

N. T. DEEN, PLAINTIFF AND APPELLEE, VS. PACIFIC COMMERCIAL CO., DEFENDANT AND APPELLANT.*G. R. No. 17066. February 07, 1922*

Ponente: JOHNS, J.

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It is undisputed that the plaintiff is a resident of Cebu and duly licensed as a real estate broker in the Philippine Islands. That the Pacific Commercial Company, to which we will hereafter refer as the Company, is a duly organized corporation and authorized to do business in the Philippine Islands, with its principal office and place of business in the city of Manila. That it has numerous branch houses, one of which is in Cebu, and does more or less business all over the Philippine Islands. That the defendant L. J. Francisco is a resident of Cebu and the local manager of the Company at that place. That at the time specified, the Company was the owner of a concrete cement warehouse in sections 4 and 5 of block 6 on the water front of Cebu, which is used and rented as a bodega. That H. B. Pond was a resident of Manila and the vice-president and general manager of the Company. That on October 15, 1919, he wrote a letter to Francisco at Cebu, enclosing a blueprint of the property which the Company owned there, and stating that it was offered for the sum of P300,000; "that on the basis of relative areas the property which we offered to Macleod & Co. should figure out P300,000 and our warehouse P100,000," in which he further said: "If this property is sold arrangements will of course have to be made to protect us and also to protect the leases at present on the property of the Cebu Warehouse Co. As you know, it is our plan to occupy the warehouse at present leased to Messrs. Macleod & Co. which adjoins our Cebu Office. Will you please look around Cebu and see if you can find buyers for this property?"

December 1, 1919, Francisco wrote the following letter to the plaintiff:

"I attach blueprint which will show P. C. C. properties for sale on the waterfront. Dr. Pond is familiar with the terms of the Government leases. They were to run for 100 years, I believe, from 1910, and are subject to revaluation each ten years. Dr. Pond has recently investigated the subject and will give you details, I am sure.

"Block No. 4—The Pacific Commercial Company has for sale sections Nos. 1, 2, and 3. The area is given in the sections. Sections Nos. 1 and 2 are at present occupied by Stevenson & Co. and section No. 3, by Macleod & Co. Stevenson & Co. pay P750 a month for sections 1 and 2, and Macleod & Company pay P375, for section No. 3. The Pacific Commercial Company is asking P200,000 net to them for these three sections. Our offer to any one is that these three sections are subject to leases with Macleod & Co. and Stevenson & Co. These leases expire December 31, 1921.

"Block No. 6.—The Pacific Commercial Company now owns and occupies a bodega on areas Nos. 4 and 5 in Block No. 6. The areas are given on the blueprint.

"The Pacific Commercial Company is placing this property for sale at P100,000 net to them. "In case a sale is consummated it must be understood that we shall be permitted to continue to occupy this warehouse for a reasonable length of time in order that we may secure other bodega space and arrange the transfer of our hemp press, etc."

December 12, 1919, the plaintiff wrote the following letter to Francisco:

"Re the sale of Bodegas as per your letter of Dec. 1st/19, I beg to inform you that I have set the ball rolling. Am I right in assuming that there is no other person authorized to offer these Bodegas for sale? I, furthermore, beg to request that no prices be given to any person directly, but any inquiries made be referred to me."

It appears that, as Francisco construed the letter of vice-president Pond to him of date October 15th, he did not think it prudent for the Company to dispose of its property in sections 4 and 5 of block 6 in Cebu, and that on December tenth, he wrote to Pond, as vice-president, advising against the sale. December 16th, vice-president Pond wrote a letter to Francisco, in which, among other things, he said:

"Your letter leads me to believe that you have misunderstood the basis on which we were considering the sale of your warehouse No. 2. In selling this warehouse we have, therefore, considered all along that it would be only on the understanding that we shall be permitted to occupy this warehouse until the lease of Macleod & Company on their present premises expires. On any other basis it would of course be foolish for us to dispose of the property.

"In view of recent developments I suggest that you discontinue making any efforts to dispose of warehouse No. 2. We shall take up our future policy in connection with our warehouses in Cebu at the time Mr. Loewenstein and I visit Cebu in January."

