

FRANCO J. ALTOMONTE, PLAINTIFF AND APPELLEE, VS. PHILIPPINE AMERICAN DRUG COMPANY, DEFENDANT AND APPELLANT.

G.R. No. L-16804. April 28, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

This appeal concerns the execution of a judgment rendered by the Court of First Instance of Cebu, which was affirmed with modifications by this Court in *Franco J. Altomonte vs. Philippine American Drug Company*, 106 Phil., 137; 57 Off. Gaz. 454.

The judgment rendered by the trial court on 13 June 1956 ordered the defendant Philippine-American Drug Company to pay Franco J. Altomonte accrued 1% commission on his gross sales in the, sum of P3,283.87 with legal interest thereon from the filing of his complaint until the commission was fully paid, P2,000 as attorney's fees, and costs.

Acting on a motion for reconsideration, the trial court awarded to the plaintiff an additional sum of P758.06, P258.06 as plaintiff's salary from 16 to 23 March 1953 and P500 as 15-day vacation leave pay for 1952.

Both parties appealed, the plaintiff to this Court claiming that the trial court erred in denying his reinstatement with back salary to his former position and payment of commission and bonus during the period of his illegal separation and of damages, expenses and attorney's fees in full (G. R. No. L-11872); and the defendant company to the Court of Appeals contending that the trial court erred in finding that the plaintiff's dismissal from his employment was arbitrary, unjustified and illegal and in holding it liable for accrued 1% commission on the gross receipts in the sum of P3,283.87, to which P758.06 was added by an amendatory order of 24 September 1956, and for attorney's fees of P2,000 (CA-G. R. No. 21473-R).

The two appeals being indivisible and referring to only one case and following precedent on the matter,[1] the Court of Appeals certified to this Court CA-G. R. No. 21473-R, which was docketed here as G. R. No. L-14922.

On 31 August 1959 this Court rendered judgment on the two cases, as follows:

As agreed upon in the employment contract (Exhibit O), the plaintiff is entitled to a commission of 1% on the gross receipts from May 1952, the month he stopped receiving it, to 21 March 1953, the date he was separated from the service and should be paid the amount due him on the total gross receipts of P504,237.42 for that period (Exhibits E, E-1 to E-10), or P5,042.37. The defendant cannot lawfully relieve itself from the obligation to pay the commission agreed upon by simply sending a letter to the plaintiff advising him that the payment of the commission would be discontinued beginning 1 May 1952 (Exhibit 2). The silence of the plaintiff to such advice has been satisfactorily explained by him and does not amount and cannot constitute in law acquiescence in it, much less consent thereto.

The plaintiff is not entitled to bonus, there being no showing that it had been granted by the defendant to its employees periodically or regularly as to become a part of their wages or salaries. The attorney's fees in the sum of P2,000 awarded to the plaintiff are reasonable.

However, it appearing that the defendant had voluntarily paid the plaintiff P500 as his salary from 16 to 31 March 1953, P1,000 as one month separation pay and P500 as 15 days vacation leave pay for 1952, less withholding tax of P241.50, or a total of P1,758.50, and the plaintiff had already cashed the check drawn in his favor by the defendant for that amount, that part of the judgment awarding to the plaintiff an additional sum of P758.60 (should be P758.06), P258.06 representing the plaintiff's salary from 16 to 23 March 1953 and P500 as 15 days vacation leave pay for 1952, should be, as it is, stricken out.

If by law the defendant has a right to end the plaintiff's employment, as there is no fixed period thereof and there are justifiable reasons for such termination, the finding by the trial court that the plaintiff's separation from the service of the defendant was "unjustifiable, arbitrary and illegal" seems to be unwarranted and in conflict with its denial of the prayer for damages. For that reason such finding should be, as it is, stricken from the judgment appealed from.

As thus modified, the judgment appealed from is affirmed, with costs against the defendant.

