

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ACOJE MINING COMPANY, INC., DEFENDANT AND APPELLANT.***G.R. No. 18062. February 28, 1963*

Ponente: BAUTISTA ANGELO, J.

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On May 17, 1948, the Acoje Mining Company, Inc. wrote the Director of Posts requesting the opening of a post, telegraph and money order offices at its mining camp at Sta. Cruz, Zambales, to service its employees and their families that were living in said camp. Acting on the request, the Director of Posts wrote in reply stating that if aside from free quarters the company would provide for all essential equipment and assign a responsible employee to perform the duties of a postmaster without compensation from his office until such time as funds therefor may be available he would agree to put up the offices requested. The company in turn replied signifying its willingness to comply with all the requirements outlined in the letter of the Director of Posts requesting at the same time that it for furnished with the necessary forms for the early establishment of a post office branch.

On April 1, 1949, the Director of Posts again wrote a letter to the company stating among other things that "In cases where a post office will be opened under circumstances similar to the present, it is the policy of this office to have the company assume direct responsibility for whatever pecuniary loss may be suffered by the Bureau of Posts by reason of any act of dishonesty, carelessness or negligence on the part of the employee of the company who is assigned to take charge of the post office," thereby suggesting that a resolution be adopted by the board of directors of the company expressing conformity to the above condition relative to the responsibility to be assumed by it in the event a post office branch is opened as requested. On September 2, 1949, the company informed the Director of Posts of the passage by its board of directors of a resolution of the following tenor: "That the requirement of the Bureau of Posts that the Company should accept full responsibility for all cash received by the Postmaster be complied with, and that a copy of this resolution be forwarded to the Bureau of Posts." The letter further states that the company feels that that resolution fulfills the last condition imposed by the Director of Posts and that, therefore, it would request that an inspector be sent to the camp for the purpose of acquainting the postmaster with the details of the operation of the branch office.

The post office branch was opened at the camp on October 13, 1949 with one Hilario M. Sanchez as postmaster. He is an employee of the company. On May 11, 1954, the postmaster went on a three-day leave but never returned. The company immediately informed the officials of the Manila post office and the provincial auditor of Zambales of Sanchez' disappearance; with the result that the accounts of the postmaster were checked and a shortage was found in the amount of P13,867.24.

The several demands made upon the company for the payment of the shortage in line with the liability it has assumed having failed, the government commenced the present action on September 10, 1954 before the Court of First Instance of Manila seeking to recover the amount of P13,867.24. The company in its answer denied liability for said amount contending that the resolution of the board of directors, wherein it assumed responsibility for the act of the postmaster is ultra vires, and in any event its liability under said resolution is only that of a guarantor

who answers only after the exhaustion of the properties of the principal, aside from the fact that the loss claimed by the plaintiff is not supported by the office record.

After trial, the court a quo found that of the amount claimed by plaintiff totalling P13,867.24, only the sum of P9,515.25 was supported by the evidence, and so it rendered judgment for the plaintiff only for the amount last mentioned. The court rejected the contention that the resolution adopted by the company is ultra vires and that the obligation it has assumed is merely that of a guarantor. Defendant took the present appeal.

The contention that the resolution adopted by the company dated August 31, 1949 is ultra vires in the sense that it has no authority to act on a matter which may render the company liable as a guarantor has no factual or legal basis. In the first place, it should be noted that the opening of a post office branch at the mining camp of appellant corporation was undertaken because of a request submitted by it to promote the convenience and benefit of its employees. The idea did not come from the government, and the Director of Posts was prevailed upon to agree to the request only after studying the necessity for its establishment and after imposing upon the company certain requirements intended to safeguard and protect the interest of the government. Thus, after, the company had signified its willingness to comply with the requirement of the government that it furnish free quarters and all the essential equipment that may be necessary for the operation of the office including the assignment, of an employee who will perform the duties of a postmaster, the Director of Posts agreed to the opening of the post office stating that "In cases where a post Office will be opened under circumstances similar to the present, it is the policy of this office to have the company assume direct responsibility for whatever pecuniary loss may be suffered by the Bureau of Posts by reason of any act of dishonesty, carelessness or negligence on the part of the employee of the company who is assigned to take charge of the post office," and accepting this condition the Company, thru its board of directors, adopted forthwith a resolution of the following tenor: "That the requirement of the Bureau of Posts that the company should accept full responsibility for all cash received by the Postmaster, be complied with, and that a copy of this resolution be forwarded to the Bureau of Posts." On the basis of the foregoing facts, it is evident that the company cannot now be heard to complain that it is not liable for the irregularity committed by its employee upon the technical plea that the resolution approved by its board of directors ultra vires. The least that can be said is that it cannot now go back, on its plighted word on the ground of estoppel.

