

B. MONTAGUE, DOING BUSINESS UNDER THE NAME OF “THE MONTAGUE ICE AND COLD STORAGE COMPANY,” PLAINTIFF AND APPELLANT, VS. P. B. ARTESIAN WATER COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 11137. December 07, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the city of Manila, on the 19th of November, 1914. The complaint contained three separate causes of action, in each of which the plaintiff alleged that the defendant had entered into certain contracts, particularly described in each cause of action, which contracts the plaintiff alleged that the defendant had violated, and prayed for damages resulting from such violation.

The defendant, upon the 14th of December, 1914, answered each of said causes of action set up in the complaint. The defendant alleged, as a defense, that the contracts to which reference is made in the complaint, had never been authorized, or executed, or ratified, or approved, in any manner or form whatsoever, by its board of directors, or by any other competent authority for it; that said contracts, signed by "E. L. Poole, president," were signed by him upon his own responsibility as an individual and in violation of the articles of incorporation and the by-laws of the defendant; that at the time said contracts were signed by "E. L. Poole, president," he explained to George Wicks, the representative of the plaintiff, that said contracts were not worth the paper they were written on, until they had been approved by the board of directors of the defendant.

The allegations of the defendant with reference to the first cause of action are substantially the same as the allegations of the defendant in its answer to the second and third causes of action.

Upon the issue thus presented, the lower court, in a very carefully prepared opinion, in which he analyzed the facts and the law, reached the conclusion that the defendant had incurred no liability to the plaintiff and absolved it from any responsibility under said complaint, with costs against the plaintiff. From that decision the plaintiff, after having presented a motion for a new trial, appealed to this court.

In this court, the plaintiff-appellant made the following assignments of error:

"First. The court erred in concluding that only the board of directors of the defendant corporation, acting as a body, could ratify or confirm the ice contract entered into by the defendant corporation, through E. L. Poole, its president, with the plaintiff.

"Second. The court erred in finding that there was no evidence that the board of directors had any knowledge that either Mr. Poole or Mr. Boeck received ice from the plaintiff for the defendant corporation.

"Third. The court erred in finding that the ice received by the defendant corporation was received without the authority of its board of directors.

"Fourth. The court erred in finding that the defendant corporation took no part in relation to the automobile trucks, and was in no manner bound by the acts of its president, Poole, and its secretary, Boeck.

Fifth. The court erred in dismissing plaintiff's complaint, with costs against the plaintiff."

Said assignments of error present questions of fact only. The appellant has not brought the proof to this court. The only question, therefore, which we can consider, is whether or not the facts set out in the decision of the lower court are sufficient to justify its conclusions and judgment. The lower court made the following findings of fact and reached the following conclusions thereon:

"On or about August 25, 1914, E. L. Poole, who was the president of the P. B. Artesian Water Company, made arrangements with B. Montague, doing business as The Montague Ice and Cold Storage Company to handle the ice manufactured by the Montague Ice Plant in Paco, Manila, and commenced taking, selling, and delivering ice to consumers on that date.

"On August 26, 1914, the said E. L. Poole, as president of the P. B. Artesian Water Company, entered into a contract with the said B. Montague to buy for the consideration of P10 per metric ton the entire production of the said ice plant, and in said contract it was provided that the amount of ice to be delivered under said contract was not to be less than twenty-five tons per day, and the period of the contract was to be two and one-half years, commencing September 1, 1914, and terminating on February 28, 1917, with the privilege of renewal for a like period of two and one-half years at the option of the P. B. Artesian Water Company.

"On August 27, 1914, the board of directors of the P. B. Artesian Water Company, duly assembled, held a meeting to discuss the advisability of and to decide on the matter of whether said company should enter into contracts with the Oriental Brewery and Ice Factory and the Montague Ice and Cold Storage Company for the disposal of ice, and it was decided by the board of directors not to enter into the ice business.

