

HENRY HERMAN, PLAINTIFF AND APPELLEE, VS. THE RADIO CORPORATION OF THE PHILIPPINES (REORGANIZED), INC., DEFENDANT AND APPELLANT.

G.R. No. 26802. July 15, 1927

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the City of Manila by Henry Herman for the purpose of recovering from the defendant, The Eadio Corporation of the Philippines (reorganized), Inc., the sum of P2,050, with interest, alleged to be owing to the plaintiff from the defendant for salary earned by the plaintiff from August 1 to October 22, 1925, while serving the defendant as manager of communications. Upon hearing the cause the trial judge found that the services referred to had been rendered and that the salary claimed was due and unpaid. He therefore gave judgment in favor of the plaintiff to recover of the defendant the amount sued for, with interest from November 24, 1925, and with costs. From this judgment the defendant appealed.

It appears that prior to July 31, 1925, there were two Philippine corporations attempting to develop the commercial radio business and other radio activities in the Islands. One was the Far Eastern Radio, Inc., and the other, The Radio Corporation of the Philippines. About the date stated, the persons in charge of the two corporations, having found that the two entities had repeatedly come into conflict with each other, to the detriment of both, agreed to merge the two concerns; and this was effected by the contract Exhibit A. The plaintiff herein Henry Herman, had been largely interested in The Radio Corporation of the Philippines; and, in consideration of the cancellation of his contract for services with that concern, it was agreed in the contract of merger that he should be offered the post of manager of the traffic department of the reorganized concern for a period of one year beginning August 1, 1925, and for such further term as might thereafter be agreed upon, and at such compensation as the board of directors of the reorganized concern would offer. The salary for the services thus to be rendered was subsequently fixed by said directors at P750 per month, and services were apparently rendered by the plaintiff to the reorganized company until October 22, 1925.

The defense, while not expressly controverting the fact that the plaintiff may have rendered service for the time and at the rate claimed, is based on the facts now to be stated. It appears that trouble had arisen between the plaintiff and the officials of the reorganized corporation during the period with respect to which salary is now claimed. As a result of this disagreement the officials in charge of the defendant company decided to buy out the interest of the plaintiff in the original Radio Corporation and at the same time to settle all existing controversies with him.

As a preliminary to the negotiations that ensued, the plaintiff employed one Julio Danon as his broker, since he himself was not on speaking terms with the officials of the defendant company. On the forenoon of October 19, 1925, the plaintiff sent Danon to the office of Andres Soriano, then vice-president of the defendant company, with a memorandum, drawn up by Herman, stating the terms upon which the latter was willing to sell out. This

memorandum stated, among other things, that, "Rather (than) to continue the pending lawsuit, I will accept P36,050 cash for personal shares in RCP, amounting to P72,100, provided all bills and accounts as now appear in the balance sheet as of July 31, 1925, submitted by the old RCP are paid, namely: Balance of ESCO (meaning Electric Supply Co.) note, ESCO acceptance and current accounts still unpaid whether contracted in the name of RCP or ESCO, salary due Mr. Henry Herman, rents for current month, current purchase account."

The memorandum furthermore stated that Herman would agree not to engage in commercial transmission of radio or in commercial broadcasting.

When this communication was presented to Soriano, he stated to Danon that the defendant company would not pay more than P30,000 for Herman's shares in RCP, that the item for salary would not be recognized, and that insistence upon it by Herman would defeat the deal. In connection with this conversation Soriano wrote a memorandum showing P30,000 as the maximum amount that would be paid for the shares and after the item "Salary due Mr. Henry Herman" he wrote the word "no." Then, in order to make clear what the new corporation would do in the matter of buying out Herman's interest, a memorandum was drawn up and signed by the defendant's secretary. This memorandum is in evidence as Exhibit F and is in substance as follows:

"In connection with the offer you presented this morning, I am authorized by the President and some members of the Board of Directors of the Radio Corporation of the Philippines, to make the following offer:

"1. We will pay P30,000 for Mr. Henry Herman's personal shares in R. C. P. amounting to P72,100, as follows:

"(a) P15,000 cash at the time the transaction is completed, and

"(b) P15,000 in a promissory note properly guaranteed payable in three months, with interest at the rate of 9 per cent per annum.