The claim that the resolution adopted by the board of directors of appellant company is an ultra vires act cannot also be entertained it appearing that the same covers a subject which concerns the benefit, convenience and welfare of its employees and their families. While as a rule an ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law (19 C.J.S., Section 965, p. 419), there are however certain corporate acts that may be performed outside of the scope of the powers expressly conferred if they are necessary to promote fee interest or welfare of the corporation. Thus, it has been held that "although not expressly authorized to do so a corporation may become a surety where the particular transaction is reasonably necessary or proper to the conduct of its business,[1] and here it is undisputed that the establishment of the local post office is a reasonable and proper adjunct to the conduct of the business of appellant company. Indeed, such post office is a vital improvement in the living condition of its employees and laborers who came to settle in its mining camp which is far removed from the postal facilities or means of communication accorded to people living in a city or municipality.

Even assuming arguendo that the resolution in question constitutes an ultra vires act, the same however is not void for it was approved not in contravention of law, customs, public order or public policy. The term ultra vires should be distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated.[2] It being merely voidable,

an ultra vires act can be enforced or validated if there are equitable grounds for taking such action. Here it is fair that the resolution be upheld at least on the ground of estoppel. On this point, the authorities are overwhelming:

"The weight of authority in the state courts is to the effect that a transaction which is merely, ultra vires and not malum in se or malum prohibitum is, if performed by one party, not void as between the parties to all intents and purposes, and that an action may be brought directly, on the transaction and relief had according to its terms." (19 C.J.S., Section 976, p. 432, citing *Nettles vs. Rhett*, C.C.A.S.C, 94 F. 2d, reversing, D.C., 20 F. Supp. 48.) .

"This rule is based on the consideration that as between private corporations, one party cannot receive the benefits which are embraced in total performance of a contract made with it by another party and then set up the invalidity of the transaction as a defense." (*London & Lancashire Indemnity 'Co. of America vs. Fairbanks Steam Shovel Co.*, 147 N.E. 329, 332, 112 Ohio St. 136.).

"The defense of ultra vires rests on violation of trust or duty toward stockholders and should not be entertained where its allowance will do greater wrong to innocent parties dealing with corporation.

"The acceptance of benefits arising from the performance by the other party may give rise to all estoppel precluding repudiation of the transaction." (19 C.J.S., Section 976, p. 433.)

"The current of modern authorities favors the rule that where the ultra vires transaction has been executed by the other party and the corporation has received the benefit of it, the law interposes an estoppel, and will not permit the validity of the transaction or contract to be questioned, and this is especially true where there nothing in the circumstances to put the other party to the transaction on notice that the corporation has exceeded its powers in entering into it and has in so doing overstepped the line of corporate (privileges." (19 C.J.S., Section 977, pp. 435-437, citing *Williams vs. Peoples Building & Loan Ass'n*. 97 S.W. 2d 930, 193 Ark. 118, *Hays vs. Galion Gas Light Co.*, 29 Ohio St. 330.)

Neither can we entertain the claim of appellant that its liability is only that of a guarantor. On this point, we agree with the following comment of the court a quo "A mere reading of the resolution of the Board of Directors dated August 31, 1949, upon which the plaintiff based its claim would show that the responsibility of the defendant company is not just that of a guarantor. Notice that the phraseology and the terms employed are so clear and sweeping and that the defendant assumed 'full responsibility for all cash received by the Postmaster.' Here the responsibility of the defendant is not just that of a guarantor. It is clearly that of a principal. "

Wherefore, the decision appealed from is affirmed.

Bengzon, C, J., Padilla, Concepcion, Reyes, J.B.L., Barrera, Parades, Dizon, Regala, and Makalintal, JJ., concur.

[1] *Thompson on Corporations*, 3 ed. Vol. 3, p. 973 citing *Deming vs. Maas* 18 Cal. App. 330, 123 Pac. 204; *Depot Realty Syndicate vs. Enterprise Brewing Co.*, 87 Ore. 560, 170 Pac 294, 171 Pac. 223, L.R.A. 1918C, 1001.

[2] 19 C.J.S., Section 966, p. 422, citing *Smith vs. Baltimore and O. R. Co.*, D.C. Pa, 48 F. 2d 861, 870.

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