"Notwithstanding the action of the board of directors, the said E. L. Poole, the president of the defendant company, and V. L. Boeck, the secretary of said company, continued to take and sell the ice of the plaintiff's manufacture, and on and after September 1, 1914, and until September 14, 1914, continued to take, sell and dispose of the ice manufactured by the plaintiff pursuant to the terms of the said contract dated August 26, 1914.

"On September 14, 1914, the plaintiff was informed by the defendant company, by V. L. Boeck, secretary, that 'the directors of the P. B. Artesian Water Company, Incorporated, have decided not to confirm the enclosed contract,' referring to said contract of August 26, 1914.

"The articles of incorporation of the P. B. Artesian Water Company show that the purpose for which said corporation was formed are:

" 'To dig or otherwise acquire artesian wells, and to buy, sell, manufacture, and otherwise deal in and with artesian water and aerated, mineral, and carbonated waters thereof; to establish a bottling plant where such waters and their products may be prepared for market; to act as agent for the sale of artesian, aerated, mineral and carbonated waters and kindred products, and to do all and everything necessary, suitable, or proper for the accomplishment of the foregoing purposes, or anything which the board of directors of the corporation may, from time to time, deem to be convenient or expedient for the protection or benefit of the corporation.'

"The by-laws of the defendant corporation provide that the directors shall have the power 'to appoint or remove, at pleasure, agents and employees to the corporation, prescribe their duties, fix their compensation, and require from them security for faithful service,' and 'to conduct, manage and control the affairs and business of the corporation and to enter into all lawful contracts and do all things in their judgment necessary or advisable for the best interest of the corporation;

"The by-laws of the defendant corporation further provide that the president, or in his absence the vice

president, shall 'sign as president, all certificate of stock, and all contracts and other instruments of writing which have been first approved by the board of directors

"On August 26, 1914, E. L. Poole, as president of the P. B. Artesian Water Company, without authority of the board of directors, wrote a letter to the plaintiff, as follows:

"Whereas the undersigned has agreed to take over the Willys-Utility trucks purchased by you from Mr. E. M. Bachrach, and whereas you have paid the sum of five hundred and thirty-three pesos (P533) on the same, and whereas you have agreed to surrender said payment in my favor, now, therefore, I agree, for and in behalf of the P. B. Artesian Water Company, to the following:

"(1) To take over in full your account with E. M. Bachrach, said sum not to exceed * * *.

" (2) In the event of the P. B. Artesian Water Company failing to comply with the terms of its contract with you, dated August 22, 1914, the undersigned corporation agrees to refund to you the said sum of five hundred and thirtythree pesos (P533) and to turn over to you the ice consumers in the territory adjacent to your ice plant situated in the district of Paco.'

"The foregoing proposition was accepted by the plaintiff and the trucks were turned over to Mr. Poole for the use of the P. B. Artesian Water Company, under said contract, and the P1,000 was afterwards paid by Mr. Poole on account of the purchase price of said trucks; but this agreement between Mr. Poole and Mr. Montague was never approved, ratified, or confirmed by the board of directors of the defendant corporation, and on and after September 14, 1914, said trucks were left and have remained in the possession of the plaintiff.

"It further appears that between August 25 and September 1, 1914, Mr. Poole and Mr. Boeck paid or caused to be paid to the plaintiff P500 on account, and that about the same time they purchased from the plaintiff a horse for P100 and the payment of P500 on account resulted in a net profit on account on September 1, 1914, of P44.94, after paying for the horse and the ice purchased up to said date.

"The determination of this case depends upon whether or not the defendant corporation is in any way bound by the contracts Exhibits A and B.

"The attorneys for the plaintiff admit in their argument that there is no question but that the board of directors of the defendant company had not approved the contract involved before it was signed by the president, and that the contract is in no way obligatory upon the defendant unless said defendant in some way ratified and confirmed it. "The attorneys for the plaintiff claim that the evidence discloses that the defendant received, through its manager or other agents, whatever ice it required under the terms of said contract and sold the same, using the funds received from the sale of the ice for its own benefit: and that this was a sufficient ratification to make the contract that of the defendant. As a matter of fact, the evidence shows that any acts that were performed by the agents of the defendant company in carrying out the said contract were performed by them without the prior authority or subsequent approval of the board of directors and after the express refusal of the said board to enter into the ice business.