This letter was received by Francisco at Cebu on the morning of December 19th, and he at once telephoned the plaintiff the substance of the letter, and that the property was withdrawn from the market.

December 19th, the plaintiff wrote Francisco, as manager of the Company, the following letter:

"With reference to our telephone conversation this morning, the deal for the sale of your Bodega has gone so far and in accordance with the terms of your letter to me, that I don't see how I can repudiate the agreement I have made with the buyer. The entire transaction will be terminated and the money paid to you within ten days or less."

On the same day, Francisco, as manager, wrote the plaintiff the following letter:

"I have your letter of the 19th of December with reference to the sale of our Warehouse No. 2. As soon as we receive the offer it will be placed before our Manila Executives for acceptance.

"I beg to state—outside of this particular deal—that this property was withdrawn from sale in accordance with the instructions received today from our Manila Office."

And on December 20th, wrote him another letter, the material portions of which are as follows:

"Replying to your letters of December 19th and December 20th, we beg to state that our offer to you to negotiate on our behalf a sale of waterfront property in Cebu was subject to confirmation of the agreement to sell by our head office in Manila. This branch has no authority to close a deal of this character without express approval of the Manila office and in fact assignment of the lease to the land must be approved by the Bureau of Lands. On December 19th the writer telephoned you and talked to you withdrawing this property from sale and you replied on the same day by letter that the deal for the sale had gone too far for you to then withdraw your offer. Not until December 20th was a definite offer made to us and then you quoted a price of P100,000 in cash and stated that the money would be paid as soon as the necessary documents are drawn up. We again call your attention to the fact that the necessary documents cannot be drawn up until the Manila office approves this sale, that is to say, you were notified before you closed with the person who is now offering to buy that the writer alone was not authorized to consummate this sale.

"A lease of this character for this period is essential to consummate this deal for the reason that the Pacific

Commercial Company is now occupying the property we are discussing and no other suitable bodega space is available in Cebu and will not be, according to our information, until about December 31, 1921, and the Company does not propose to be put out into the street. The writer regrets that you misunderstood his letter of December 1st which was intended to have you secure offers which were to be submitted and forwarded to Manila * * *."

The plaintiff claiming that he had a buyer who was able, ready and willing to purchase the property and pay P120,000 for it, and the Company refusing to sell and convey the property, after certain negotiations, for the purpose of trying to settle the dispute between them, the plaintiff commenced this action.

The complaint alleges that on December 1, 1919, the defendant Francisco, as manager of the defendant Company, and complying with its instructions, offered in writing to plaintiff for sale sections 4 and 5 of block 6 of the Cebu Reclaimed Lands for the sum of P100,000, "and utilized in effect plaintiff in his capacity already cited to negotiate the sale of the property."

"That said defendant L. J. Francisco, in offering and recommending to plaintiff the negotiation for the sale of the property already mentioned, agreed with the latter that, if he could sell said property for the fixed sum of P100,000, the plaintiff would receive, as remuneration for his services in the negotiation of the sale, any amount which could be obtained from the buyer in excess of the said sum, whatever may be the value of the difference.

"That on the 18th of December, 1919, the plaintiff effected the negotiation of the sale of said warehouse, and promised in the name of his principal with the Roman Catholic Bishop of Cebu, that he would sell to him for the sum of P120,000 the warehouse referred to, having closed the agreement with the Roman Catholic Bishop referred to on the same date; and that the defendant L. J. Francisco was immediately notified of the execution of this agreement."

It is then alleged that the defendants "have refused to pay the plaintiff his commission of P20,000, notwithstanding the demands made by the plaintiff, which sum is Hue and payable by the defendants jointly and severally."

As a second cause of action, the plaintiff alleges in substance that the defendants have formed a conspiracy to defeat plaintiff's claim against the Company, and to place all liability upon the defendant Francisco.

The defendants filed a general demurrer to the complaint which was overruled. An answer was then filed, in which they admit the formal allegations of the complaint, and make a general denial of all the others. Testimony was taken upon such issues, and the trial court dismissed the action as to Francisco, and rendered a judgment against the Company for P20,000, with interest and costs, from which it appealed, making eighteen assignments of error. The plaintiff did not appeal.