"2. We will also agree to pay the following items:

"(a) 50 per cent of Electric Supply Company's promissory note, with the Philippine National Bank at time of maturity, the other 50 per cent to be paid after three months. It is to be understood that the extension for this payment will be negotiated by us;

"(b) Acceptances on Radio material, not yet withdrawn from the Bank, provided the goods have not been kept in store for a period longer than six months;

"(c) Rents for current month;

"(d) Current purchases, if any balance is due to the Electrical Supply Co., after deducting purchases of this Company from the Radio Corporation of the Philippines.

"3. Mr. Herman shall agree not to engage directly or indirectly in commercial transmissions and reception of radio-telegraphy nor in commercial or amateur broadcasting, such agreement to be made on public document fixing the amount of P25,000 as damages which should be paid by him in case of violations of this agreement.

"4. Consequently, the Federal Radio Corporation shall be immediately dissolved.

"This offer is firm up to 3 p. m., October 20, 1925.

"5. We will also agree to pay the bills pending to-day from the balance of July 31, of the R. C. P. old."

With this memorandum in hand Danon returned to his principal and reported Soriano as saying that he would not proceed in the matter unless Herman would take off the salary. Danon says that Herman thereupon agreed to do this. While Herman denies that he said he would withdraw the claim for salary, the fact nevertheless remains that

Herman immediately proceeded to draw up a counter offer (Exhibit 3) in which all reference to the matter of salary was omitted. This memorandum is as follows:

"Transfer of stock to be made under the following conditions:

"1. Henry Herman will deliver stock in the sum of P73,100 endorsed by respective owners.

"2. Will deliver a petition to the Court signed by all plaintiffs for dismissal of case now pending.

"3. Will deliver a resolution of the stockholders of Federal Radio, Inc., dissolving company.

"4. Will sign pledge not to engage in commercial transmission and commercial broadcasting for a period of five years.

"5. Will agree, if so desired, to manage the commercial station for the balance of this week.

"6. Radio Corporation of the Philippines will deliver check in the sum of P16,000 in favor of Henry Herman.

"7. Will deliver 90-day note for like amount, executed jointly and severally with Mr. Soriano, also in favor of Henry Herman.

"8. Will cause the present Electrical Supply Company note to be guaranteed by Mr. Soriano or any other party satisfactory to the bank.

"9. Will deliver check in the sum of P1,443.54 in favor of Electrical Supply Company balance of old account as of July 31st.

"10. Will deliver check in favor of Manila Trading & Supply Co., in the sum of P1,125 (said company is about to file legal action and only by special request are holding this matter over).

"11. Current account of Electrical Supply Company to be adjusted in ordinary course of business.

"12. All other accounts appearing on statement of July 31st, except acceptances, to be taken care of by the Radio Corporation of the Philippines."

Herman delivered this memorandum to Danon and told him to return to Soriano and try his best to get Soriano to raise his bid for the shares from P30,000 to P32,000. Armed with this document Danon returned to Soriano and informed him in substance that Herman agreed to drop the claim for salary, but would insist on P32,000 as the purchase price of Herman's shares. Both Danon and Soriano concur in the statement that Danon so reported to Soriano, and we have no doubt that he did so. We are also of the opinion that Danon was justified in believing, as a result of his communication with Herman, that the latter was willing to cancel that claim. At any rate negotiations proceeded without further reference by anybody to the salary matter, and after Soriano had finally refused to raise the bid for Herman's shares to P32,000, an agreement was reached between Danon and Soriano which was accepted by Herman and the contract of sale was then drawn up. No question has subsequently arisen between the parties with respect to said contract or the performance thereof by either party; but about a month after the making of the contract had been concluded, Herman put in a claim with the defendant for the salary in question. Said demand having been refused, this action resulted.