As this Court did not mention in its judgment legal interest on the total commission on the gross receipts, which was prayed for in the plaintiff's complaint and granted by the trial court, the plaintiff on 8 October 1959 filed in this Court a motion praying for clarification to include legal interests. On 21 October 1959 the motion for clarification was denied, for having been filed out of time.

On 5 November 1959 the defendant company filed in the Court of First Instance of Cebu a statement—

That under the modificatory judgment of the Supreme Court, the exact amounts awarded to the plaintiff are limited to the following:

a)

1% commission on the gross receipts of P504,237.42 (from May 1, 1952 to March 21, 1953)

P5,042.37

b)

Attorney's fees

2,000.00

Total

P7,042.37

On 5 December 1959 the plaintiff filed a motion for execution of the judgment rendered by the trial court as affirmed with modifications by this Court, claiming that he is entitled to the following:

(1)

For the 1% commission on the gross sales

P5,040.00

(2)

For legal interest on P5,040.00 from Apr. 9, 1953

(date complaint was filed) to Dec. 9, 1959, when

payment might be made (6 years 8 mos. a 6%)

2,016.00

(3)

For attorney's fees

2,000.00

(4)

For costs and legitimate expenses:

(a)

Filing fee CFI

P16.00

(b)

Preparation of complaint

8.00

(c)

Appearance of counsel CFI

10.00

(d)

Travel expenses of witness Altomonte

from Manila to Cebu &

back by plane for attending the

hearing a P64.00/trip

128.00

(e)

For one day lodging & meal in Cebu

15.00

(f)

For appearance of counsel, Court

of Appeals

20.00

(g)

Docket fee, Supreme Court

24.00

(h)

Appearance of counsel, S.C.

40.00

(i)

Summons to defendant in Manila

2.10

263.10

Total

P9.319.10

On 14 December 1959 the defendant objected to the issuance of a writ of execution, questioning the correctness and legality of some of the items enumerated in the list of costs; contending that—

* * * in the final modificatory judgment of the Supreme Court, the exact sum of P5,042.37 adjudged in favor of plaintiff for commission did not include payment of legal interest. * * *;

and that this Court fixed its liability at the exact amount of P7,042.37 which the trial court cannot increase; and offering to tender payment of P7,042.37 to the Clerk of Court to be delivered pursuant to sections 42 or 43, Rule 39, of the Rules of Court.

On 14 January 1960 the trial court issued a writ of execution—

* * * for the enforcement of the judgment of this Court, as modified by the Supreme Court, for the following amounts: (1) for the 1% commission on the gross receipts, P5,042.37; (2) Attorney's fees, P2,000.00; (3) For costs, P120.10; and (4) Interest at the legal rate on the sum of P5,042.37, from April 14, 1953 until the same shall be fully paid.

From the above order of execution particularly specifying clause number 4 which directs payment of legal interest

on the accrued commission of P5,042.37, the defendant company has appealed.

Whether the order of execution which includes the payment of interest at the legal rate on the commission of P5,042.37 carries out, enforces or executes the judgment rendered by the trial court as modified by this Court is the point at issue.

The appellant contends that the "amount adjudged to be paid to the plaintiff for the commission of 1% on gross receipts is the exact sum of P5,042.37," because the judgment rendered by this Court did not mention legal interest on the sum awarded, whereas the appellee claims that legal interest on the total commission should be paid him, because the judgment rendered by the trial court on the payment thereof was not modified or altered by this Court in G. R. Nos. L-11872 and L-14922.[*]

The judgment rendered by the trial court was not only modified but was also affirmed by this Court in cases L-11872 and L-14922. What this Court did not expressly reverse, alter or modify stood affirmed. This Court did not state that the legal interest was excluded from the judgment then under review. Hence that point is considered affirmed when this Court said that "As thus modified, the judgment appealed from is affirmed, with costs against the defendant."

The order appealed from is affirmed, with costs against the appellant.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

* *Altomonte vs. Phil., American Drug Co.*, 106 Phil., 137; Off. Gaz. [3] 454.

[1] G. R. No. L-8014, *Villar vs. Paraiso*, 96 Phil., 569.

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