Although the trial court found for the plaintiff and against the Company, and there is a sharp conflict in much of the evidence, there is no dispute about any of the matters above stated. Neither is there any allegation or proof that Francisco was an officer or director of the Company, or that he had any authority to convey the property, or that his signature was necessary to the conveyance. It is also undisputed that the fee to the property was in the Government, and that the Company had a ninety-nine-year lease from the Government, dating from 1910, subject to certain terms and provisions, among which was the fact that the lease could not be assigned without the consent of the Government. It is also undisputed that at the time in question Mr. Pond was vice-president and general manager of the Company, and that his signature was necessary to any conveyance of real property. In fact, he was the only officer of the Company in the Philippine Islands who had authority to make such a conveyance.

The defendant Francisco, being only the local manager of the branch office of the Company at Cebu and not an

officer or director, unless otherwise empowered, would not have any authority to sell or convey the real property of the Company, or make a contract for a sale or conveyance. That power was primarily vested in the Board of Directors and the executive officers of the Company, and it appears from the record that at the time of the alleged acts, it was delegated to, and vested in, Mr. Pond, who was the vice-president and general manager of the Company, and that he alone was authorized by the Board of Directors to exercise that power. Francisco, as local manager, not having any authority to make contracts for the sale or conveyance of the real property of the Company, his authority, if any, must come from the Company or Pond, its general manager. Any authority of Francisco must be found in the letter to him of October 15, 1919, from vice-president Pond, in which, after speaking of the value of relative areas, and that the value of the property in question would figure out P100,000, he says: "If this property is sold arrangements will of course have to be made to protect us and also to protect the leases at present on the property of the Cebu Warehouse Co. As you know, it is our plan to occupy the warehouse at present leased to Messrs. Macleod & Co. which adjoins our Cebu Office. Will you please look around Cebu and see if you can find buyers for this property." By the express terms of this letter, the authority of Francisco was limited to "look around Cebu and see if you can find buyers for this property." It did not authorize him to sell the property or to contract for its sale. His instructions were to look around and see if he could find a buyer. Again, the letter clearly says that an agreement will "have to be made to protect us and also to protect the leases at present on the property of the Cebu Warehouse Co." That it was the plan of the Company to occupy the warehouse which adjoins its Cebu office. By the very terms of the letter, any sale of the property was subject to the approval of the home office at Manila, and no sale could be made without its approval, and yet, under the record, any authority of Francisco to sell or contract for the sale of the property must be found in this letter. This letter was followed by the one of Francisco to the plaintiff of December 1, 1919, above quoted, which was written on the stationery of the Company, and is signed merely "L. J. Francisco." The letterhead shows upon its face that the head office of the Company is in Manila, and that it has branch offices at Sydney, Kobe, Cebu, Iloilo, and Zamboanga. After stating that the property is held under Government leases and placing the value of the property at P200,000 on block 4, this letter says: The Company "now owns and occupies a bodega on areas Nos. 4 and 5 in block No. 6. The areas are given on the blueprint," and it "is placing this property for sale at P100,000 net to them." Also, that in the event of a sale, "it must be understood that we shall be permitted to continue to occupy this warehouse for a reasonable length of time in order that we may secure other bodega space and arrange the transfer of our hemp press, etc," Here again, this letter expressly says any sale of the property would be conditional. Although this letter is not as clear and explicit on that point as that of vice-president Pond of October 15th, it does clearly point out that, as one of the conditions of the sale, the Company must have an agreement satisfactory to it for the continued possession of the property. By the very terms of this letter, the right was reserved to the Company to say what terms would be and would not be satisfactory, and what would be a reasonable length of time, for its continued possession of the property. The power to do that was never delegated by the Company, or in the letter to Deen. Again, the plaintiff either knew or it was his business to know that he was dealing with a corporation which had executive officers and a board of directors, and whose principal office was in Manila, and that Francisco was not an officer or director of the corporation, and that he was only a local manager of the Company's property at Cebu, and that as such he had no legal right to sell or contract to sell the real property of the Company, and that any power which he had or claimed to have in such matters must be expressly conferred.

