

GIL EXCONDE, PLAINTIFF AND APPELLANT, VS. INTERNATIONAL HARVESTER COMPANY OF PHILIPPINES, DEFENDANT AND APPELLEE.

G.R. No. L-4096. November 05, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an action to recover damages for an alleged breach of promise to employ. On May 31, 1946, plaintiff was appointed exclusive dealer for defendant's International trucks and their attachments for the provinces of Laguna, Batangas, Quezon, and Mindoro, with a commission of 10 per cent on all sales made by him to bona fide residents in his territory, 5 per cent on those made to residents of other territories, and 2 per cent on those made by defendant at Manila or elsewhere to customers residing in his territory. His employment as such was to expire in one year, but defendant reserved to itself the right to cancel it at any time, at its discretion and without need of giving its reasons therefor. (Exhibit A.) Plaintiff accepted the appointment and rendered service accordingly, earning commissions which amounted to P7,055.90 in 1946, P32,005.62 in 1947, and P7,650.67 in 1949. (Exhibits D, F, and G.) On December 6, 1948, defendant advised plaintiff of the termination of his temporary appointment as commission dealer as of December, 1948, and warned him that a new agreement would be available to him only if he would show progress in establishing the required facilities in his territory. The advice is as follows:

EXHIBIT B December 6, 1948

Mr. GIL EXCONDE
San Pablo, Laguna

DEAR SIR:

During the past year or more, we have repeatedly invited your attention to the advantage of your establishing your dealer Base-of-Operations at San Pablo. A dealership so established would provide for necessary showroom space, parts stock and customer's service facilities.

The need for such facilities in San Pablo is even more apparent now than a year ago. Dealer commissions are allowed to provide for such establishments. The time has come when we must see some concrete action on your part towards these aims.

Your temporary appointment as commission dealer is terminated as of December 31, 1948. A new commission dealer agreement will be available to you only if you can show satisfactory progress in the establishment of the required facilities on the territory.

Because of your experience in selling Harvester products and because of your friends and business acquaintances in Laguna, we hone you will find it possible to meet the requirements necessary to a new contract.

Very truly yours,

INTERNATIONAL HARVESTER COMPANY OF THE PHILIPPINES

By (Sgd.) PAUL H. WOOD

In anticipation of his appointment, plaintiff subleased a parcel of land for 9 years at a monthly rental of P75 (Exhibit H) and constructed a small building thereon at a cost of P1,500. This building was going to be used as his "Base-of-Operations." He also purchased spare parts from defendants for display and sale therein (Exhibits I, I-1 to I-14), and truck tires valued at around P4,000 (Exhibit 1-15).

On March 24, 1949, plaintiff was advised to make immediate arrangements to furnish a bond, thus:

EXHIBIT B-7 March 24, 1949

Mr. GIL B. EXCONDE
San Pablo City

DEALER BOND

DEAR MR. EXCONDE:

The printers have almost completed our new Commission Dealer Contract Forms and they will soon be ready for signature. However, we are informed by the Credit & Collection Department that you have not yet made arrangements for a bond. Since, to hold a dealership, it is absolutely necessary that you furnish an adequate bond, we suggest that you make the arrangements at once.

Very truly yours,

(Sgd.) L. D. HARRISON

but up to the time he brought this action on July 26, 1949, he had not done so.

On June 21, 1949, he was informed that his appointment expired as of June 30, 1949, for the reason that the manner in which he had "handled your territory has been entirely unsatisfactory." (Exhibit C.)

Plaintiff testified that the site of the building where he established his "Base-of-Operations" was approved by, and the building constructed in accordance with the plans and wishes of, defendant's agents or officials; that he was rated as an efficient salesman of the defendant company; that his attention had never been called to any irregularity or mismanagement on his part as a dealer; and that it is possible that the defendant's inspector, who inspected him, had a "disgusto" (misunderstanding) with him.

Defendant's manager summarized the defendant's reasons for not renewing plaintiff's appointment in the following words:

Q. Will you tell the court why no new commission dealer's agreement was entered between plaintiff and defendant?

A. Because the defendant (plaintiff) did not have satisfactory facilities or comply with our requirements.

Q. What requirements?

A. To handle his territory in a manner satisfactory to us; to live in his territory; and canvass in systematic manner new customers; he did not establish a satisfactory base of operations and he did not file a satisfactory bond. (t. s. n., p. 124)

As to the building, the same witness for defendant testified that plaintiff failed to complete the building in

accordance with agreement, namely, that he would enlarge the building so that it would be big enough for a show room for the trucks, machinery, and equipments sold by it, or put a cement floor for all its rooms, provide it with walls on all sides, etc. He further testified that plaintiff was in Manila on an average of three days a week, when he should spend more time in his territory, and that plaintiff also failed to file the bond; that he had been asking plaintiff to complete his building and put up his bond, but that plaintiff, in spite of promises, failed to do so. According to this witness, plaintiff informed him he could not put up a bond because all his properties were mortgaged.