The trial judge appears to have been of the opinion that, inasmuch as the claim for salary had not been expressly waived in the final agreement, the claim therefor was not affected by such agreement. For the defendant it is contended that, by failing to insist on the claim for salary, under the circumstances above revealed, the plaintiff has in effect waived his right to rely upon the claim and is estopped from asserting it in this action.

We are of the opinion that the contention of the defendant is well founded. In subsection 1 of section 333 of the

Code of Civil Procedure it is declared that whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it. This provision is in our opinion of true and exact application to the case in hand, because, during the negotiations (which originally included this claim for salary), the plaintiff was informed that insistence upon this demand would make the sale of the stock impossible and, through his agent Danon, he led Soriano, as representative of the defendant, to believe that the claim for salary had been waived. As a legal proposition there can be no doubt that Danon, as agent of the plaintiff in this particular deal, had legal authority to bind the plaintiff by representing to Soriano that the claim for salary was waived; and the omission of the plaintiff to include the claim for salary in the Exhibit 3 accredits the proposition that the claim for salary was withdrawn for the purpose of enabling the negotiations to proceed. There can be no reasonable doubt that the final contract was consummated with full knowledge on the part of the plaintiff that the defendant's officers believed that the claim for salary had been waived. Under these circumstances good faith requires that the plaintiff should not be allowed to put forward the claim for salary again, and he must be considered estopped from asserting it.

But attention is directed to section 1815 of the Civil Code which declares that a compromise shall include only matters specifically determined therein or which by necessary inference from its wording must be deemed included. It is not certain that the section referred to could properly be considered applicable to the situation before us, as the transaction now under consideration was more than a compromise. The two parties were engaged in negotiations the purpose of which was to enable the plaintiff to sell to the defendant all the plaintiff's rights and interest in the radio concern, and the principal feature of the transaction was the transfer of the shares owned by the plaintiff in the corporation. But even if it be supposed that the language used in the article cited covers the case, nevertheless the salutary rule of good faith prescribed in subsection 1 of article 333 of the Code of Civil Procedure must prevail, not only because of its greater moral cogency but because it is a later expression of the legislative will than article 1815 of the Civil Code.

The judgment appealed from must be reversed, and the defendant will be absolved from the complaint, without express pronouncement as to costs. So ordered.

Avanceña, C. J., Villamor, and Villa-Real, JJ., concur.

Ostrand, J., voted for the reversal of this case, but owing to his departure on leave, his signature does not appear on the decision.

MALCOLM, J., dissenting:

There can exist no measure of doubt as to the true facts in this case which are as found by Judge Harvey in the Court of First Instance. Nor can there be any hesitancy in recognizing the provision of law which governs the facts. From the settled facts and law, a decision flows which indubitably indicates that the plaintiff has a good cause of action and that the judgment appealed from should be affirmed.

The final written contract in the nature of a compromise, arrived at after long negotiations between the parties, is admittedly silent as to plaintiff's claim for salary. The original offer of the plaintiff contained an item for salary but was categorically rejected by the defendant. The defendant in its counter-offer made no mention of salary due the plaintiff. If predicated on these facts the common law doctrine of waiver be applicable, then it must be admitted that waiver must be manifested in some unequivocal manner. The intention to waive must be proven and found as a fact. (40 Cyc, pp. 261 et seq.) Again if the civil law be given effect, then it is undeniable that "A compromise shall include only matters specifically determined therein or which by necessary inference from its

wording must be deemed included. A general waiver of rights shall be understood as including only those relating to the question with respect to which the compromise has been made." (Civil Code, art. 1815.) A compromise agreement, as was held by this court in the case of Ferrer vs. Ignacio ([1918], 39 Phil., 446) speaking through the present Chief Justice, must be strictly interpreted and must be understood as including only matters specifically determined therein or which, by necessary inference from its wording, must be deemed included.

Since, therefore, the compromise agreement fails to include the salary matter, since the plaintiff has never expressly waived his right to a salary, since the findings of the trial court having particularly to do with the credibility of the witnesses should not be lightly disregarded, and since the law is plain, there should be no other result than to do what is right, which is to affirm the judgment. Such is my vote.

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