

PUA CASIM & CO., PLAINTIFF AND APPELLEE, VS. W. NEUMARK & CO., DEFENDANT AND APPELLANT.*G.R. No. 21644. October 02, 1924*

Ponente: OSTRAND, J.

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This action is brought to recover the sum of P15,000 with interest and costs. It is alleged in the complaint that on or about January 20, 1922, the defendant corporation represented by its president and principal stockholder, W. Neumark, borrowed from the plaintiff the sum of P15,000 which was delivered to the said defendant by means of a check drawn in favor of the defendant against the plaintiff's account in the China Banking Corporation, which check was deposited with the Bank of the Philippine Islands and the amount of it credited to the defendant on its current account.

The defendant's answer is a general denial together with a special defense to the effect that W. Neumark had never been authorized by the defendant corporation to borrow money for its account from the plaintiff to the amount of P15,000 and that said defendant has never received nor made use of the sum alleged to have been so borrowed. The court below rendered a judgment in favor of the plaintiff for the sum of P15,000 with legal interest from October 30, 1922, and with the costs. From this judgment the defendant appeals to this court.

The appellant presents two assignments of errors, viz.: (1) That the court erred in holding the defendant responsible for the payment of the money borrowed by Neumark, and (2) that the court erred in giving the plaintiff judgment for P15,000 with interest and costs.

The first assignment of error cannot be sustained. The evidence shows that Neumark was the principal stockholder, the president and the general business manager of the defendant corporation. On behalf of the corporation he solicited a loan from the plaintiff and, as alleged in the complaint, was given the plaintiff's check in favor of the corporation for the sum of P15,000, which check was endorsed by him in his capacity as president of the corporation and deposited to the corporation's account. It may be true that a large part of the amount so deposited was diverted by Neumark to his own use, but that does not alter the fact that the money was borrowed for the corporation and was placed in its' possession.

It is conceded that Neumark was not expressly authorized by the board of directors to borrow the money in question and the general rule is that a business manager or other officer of a corporation has no implied power to borrow money on its behalf. But much depends upon the circumstances of each particular case and the rule stated is subject to important exceptions. Thus, where a general business manager of a corporation is clothed with apparent authority to borrow and the amount borrowed does not exceed the ordinary requirements of the business, it has often been held that the authority is implied and that the corporation is bound. (*G. V. B. Mining Co. vs. First National Bank of Hailey*, 95 Fed., 23; *Matson vs. Alley*, 141 Ill., 284; *Topeka Primary Association University of Builders vs. Martin*, 39 Kan., 750; *Africa vs. Duluth News Tribune Co.*, 82 Minn., 283; *Rosemond vs. Northwestern Autographic Register Co.*, 62 Minn., 374; *Helena National Bank vs. Rocky Mountain Telegraph*

Co., 20 Mont., 379; Fensterer vs. Pressure lighting Co., 149 N. Y. S., 49; Clark vs. Freeport Clays etc., Co., 52 Pa. Super., 1.)

In the present case there are ample indications in the record that the corporation was in need of funds to carry on its business and it does not appear that the amount borrowed was disproportionate to the volume of the business. As president, general manager and principal stock holder Neumark appeared, in a sense, to be almost the whole corporation and was clothed with apparent authority to do everything necessary for the conduct of its business. In these circumstances he must be held to have been impliedly authorized to borrow the money here in question.

The second assignment of error is well taken; the plaintiff admits that he has received P5,000 from the corporation on account of the loan.

The judgment appealed from is therefore modified by reducing the amount of the recovery to the sum of P10,000, with interest at the legal rate from October 30, 1922, and with the costs. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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