name was mentioned in the order of the court

it is simply because he was the chief counsel of the defendant although in some instances he has not appeared personally but his assistant, Atty. Antonio Barredo. And yet the notice of hearing of the case was not addressed to him as chief counsel but merely to his assistant which accounted for the failure of Atty. Recto to appear at the hearing. But the affidavit of merit attached to the motion for reconsideration shows that the fault for that shortcoming was not attributable to Atty. Recto but rather to his clerk, one Jose V. Brosas, who admitted having failed to notify either Atty. Recto or Atty. Barredo, of the date of hearing. Considering that the answer has been filed long before the date of hearing and the fact that the case is of far-reaching consequence to the defendant corporation, the lower court decided to grant the petition for relief in the interest of justice as may be seen in the following portion of the order of the court:

"Going over the records of the instant case, the Court is satisfied that the answer of the defendant Consolidated Investments Incorporated and that defendant Jesus S. Nava were not filed within the reglamentary period. However, the explanations given by the defendants as to their failure to file their respective answers within the reglamentary period, are satisfactory. In the first place, this is a case which involves a big amount of money and it is the feeling of this Court that the defendants should have their day in Court. This is more so because the notification of the hearing was not sent directly to Atty. Claro M. Recto who is the real attorney of the defendant Consolidated Investments, Inc. The Court refuses to believe that Atty. Claro M. Recto, whose reputation and diligence as such, could be guilty of negligence towards his clients. The failure, therefore of Atty. Recto to appear at the hearing of this case was not due to any negligence of his, but to some other independent causes beyond his control. With respect to defendant Nava, there seems to be no reason why his answer nor on record should not be admitted for the reason that he was not notified of the hearing of the instant case."

Considering that a motion for relief is addressed to the sound discretion of the court, we find that the lower court has not committed any abuse of discretion in granting the relief considering the nature and circumstances of the case.

Coming now to the second issue, we are constrained to hold, after considering the evidence obtaining in this case, that plaintiff is not entitled to the extra compensation he seeks to recover for the "extraordinary services" he claims to have rendered to defendant corporation. It is not disputed that at the time the alleged services were rendered by plaintiff, he was then employed by the salary of P250. It is not likewise disputed that the initial steps relative to the negotiations made with the Bureau of Internal Revenue with a view to securing the exemption of defendant corporation from payment of the war profits tax liability were undertaken by Agapito P. R. Raagas, who was then the Vice-President and Manager of the corporation. It was Raagas who personally went to the office of said Bureau to secure such clearance or exemption and when he was told that before that could be granted there was need of making an investigation of the books and assets of the corporation in order that that Bureau might determine whether the corporation did not really make any profit under the law, the internal revenue agents dealt directly with Raagas to the extent that they had to see him for four successive occasions in connection with the examination of the books and it was only when Raagas found himself unable to explain certain items or accounts appearing in the books because they were technical and complicated that he asked plaintiff to assist him not only because he was then the accountant of the corporation but because, being an accountant, he was more in a position to attend to that kind of work. It was only then that plaintiff intervened in the picture.

On the other hand, it is a matter that this Court can take judicial notice that the preparation of a return to be submitted to the Bureau of Internal Revenue for tax purposes is a work in which an accountant generally intervenes because of the very nature of his experience and duties, although cases there are when an auditor is also employed to undertake that work. And this is more so in this case when the work of the plaintiff appears to have been done during office hours. If plaintiff really considered his intervention in the preparation of the war profits

tax return not as part of his duties as accountant of the corporation, why did he not secure a written contract from him knowing as he should know, that his claim would involve a substantial sum of money? His failure to produce any written evidence showing that understanding lends cogency to the claim of Raagas that there was no such understanding for the simple reason ;that he had no authority to do so from the Board of Directors of the corporation. Indeed, that was a matter on which Raagas could not commit the corporation without first securing an express authority from that body.

Another circumstance which indicates that Raagas was sincere in his testimony on the matter is that, after the negotiations were over and the Bureau of Internal Revenue had given the desired clearance to the defendant corporation and plaintiff approached him to demand the oft-repeated extra compensation for his services, the first reaction of Raagas was to tell him that the matter entirely devolved upon the Board of Directors of the corporation. If Raagas had really committed himself to pay plaintiff an extra compensation for his services, he would have reported the matter to said Board within a favorable recommendation considering his statement that plaintiff was his friend. In fairness to Raagas, it should be here stated that when he testified in this case he had already severed his connection with the defendant corporation. There was therefore no reason for him to favor the defendant and prejudice the plaintiff if what the latter claims is true.

Moreover, there is a point in the special defense of defendant to the effect that the claim of plaintiff, if true, is premature. It is a matter that appears in the very Exhibit "A" submitted by the plaintiff that the clearance given by the Bureau of Internal Revenue to the defendant corporation was not final in nature. It is still open to further investigation which may result in the payment of the tax on the part of the corporation. Thus, in what exhibit the following sentence appears: "However, if upon further investigation you are found finally subject to pay the war profits tax you will be informed in due time of the amount thereof." It is apparent that this clearance is provisional in character.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador. JJ., concur.

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