In *Mechem on Agency*, 2d ed., vol. 1, section 797, it is said:

"Authority to sell rather than merely to find a purchaser; mere broker no authority to make a binding contract.—It is to be noted also that the case here contemplated is that in which the agent is really authorized to sell, and not merely employed to find a purchaser to whom the principal may sell. The distinction is one of consequence, because one employed as a mere real estate broker to 'sell' land, even though employed by

writing, is usually held to have no power to make a binding contract (much less a deed of conveyance), but is confined to the finding of a person ready, willing-and able to buy from the principal on the terms proposed by him * * *."

In section 800, the same author says:

"Mere preliminary correspondence or negotiations not enough to confer authority.—It is obvious also that before the questions here suggested can be determined, the authority intended to be conferred must be completely agreed upon and vested. If, therefore, the dealings between the principal and the agent have not passed beyond the stage of preliminary correspondence, if the terms upon which the authority is to be executed or the property sold are not yet fully determined, if further communications are to be had with the principal, or further assent given, before the authority is to be exercised, and the like, there can ordinarily be no present authority to sell in such wise as to bind the principal."

It is Horn-Book law that a person dealing with an agent is put upon inquiry as to the power and authority of the agent.

Corpus Juris, vol. 2, p. 562, section 204, says:

"Duty of third person to ascertain authority; general rule.—It follows from the above rules that as a general rule every person who undertakes to deal with an alleged agent is, by the mere fact of the agency, put upon inquiry, and must discover at his peril that it is in its nature and extent sufficient to permit the agent to do the proposed act, and that its source can be traced to the will of the alleged principal, particularly where he is dealing with an agent whose authority he knows to be special, or where it is his first transaction with the agent, or the circumstances connected with the agency are such as should put him on inquiry, as where it appears from the circumstances of the particular business that the interests of the agent and principal are necessarily adverse, or that the authority is of an unusual, improbable, or extraordinary nature. Such a person is to be regarded as dealing with the power before him, and must, at his peril, observe that the act done by the agent is legally identical with the act authorized by the power.

"Source of information.—The person dealing with the agent should ascertain the extent of his authority from the principal, or from some other person who will have a motive to tell the truth in the interests of the principal, and he cannot rely upon the agent's statement or assumption of authority, or upon the mere presumption of authority.

"Failure to inquire.—If such person makes no inquiry but chooses to rely on the agent's statements he is chargeable with knowledge of the agent's authority, and his ignorance of its extent will be no excuse to him, and the fault cannot be thrown upon the principal who never authorized the act or contract, although he was careless in reposing confidence in his agent."

Section 207 says:

"Where authority is, or required to be, in writing.—Where a third person dealing with an agent has knowledge that his authority must necessarily be in writing in order to bind the principal, it is his duty to ascertain whether the agent has such authority and whether it is in proper form; and where there is written authority, whether it is required or not, and such person has, or is charged with, knowledge thereof, it is his duty to ascertain the nature and extent of the authority conferred, and whether the agent is acting within its scope, unless he is excused from inspecting the written authority by a statement from the principal himself defining the authority. When the authority is by law required to be in writing he is charged with knowledge of that fact, and of the limitations upon the agent's power contained in such writing * * *."

The same rule is laid down in Mechem on Agency, vol. 1, section 758.

As a matter of law, it must follow, upon the undisputed facts, that the plaintiff does not have a cause of action

against the Company. The lower court dismissed the case as to the defendant Francisco. The plaintiff did not appeal, and that decision is now final. In the final analysis of the facts, Francisco did nothing more than to advise and represent to the plaintiff that this Company was willing to sell the property in question for P100,000, and on condition that the Company would have the right to continue in the use and possession of the property upon such terms and conditions, and for such a length of time, as the Company would approve. That statement was true when it was made, and upon a change in the policy of the Company, Francisco at once notified the plaintiff.

The judgment of the lower court against the defendant Pacific Commercial Company will be reversed, and one entered here in favor of the Company and against the plaintiff for the costs and disbursements of this action. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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