Both parties introduced as evidence pictures of the building which was to be plaintiff's "Base-of-Operations" (Exhibits U, U-1 to U-4). Those introduced by defendant (Exhibits 1 and 2) show that the building is small and has no sufficient room for display, is not paved and provided with a siding on one side.

The trial court found that the plaintiff failed in the following respects: that he did not construct the building in the manner indicated or required by defendant, did not put sufficient time in his territory, did not cover his territory in a satisfactory manner, and failed to file the bond required. The action was, therefore, dismissed.

On this appeal plaintiff contends that the finding as to the condition of the building is not justified by the evidence. It is to be noted that no written specifications were made as to the size and conditions of the building to be used as "Base-of-Operations." The pictures submitted by defendant, Exhibits 1 and 2, fully justify the claim that it has no sufficient space for the display of the trucks, machinery, and equipments intended to be displayed, since it contains only one small room for the purpose and does not have the necessary siding to have said display room safe, nor the necessary and convenient pavement for servicing trucks.

Plaintiff also claims that his failure to file a bond is a flimsy excuse, as a bond could have been executed upon the execution of the contract. It is sufficient to state, in answer, that as early as March 24, 1949—three months before cancellation—plaintiff was advised to make arrangements "at once" for his bond, but that he neglected to comply with the requirement. It is true the bond could have been executed immediately before the appointment of plaintiff, but it is to be noted that the plaintiff's failure to put up the bond was only one of the many Misons, the main reason being the "unsatisfactory manner" in which he handled his business.

The last and most important contention of the plaintiff-appellant is that there was "a definite promise on the part of defendant to extend to the plaintiff a permanent dealership contract upon the establishment of a base-of-operations at San Pablo City." This claim is made to rest on the legal proposition that by its supposed acts in "addressing, treating and considering plaintiff as its dealer," defendant is now estopped from cancelling his appointment as dealer. We find no evidence to support the claim of alleged estoppel; on the contrary, the letters of defendant to him plainly show otherwise. Thus, the original appointment, Exhibit A, was for a period of one year only, and then subject to defendant's, right to cancel it at any time. This appointment was supposed to expire by May, 1947, yet no written extension was ever given thereafter. On the contrary, on December 6, 1948, he was advised of the termination of his "temporary appointment"—which shows that all the while plaintiff-appellant was on a temporary or provisional appointment. This same advice warned him that he must "show satisfactory progress," and that a new agreement "will be available only" if he did so. What clearer language could there have been to show that up to that date plaintiff's services were not satisfactory? Can a promise of employment be inferred from such a blunt warning, so plainly and positively indicative of the dissatisfaction that defendant felt over the manner in which plaintiff had conducted his business as dealer? That plaintiff was aware that he was not to be favored with the appointment can be inferred alone from the fact that he himself recommended another, one Mr. Young, to take his place (t. s. n., P-166). The claim of estoppel must be dismissed.

Plaintiff's counsel makes capital out of the fact that defendant's letter, Exhibit C, is given the heading of

"Cancellation of Dealer's Contract." The body of the letter, however, shows that plaintiff has had no contract at all. The body of the letter, not its title, governs. Defendant's counsel explained that the heading was made by a "layman" and this seems to be correct.

It is not necessary to follow plaintiff-appellant's counsel through his hazy and labyrinthine argumentation. It is enough to state that this suffers from an erroneous assumptions, i.e., that plaintiff-appellant was already a dealer and his appointment was unjustly cancelled. The evidence shows that plaintiff-appellant was never appointed a permanent dealer and was never made to believe so. He may have entertained hopes that out of consideration for his past services and his attempt to satisfy the demands of his employer, he would be appointed in the end. But in order that his action for breach of promise may succeed, nothing short of an actual, clear, and positive promise on the part of the defendant-appellee must be shown by him by competent evidence. His unjustified hopes, perhaps inspired by courteous dealings of the other party, do not constitute promise, the breach of which is actionable at law. We are fully satisfied that there is absolutely no evidence of the existence of such promise, and we find that plaintiff-appellant has failed to establish a cause of action against the defendant-appellee.

We find no reason or ground for disturbing the judgment of dismissal appealed from, and we hereby affirm it, with costs against plaintiff-appellant.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

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