

ODUS C. HORNEY, PLAINTIFF AND APPELLANT, VS. THE SOUTHERN TRANSPORT & TRADING CO., DEFENDANT AND APPELLANT. MANILA FINANCE & DISCOUNT CORPORATION, DEFENDANT AND APPELLEE.

G. R. No. 39883. March 21, 1934

Ponente: HULL, J.

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HULL, J.:

On the 21st of August, 1929, plaintiff entered into a written contract with defendant Southern Transport & Trading Co., a corporation represented by Bradley Fairchild, treasurer, for the lease for a period of two years of a vessel known as the Barracuda. The dispute now centers around article 5, which reads as follows:

"5. That after the expiration of this lease to wit: After August 31, 1931, the lessee herein shall be bound to purchase from the lessor the said vessel Barracuda for the agreed sum of fifteen thousand (15,000) pesos, Philippine Currency; provided, that the lessor shall have the option to elect whether this fifteen thousand (P15,000) pesos purchase price should be in cash or for like amount in stock of the lessee corporation at par, the southern TRANSPORT & TRADING CO."

During the two-year lease period the rentals were duly paid either by the Southern Transport & Trading Co. or by its apparent parent corporation, the Manila Finance & Discount Corporation.

After trial, in which the principal defense of the Southern Transport & Trading Co. was that so much of the contract as required the purchase of the vessel was unauthorized by the board of directors and therefore ultra vires, the court gave judgment against the Southern Transport & Trading Co. for the purchase price of the vessel but refused to give the monthly rentals from the expiration of the lease contract until the commencement of the suit. Both parties appealed.

The contract is an unusual one, but its origin is clearly shown to be unusual. Plaintiff's son was working for the Southern Transport & Trading Co. The company desired to go into the transportation and fishing business, which it thought would be remunerative, but it did not have sufficient funds to purchase a proper vessel. Plaintiff, although not a business man, in order to help the future of his son, was willing to advance 15,000 for the purpose with the condition that after a two-year trial, if the business was successful, he would take stock in the corporation in payment or, if not successful, that the company would then pay for the boat which he was to purchase.

The minutes of the company show that this contract was discussed by the board of directors and a lease contract was authorized. It also appears that the contract in question was drawn up by the attorneys for the company. It was to be executed on behalf of the company by its manager but due to his temporary absence from the city, it was executed by the treasurer, who was also at that time taking an active part in the management of that company.

The directors testify orally that when the matter was brought to their attention before the execution of the contract, they objected to clause 5, and that the minutes of the company were inaccurate and untrue, though they would

lead anyone who read them to believe that they had approved of the contract drafted by the company's own attorneys. But whether or not the minutes were true, the defense of ultra vires cannot protect the company from its contract. Plaintiff acted in perfect good faith throughout and fully fulfilled the contract on his part. For two years the company had the full benefits of plaintiff's acts and had possession of the vessel, and it is then too late for them to question the authority of their officer in entering into the written contract in question.

While the vessel was in the possession of the defendant its name was changed from the Barracuda to the Southern Messenger.

Neither side saw fit to fully develop the relationship between the two defendant corporations. They had the same board of directors and apparently the Southern Transport & Trading Co. is a subsidiary of the Manila Finance & Discount Corporation.

Among the actions taken by the board of directors of the Manila Finance & Discount Corporation, we find the following:

"Resolved, that it is the sense of the meeting that the S. S. Southern Trader should be turned over to L. Everett, Inc., for operation, and that the Board of Directors of the Southern Transport & Trading Company be advised to this effect."

"Resolved, that it is the sense of the meeting that the Southern Transport & Trading Company dispose of the fishing business and fishing boats, and that the Board of Directors of said Southern Transport & Trading Company be advised to this effect."

"The manager reported that he has been endeavoring to arrange with the owner of the M/S Southern Messenger for a cancellation of the lease contract which the company entered into the said owner is negotiating with other parties to engage in the fishing business and if he is successful he is willing to release the company on its lease contract upon the payment of P500.

"On motion, duly made and seconded, it was

"Resolved, that the Manager be, and he hereby is, authorized to pay the owner of the M/S Southern Messenger the sum of P500 to cancel the lease contract now held by the company on said vessel."

(Minutes of May 8, 1931)

"On motion of Mr. Deymek, seconded by Mr. Simpson, the Manager was authorized to continue paying the rental on the M. S. Southern Messenger"

(Minutes of June 26, 1931)

"The Secretary presented a proposition of W. S. Boston for the purchase of the M. S. Southern Messenger and the barges Molo and Lapu-lapu, a copy of which said proposition is attached to these minutes."

(Minutes of July 21, 1931)

"The Secretary read a letter from the Merchants Clearing House making an offer to purchase Southern Messenger, Molo and Lapu-lapu for P37,000; P25,000 to be paid in cash and the balance to be paid in stock of a new corporation to be formed to take over the boats."

The following letter was written by the Finance corporation:

"MANILA FINANCE AND DISCOUNT CORPORATION

"604 Heacock Building

"MANILA, P. I.

"February 4, 1932

"Mr. JULIAN WOLFSON

Attorney in fact of

Col. Odus C. Homey

"Manila, P. I.

"DEAR SIR: It is respectfully requested that you take immediate possession of the Southern Messenger and arrange for the future care of the vessel, which is now tied up in the Pasig River in the rear of Fort Santiago.

"We have been put to considerable expense in taking care of the vessel since the termination of our lease contract and we do not wish to be further responsible for her care or safety.

"Very truly yours,

"Manila Finance and Discount Corp.

"By (Sgd.) W. D. Clifford

"Manager

"WDC: mcl."

It is therefore clear that the Manila Finance & Discount Corporation was actively directing the affairs of the Southern Transport & Trading Co. and the breach of contract which made this suit necessary was due to the action of the Manila Finance & Discount Corporation and pursuant to its decisions and directions. It has no right to complain if it is likewise held responsible for the damages third parties may have suffered due to its active interference in the matter.

Plaintiff-appellant is in error when he insists that the rental value of the boat is the measure of damages for failure to perform so much of the contract as relates to the purchase. In the absence of anything to the contrary, the

correct measure of damages for failure to pay money is legal interest.

The judgment of the Court of First Instance of Manila, modified so as to make the defendant Manila Finance & Discount Corporation jointly and severally liable with the Southern Transport & Trading Co. for the judgment and interest at the rate of 6 per cent allowed thereon from the 1st of September, 1931, until paid, is affirmed. No expression as to costs. So ordered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ, concur.

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