"Mr. Poole testified that he began to receive the ice on September 1, 1914, under the terms of the contract, notwithstanding the fact that the board of directors had refused on August 27, 1914, to enter into the ice business, and that he did this in the belief that he could swing the board of directors so as to secure the ratification of the contract.

"It will hardly be contended that the unauthorized acts of an agent in carrying out an unauthorized contract amount to a ratification or confirmation of the contract.

"Under the law and under the by-laws of the defendant corporation no agent of the said corporation other than the board of directors, or under its authority, is authorized to enter into contracts on behalf of the corporation; and when an officer or agent of the corporation has, without prior authority, entered into a contract in the name

of the corporation it is clear that only the board of directors, acting as a body, could ratify or confirm the unauthorized act of the officer or agent thus assuming to act in the name of the corporation. There is no evidence in this case showing that the board of directors, as the governing body of the corporation, after it had passed its resolution of August 27, 1914, refusing to go into the ice business, had any knowledge of the fact that Mr. Poole and Mr. Boeck or either of them were receiving ice from the plaintiff for and in the name of the defendant corporation. Of course Mr. Poole and Mr. Boeck individually knew this, and knew that they were doing it contrary to the action of the governing body of the corporation; but a corporation does not act through an individual agent, or through any number of agents, unless thereunto duly authorized by its by-laws or by the board of directors, and in this case there was no such authority.

"It is claimed by plaintiff that the action of the agents of the defendant corporation in receiving and selling the ice and turning the proceeds into the treasury of the defendant corporation amounts to a confirmation of the contract by reason of its acceptance of the benefits of said contract. It should be noted, however, in this connection that any ice that was received without the authority of the board of directors and, so far as the evidence shows, without its knowledge, and the money received for the ice was received and put into the treasury by the same agents who had performed the unauthorized acts in the name of the corporation; and it is not shown that the board of directors was ever advised of the turning into the treasury of the proceeds of the sale of said ice. Therefore, it is clear that the action of said unauthorized agents in receiving the money and turning same into the treasury of the defendant corporation is no more a ratification or confirmation of the contract than were the unauthorized acts of said agents in receiving said ice in spite of the action of the corporation through its board of directors.

"As shown by the testimony of Mr. Poole and Mr. Boeck themselves, the board of directors, notwithstanding the strenuous efforts of the former, refused to approve the contract in question, and there is no evidence in the case to show that the board of directors had knowledge of the unauthorized action of Messrs. Poole and Boeck, or in any manner acquiesced in or approved their acts as individuals; therefore, it never became a contract of the corporation, either by ratification or by acting under it and accepting the benefits of it.

"The claim of the plaintiff regarding the automobile trucks must be denied, for the reason that the defendant corporation took no part in the transaction with the plaintiff and is not in any manner bound by the unauthorized acts of Messrs. Poole and Boeck. The plaintiff took the risk of the defendant corporation approving said contract, and the corporation failed to approve it. Therefore, whatever recourse plaintiff may have must be against Messrs. Poole and Boeck as individuals.

"In view of the foregoing consideration, it does not appear to be necessary to discuss or determine the question of the power or authority of the defendant corporation under its articles of incorporation to engage in the buying and selling of ice as a business.

"Therefore, it is the judgment of the court that the plaintiff's complaint be dismissed and that the defendant be absolved from the demands thereof, with the costs against the plaintiff. So ordered."

Accepting the findings of fact of the lower court, we are of the opinion and so hold that they justify his conclusions. Therefore the judgment of the lower court is hereby affirmed, with costs. So ordered.

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

Judgment affirmed.

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