

CLIFFORD H. LOGAN, PLAINTIFF AND APPELLANT, VS. PHILIPPINE ACETYLENE CO., DEFENDANT AND APPELLEE.

G.R. No. 11078. January 11, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

On the 24th of April, 1911, plaintiff and defendant entered into an agreement whereby plaintiff agreed to act as the manager of the Philippine Acetylene Company in the Philippine Islands for a period of four years, commencing May 1, 1911, and ending April 30, 1915. The agreement contained a provision that, at any time during the term of such employment, either party thereto might cancel the agreement and terminate the same by first giving the other party three months' written notice in advance of his or its intention so to do. It also provided that no action looking to the termination of the contract could be taken by the company except it had been first authorized by a resolution of its board of directors. Plaintiff was to receive a salary of P500 a month under said agreement.

On the 20th of April, 1914, plaintiff wrote the following letter to defendant:

"I hereby tender my resignation as manager of the Philippine Acetylene Company to be effective May 1st, 1914.

"In lieu of the three months' notice as per my contract, I hereby agree to accept the Overland automobile of this company and agree to waive the three months' notice clause in my employment contract."

On the 30th of April, 1914, the defendant company wrote the plaintiff a letter enclosing the following resolution of its board of directors:

"Be it resolved, That in view of the fact that Mr. C. H. Logan's services as manager of this company can be dispensed with at this time without detriment to the company, it is the sense of the board that he be not held to the clause in his contract with this company, dated April 25th, 1911, requiring him to give three months' advance notice of resignation, and that the board waive, and hereby does waive its right to require such advance notice of his resignation, and that Mr. Logan's resignation as manager of this company be and hereby is accepted effective May 1st, 1914, as requested by him; And be it further resolved, That the secretary notify Mr. Logan of this action, and at the same time call his attention to the amount of his indebtedness to this company, including borrowed property which has not been returned and request immediate settlement, and also direct him to deliver the company automobile to the assistant manager, who will be acting manager for the time being."

The letter terminated with this sentence:

"In accordance with the above (resolution of board of directors) I respectfully request that you comply with the conditions stated therein."

The letter was signed by the secretary of the Philippine Acetylene Company.

Immediately on receiving this letter plaintiff wrote defendant as follows:

"Referring to the letter of your secretary under date of April 30, I would say that inasmuch as you have failed to accept the condition contained in my letter of April 20, I decline to waive the three months' notice provided for in our contract of April 25, 1911.

"I hold myself at your orders for such services as may be required under said contract."

The defendant company refused to continue the plaintiff in its employ or to permit him to perform any further services under the contract between them. After the expiration of three months from the date of plaintiff's first letter (April 20, 1914) he began this action to recover salary for three months. The trial court found in favor of defendant, dismissing the complaint on the merits with costs. This appeal is taken from that judgment.

The appellant argues that his letter of April 20, 1914, was not an absolute but a conditional offer to cancel the contract between the parties; and that, accordingly, the appellee, if it accepted the offer, must accept the condition that went along with it. It is contended that the appellee had no legal right to accept that portion of the offer which was beneficial to it and reject that which was beneficial to the appellant; that the offer being entire, it must be accepted or rejected in its entirety. It is also maintained that appellee's letter of the 30th of April, in reply to his of the 20th, was not an acceptance of appellant's resignation but was, in legal effect, a counter-offer which, before it became effective, must have been accepted by appellant; that the appellant having rejected it by his letter of the 2d of May, all negotiations relating to the cancellation of the agreement were thereby terminated and he was entitled to continue in his position as manager of the appellee until such time as their relations were terminated as provided by the contract or by mutual consent. It is claimed also that the minds of the parties never met on an agreement to terminate, and that, therefore, in law, the parties remained at the end in precisely the same condition as at the beginning.

On the other hand, the appellee says in its brief:

"The fundamental error of appellant seems to be a failure upon his part to understand the three months' notice provision of the contract for services (Exhibit A, par. II). Three months' notice was required by the party seeking to terminate the contract. If the appellant sought to terminate the contract, he must give the appellee three months' notice. If the appellee sought to terminate the same, it must give the appellant three months' notice. By no stretch of the imagination if the appellant desired to resign could he compel the appellee to give him three months' notice. Therefore appellant's statement in his letter (Exhibit B) that he agreed 'to waive the three months' notice clause in (his) my employment contract' is simply outside of any provision of the contract. He was the one to give the notice. For his failure so to do he could not demand payment either by way of an automobile or in cash as he seeks to do by this suit. The appellee could have demanded the notice. No one will dispute this. But by formal action of its board of directors it waived its right to require such notice, and accepted the resignation as tendered to take effect in ten days from the date thereof.

"It seems to us to be little less than silly to claim that the appellant had a right to terminate his contract upon ten days' notice and then to require payment as he seeks to do for three months more. The contract, of course, never contemplated any such situation. It is plain and unequivocal. He could have given notice that he would terminate his contract in three months, during which time he would have continued in the service of the company, and the appellee would have been helpless to refuse it. But when he offered his resignation to take effect in ten days he sought to have the appellee waive its right to demand three months' notice on his part. By the terms of the contract it was appellant's duty to give the three months' notice. What does he mean then when he writes about waiving the notice? There was no notice required that he could waive. The appellee could waive notice upon the part of the appellant. It did so. (Exhibit G.) Now he seeks payment. Is there not a complete misapprehension of the situation on the part of the appellant?"

