

FRANCISCO, U. BUENASEDA, PETITIONER VS. BOWEN & CO., INC., AND/OR GEOFFREY BOWEN, RESPONDENTS.*G.R. No. L-14985. December 29, 1960*

Ponente: GUTIERREZ DAVID, J.

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The pertinent facts of this case are not disputed and are as follows: On August 11, 1951, the Board of Directors of Bowen & Co., Inc., a duly organized domestic corporation, adopted a resolution appointing one of its directors, Francisco U. Buenaseda, as Managing Director. In the same resolution, said Francisco U. Buenaseda was authorized "to negotiate for and in behalf of the corporation with the Government for the securing of the ECA order for paints in the sum of \$398,000.00", with "full powers to arrange the financing of the order and if necessary to mortgage the entire assets of the Corporation." Sometime in the same year, after proper representations and negotiations, an award of P200,000 worth of ECA procurement materials consisting of marine and industrial paints was allocated to the corporation. For the importation of these materials, it was necessary to open a letter of credit in the amount of P100,000.00 with the Philippine National Bank. As the corporation did not have at the time the necessary funds to put up the required cash marginal deposit of P60,000.00, its president, Geoffrey Bowen, obligating the corporation and himself in his personal capacity, offered to pay Francisco U. Buenaseda 37 1/2 % of the profits to be realized from the sale of the ECA procurement materials, should he (Buenaseda) be able to obtain and produce the amount necessary to cover the cash marginal deposit. Francisco U. Buenaseda accepted the offer and through his business connections, another corporation, E.J.C. Montilla & Co. agreed to put up the cash marginal deposit of P60,000.00. In consideration thereof, a provisional contract of partnership was entered into by and between E.J.C. Montilla & Co. and Bowen & Co., Inc. The contract, among other things, provides that, besides the return of P60,000.00, E.J.C. Montilla & Co. shall receive as compensation an amount equivalent to 50% of the total profits that may be realized from the sale of ECA procurement materials. To guarantee the faithful performance of the terms and conditions of the contract by Bowen & Co., Inc., a lien of second mortgage was constituted on certain real property admittedly belonging to Francisco U. Buenaseda. The latter under the contract also guarantees in his personal capacity, jointly and severally with Bowen & Co., Inc., the faithful performance of all the terms and conditions of the contract.

After the required cash marginal deposit of P60,000.00 had been made, the P200,000.00 worth of ECA procurement materials were subsequently imported and received by Bowen & Co., Inc. From September 27, 1951 to June 9, 1955, part of the said materials were sold, the corporation realizing a net profit of P22,303.98. Of this amount, Francisco U. Buenaseda claimed 37 1/2 % or P8,363.99 on the strength of the promise of Geoffrey Bowen. As the corporation refused to pay, Francisco U. Buenaseda filed the present action in the Court of First Instance of Manila against the corporation and/or its president, Geoffrey Bowen, to recover the said amount of P8,363.99. The lower court, however, in its decision rendered after trial, absolved the defendants from the complaint on the theory that the earnings or profits derived from the sale of the imported materials were property of the corporation and that the "commitment" made to plaintiff by defendant Bowen was not approved by the Board of Directors of the defendant corporation. On appeal to the Court of Appeals, the decision was affirmed.

Reconsideration of this decision having been denied, plaintiff Buenaseda filed the present petition for, review contending, among other things, that the Court of Appeals erred in holding that the agreement between him and Geoffrey Bowen was not binding upon the corporation.

We find this contention to be meritorious. It is not here pretended that the Board of Directors of the defendant corporation had no knowledge of the agreement between Geoffrey Bowen and plaintiff to the effect that the latter was to receive 371/2 % of the profits to be realized from the importation and sale of ECA procurement materials. Indeed, at the time the said agreement was made, the Board of Directors of the corporation was composed of Geoffrey Bowen himself, his wife, Francisco U. Buenaseda and two others, with Bowen and his wife controlling the majority of the stocks of the corporation. The Board did not repudiate the agreement entered into by Geoffrey Bowen with plaintiff Buenaseda, but, on the contrary, acquiesced and took advantage of the benefits afforded by said agreement. Such acts are equivalent to an implied ratification of the agreement by the Board of Directors and binds the corporation even without formal resolution passed and recorded. (*Zamboanga Transportation Co. vs. Bachrach Motors*, 52 Phil. 244. See also 3 *Thompson on Corporations*, 705- 706 3rd Ed., citing the cases of *Pittsburg & c. R. Co. vs. Keokuk & C. Bridge Co.*, 131 U.S. 371, 33 L. ed. 157, 9 Supp. St. 770; *Bennet vs. Millville Imp. Co.*, 67 N.J.L. 320, 51 Atl. 706. Likewise see 2 *Fletcher Cyclopedia Corporations*, 52 Ed., pp. 678, 1114-1119, and the cases cited therein.)

It is argued by the respondents, defendants below, that the profits of the corporation form part of its assets and payment of a certain percentage of the profits requires a declaration of dividends and/or resolution of the Board of Directors. The argument is untenable. Although plaintiff Buenaseda is a stockholder of the corporation, he does not, however, claim a share of the profits as such stockholder, but under an agreement between him and the president of the corporation which has been impliedly ratified by the Board of Directors.

In view of the foregoing we consider it unnecessary to pass upon the other questions raised by the parties.

Wherefore, the decision of the Court of Appeals is reversed, and the corporation Bowen & Co., Inc. is hereby ordered to pay the sum of P8,363.99 to petitioner Francisco U. Buenaseda with legal interest from June 17, 1955, and 371/2 % of such other profits as may be realized from the sale of the remaining ECA procurement materials. So ordered with costs against the respondent corporation.

Paras, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.

Decision reversed.

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