

J. J. RAFFERTY, PLAINTIFF AND APPELLANT, VS. THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLEE.*G.R. No. 22971. December 20, 1924*

Ponente: STATEMENT After formal pleas the plaintiff alleges that on the 23d of August, 1918, in the City of Manila, at a meeting of its board of directors, the defendant corporation adopted the following resolution: "On motion duly made and seconded, it was resolved by the Board of Directors that Mr. James J. Rafferty, a member of the Board, be and is hereby authorized and requested: "1. To negotiate on behalf of the Board, during his sojourn in the United States, for the purchase of a steel ship of a tonnage of not less than 500 and not to exceed 1,200, dead weight capacity, and for such other material, equipment and supplies as may be required by the Manila Railroad Company, obligations to be incurred only upon specific approval from the Board in each case. "2. To take such measures' as he may deem necessary to insure the speedy delivery of the railway equipment and supplies now ordered, or to be purchased for the Manila Railroad Company, for shipment from the United States or other countries. "3. To represent the Manila Railroad Company in its negotiations and dealings in the United States with factory managers, railway officials, shipowners and their agents and all Government Boards, Bureaus and Departments." Pursuant to said resolution and between the 7th of September, 1918, and the 25th of December, 1919, the plaintiff rendered services to the defendant, which were and are of the reasonable value of P18,680. That despite his numerous demands, the defendant has failed and refused to pay plaintiff the said sum or any part of it. Wherefore, he prays judgment for that amount, with interest and costs, and for such other and further relief as may seem just and equitable. For answer the defendant made a general and specific denial, and as a further and separate defense alleges "that before, at the time of, and after the approval of the resolution which is referred to in paragraph two of the complaint, it was expressly stipulated, agreed upon and resolved that the plaintiff would not receive any compensation whatever for the acts which he may perform on behalf of the defendant." Upon such issues the case was tried and in a clear and well-written opinion, judgment was rendered for the defendant, from which the plaintiff appeals, contending that the court erred in finding that the defendant did not promise to compensate plaintiff for his services, and in finding that the resolution under which plaintiff acted and the circumstances of his appointment did not constitute an implied promise to pay plaintiff for his services, and in rendering judgment to that effect, and in denying the plaintiff's motion for a new trial. JOHNS, J.

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STATEMENT

After formal pleas the plaintiff alleges that on the 23d of August, 1918, in the City of Manila, at a meeting of its board of directors, the defendant corporation adopted the following resolution:

"On motion duly made and seconded, it was resolved by the Board of Directors that Mr. James J. Rafferty, a member of the Board, be and is hereby authorized and requested:

"1. To negotiate on behalf of the Board, during his sojourn in the United States, for the purchase of a steel ship of a tonnage of not less than 500 and not to exceed 1,200, dead weight capacity, and for such other material, equipment and supplies as may be required by the Manila Railroad Company, obligations to be incurred only upon specific approval from the Board in each case.

"2. To take such measures' as he may deem necessary to insure the speedy delivery of the railway equipment and supplies now ordered, or to be purchased for the Manila Railroad Company, for shipment from the United

States or other countries.

"3. To represent the Manila Railroad Company in its negotiations and dealings in the United States with factory managers, railway officials, shipowners and their agents and all Government Boards, Bureaus and Departments." Pursuant to said resolution and between the 7th of September, 1918, and the 25th of December, 1919, the plaintiff rendered services to the defendant, which were and are of the reasonable value of P18,680. That despite his numerous demands, the defendant has failed and refused to pay plaintiff the said sum or any part of it. Wherefore, he prays judgment for that amount, with interest and costs, and for such other and further relief as may seem just and equitable.

For answer the defendant made a general and specific denial, and as a further and separate defense alleges "that before, at the time of, and after the approval of the resolution which is referred to in paragraph two of the complaint, it was expressly stipulated, agreed upon and resolved that the plaintiff would not receive any compensation whatever for the acts which he may perform on behalf of the defendant."

Upon such issues the case was tried and in a clear and well-written opinion, judgment was rendered for the defendant, from which the plaintiff appeals, contending that the court erred in finding that the defendant did not promise to compensate plaintiff for his services, and in finding that the resolution under which plaintiff acted and the circumstances of his appointment did not constitute an implied promise to pay plaintiff for his services, and in rendering judgment to that effect, and in denying the plaintiff's motion for a new trial.

JOHNS, J.:

It is admitted that soon after its adoption, a copy of the resolution was sent to the plaintiff, and that about August 30, 1918, he notified the Secretary of Commerce and Communications that he accepted the employment specified in the resolution. It also appears that he first went to Vladivostock to obtain the ships, materials, and supplies which the company desired, and that he reported his activities to Mr. Quezon, President of the defendant. That while there he called on the American Consul and the Secretary of the Chief Engineer of the Transiberian Railway, and from there he went to Nagasaki, Yokohama, San Francisco, and Washington, where in the latter place he had conferences and interviews with General McIntyre, the Disbursing Agent of the Bureau of Insular Affairs, the Chairman of the United States Shipping Board, its New York Manager, and other officials of the Board, both in Washington and New York. That he also made trips to San Francisco, Victoria, and Seattle and back to San Francisco, thence to Washington, New York, and Boston, all of which he claims were made in connection with the business covered by the resolution. He also claims, and the evidence tends to show, that during this time he wrote different letters to Mr. Quezon as President of the defendant advising him of what he was doing and the progress that he had made. The evidence for the plaintiff is confined and limited to the adoption of the resolution and his own personal testimony in the form of a deposition and copies of certain letters which, taken together, tend to show that the plaintiff is entitled to recover the reasonable value of his services. Mr. Quezon flatly denies the testimony of the plaintiff and in particular that he ever promised or agreed that the plaintiff should be paid for his services. The evidence for the defendant, including that of Mr. Quezon, tends to show that at the time of his employment, it was agreed and understood that the plaintiff was not to receive any compensation for his services, and that in truth and in fact plaintiff sought the employment and the adoption of the resolution, so that he would have and receive the courtesies which the officials of one railroad pay to another, and in substance that is the finding of the trial court. It also appears that during the time for which the plaintiff claims compensation for his services, he was the Director of the Bureau of Commerce and Industry in the Philippine Government at a salary of P12,000 per annum. That he was a member of the board of directors of the defendant, and that prior to his departure, he was receiving about 100 per month from the defendant. That he was the supervising agent for the Alien Property Custodian of the Manila Commercial Company with salary at the rate of

P500 per month. That prior to the date of the resolution, he was designated to go to the United States as Director of the Bureau of Commerce and Industry for publicity work in behalf of the Philippine Government, for which he was to receive the salary of a director and a per diem of P15 for expenses. The evidence tends to show, as the trial court found, that the plaintiff was not to have or receive anything for any services which he rendered the defendant under the resolution. The fact that at no time during the period of his employment the defendant never made or rendered any claim for his services and that he never did make such claim until February 3, 1920, is very significant. It devolved upon him to show by a preponderance of the evidence that he was to be paid for the services which he claims to have rendered under the resolution. It is admitted that there was no express agreement that he should be paid, and upon the question of an implied contract, there is a failure of proof.

The judgment of the lower court is affirmed, with costs. So ordered.

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

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