We are inclined to regard as of very little consequence on this appeal who was entitled to receive or who should give the notice which the contract required in order that it might be terminated. Indeed, we believe that such a controversy has nothing to do with the resolution of the question presented by this appeal. We are of the opinion that a decision of this case requires us to take into consideration only what the parties actually did, not what the contract required them to do if it was desired to terminate it. With this in mind we have an offer on the part of the appellant to terminate a contract which, at the time of the offer, had more than a year to run and in which, consequently, he had a considerable interest. That offer contained as an integral part thereof the condition that the appellee, if it accepted the offer, should turn over to him an automobile belonging to it. He had a perfect right to make the offer and to attach the condition. There was nothing illegal about it, nothing that violated the law or the terms of the contract. It was a mere offer which could be accepted or rejected as appellee willed; and he could have attached any condition that pleased him. He was under no obligation to appellee to make the offer in any given form or to make it conditionless; indeed, he was under no obligation to make it at all. That being so, he could have attached to it whatever condition he considered consonant with his interests so long as it was not unlawful. If he had that right, then it necessarily follows that he also had the right to have that condition considered by the company to which the offer was directed. There was no authority in the appellee to tear the offer asunder and treat it as consisting of separate and distinct parts. It was entire, made so by the lawful act of the appellant; and, without his consent, it could neither be mutilated nor materially changed. On its reception by the appellee, it was its duty, if it did anything at all with it, to treat it as a single and entire proposition and to accept or reject it in its entirety. Or, if the offer as made did not permit of its acceptance by the appellee but it desired further negotiations, it could have made a counter-offer. But there its rights stopped. It could not reject that portion of the offer which was disadvantageous to it and accept only that which was beneficial. If such were the case, the one making an offer coupled with a condition would always be at the mercy of the one to whom the offer was directed. Anything but straight offers would be impossible under such a theory. The appellant did absolutely nothing which would authorize a finding that he placed himself at the mercy of the appellee. He did, as he had a right to do, all that he thought necessary to protect his own interests, as he saw them; and the appellee had no right to strip the offer of that portion designed to that end.

As we have intimated, one of the appellee's rights under appellant's offer to cancel was to make a counter-offer; and that, in law, is precisely what appellee did. Its letter of the 30th of April was not an acceptance of the offer made by appellant but was a complete rejection of the offer and of the whole thereof. A counter-offer is always considered in law a rejection of the original offer and an attempt to enter the negotiations between the parties on a different basis. This is what appellee's reply to appellant's offer amounts to. It offers to negotiate on a different theory and from a different basis. It put the whole matter on a different footing and required it to be viewed from a different standpoint; and appellant should have been permitted to pass on that situation before he could be said to have accepted it. The appellee proceeds on a wrong theory when it says that it is idle "to claim that the appellant had a right to terminate his contract upon ten days' notice and then to require payment as he seeks to do for three months more." It is not claimed that the appellant had the right to terminate the contract on ten days' notice, or that he had the right to require the appellee to deliver an automobile to him. What is claimed is that he had the right to make the offer that he made. He could not compel the appellee to accept that offer but that does not argue that he did not have the right to make it. Whether it was to be accepted or not was a matter exclusively for the company to which it was directed. The sole claim is that appellant had the right to make the offer which he did make and that he had the complementary right to have it considered as made. Nor do we think that the appellee argues from a correct basis when it contends that, when appellant "offered his resignation to take effect in ten days, he sought to have the appellee waive its right to demand three months' notice on his part;" and that "by the terms of the contract it was appellant's duty to give the three months' notice." What the rights of the parties were under the contract is, as we have already said, of no consequence here. Whatever they were, it is undeniable that the

appellant had the right to offer to modify them; and, in making such an offer, he waived or modified no right under the contract except such as were expressly or impliedly waived or modified by the offer itself. If the offer to change the rights of the parties under the contract was rejected, then the proposed change failed; if accepted, then the change was accomplished by common consent. The offer itself changed nothing. It had no force or effect whatever until accepted by the company. So that, whether the offer was beneficial to appellant, or to the company, or vice versa, he had the right to make it; and he had that right even though it was highly injurious to appellee's interests. While he had no right to require an acceptance of the offer, he did have the right to require that, if the appellee acted on it at all, it act on it in its entirety. That is the only right which appellant had or that he contends on this appeal that he had; and that is the very right which appellee violated when it accepted a part of the offer and rejected the remainder.

From the foregoing it is apparent that the appellant never left the service of appellee, inasmuch as he offered, and there is no contention to the contrary, to continue the performance of his duties under the contract, and that his offer was rejected and he was excluded from that right. The case then resolves itself into one of wrongful discharge; and the principles of law which rule such cases are applicable here. If plaintiff had brought his action for breach of contract he could, under the facts in this case as they appear of record, have recovered for the remainder of the term and not simply for the three months for which he is asking payment. It does not appear that the appellee terminated the contract in the manner provided therein and, so far as the record shows, it continued in full force and effect until it terminated by the expiration of the period stated therein. Appellant, however, saw fit to bring his action for three months' services and it having been brought after the expiration of the 3 months, it will have to be considered as an action to recover for services rendered rather than one for breach of contract of service. There is no question then as to the measure of damages, it being simply an action to recover for services on a contract which specifies the wages to be paid. It necessarily follows that the appellant is entitled to recover the sum of P1,500, with interest thereon from the beginning of the action, August 6, 1914.

The judgment appealed from is hereby reversed and the cause returned to the court whence it came with instructions to enter a judgment in favor of the plaintiff and against the defendant for P1,500, with interest thereon from August 5, 1914. Without costs in this instance. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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