

VICENTE L. LEGARDA, PLAINTIFF AND APPELLANT, VS. LA PREVISORA FILIPINA, A MUTUAL BUILDING AND LOAN ASSOCIATION, DEFENDANT AND APPELLANT.*G.R. No. 44451, December 16, 1938*

Ponente: LAUREL, J.

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The defendant building and loan association, on February 27, 1935, filed its answer and also a counterclaim and a cross-complaint. In the answer, as amended on February 27, 1935, a general denial is set up. Specific denial is made as to the existence of an agreement to employ plaintiff as defendant's consulting¹ architect and president of its assessment committee for the year 1932. As special defenses, it is averred (a) that the officer of the defendant corporation who executed the contract, Exhibit C, did not have the authority to so act for the association; (b) that the contract was fraudulent; (c) that the contract was illegal and void; (d) that the plaintiff was guilty of breach of trust; and (e) that the shares of stock referred to under the fifth cause of action were deposited by the plaintiff to secure faithful performance of plaintiff's obligations towards the corporation, said shares being retained to answer for damages occasioned to the defendant. By way of counterclaim, the defendant alleges that plaintiff received under a void contract, Exhibit C, P14,100 and that it also suffered P10,000 damages and asks for the refund and payment of both amounts.

On the issues thus joined, trial was had, and on June 29, 1935, the lower court rendered its decision the dispositive part of which is as follows:

In his amended complaint filed July 24, 1934, in the Court of First Instance of Manila, the plaintiff claims from the defendant building and loan association various amounts under divers causes of action: (a) P48,300 and interests thereon from the date of the filing of the original complaint, for unwarranted cancellation of the contract, Exhibit C, which is hereinbelow inserted and for his wrongful discharge as manager of the defendant corporation; (b) P3,250 and interests, for the suppression, as of March 1, 1932, of the position of consulting architect theretofore held by him; (c) P1,760 and interests, for his discharge, as of March 1, 1932, as president of the appraisal committee for the year 1932; (d) P230.41 and interests, for inspection work undertaken by him, which amount, it is alleged, was being retained by the defendant corporation. In addition, and under the fifth cause of action, plaintiff seeks the immediate delivery of thirty shares of stock of the par value of P200 each, or the payment of their retirement value in the aggregate sum of P6,000, with the corresponding interests.

"Por las consideraciones arriba expuestas, se dicta sentencia:

"(A) Sobreseyendo el primero (1.º), segundo (2.º) y tercer (3.º) motivos de accion alegados por el demandante;

"(B) Condenando a la demandada a reembolsar al demandante la suma de doscientos treinta pesos con cuarenta y un centimos (P230.41) injustamente deducida por la demandada del importe de las acciones liquidadas y retiradas por el demandante, con sus intereses legales desde la presentacion de esta demanda hasta su completo

pago:

"(C) Condenando asimismo a la demandada a devolver al demandante las treinta (30) acciones libradas a favor de este segun el certificado No. 92, o a pagarle su valor total de seis mil (P6,000) pesos, con los intereses convenidos a razon de diez (10%) por ciento al año desde el 30 de septiembre de 1934 hasta su completo pago, en ambos casos; y

"(D) Sobreseyendo la reconvencion formulada por la demandada.

"Sin expreso pronunciamiento de costas.

Exceptions and motions for new trial were filed by both plaintiff and defendant and the case finally elevated to this court by bill of exceptions.

Plaintiff-appellant submits the following assignment of errors:

"I. The trial court erred in holding: that the contract Exhibit C was obtained fraudulently through confabulation and conspiracy and, therefore, illegal ab initio.

"II. The trial court erred in holding that the Board of Directors of the defendant corporation had no power to authorize the execution of the said contract, Exhibit C, for the reason that the stipulated period of duration of the employment was for a longer time than the tenure of office of the members of said board.

"III. The trial court erred in holding that the contract Exhibit C had not been approved by the Board of Directors of the defendant corporation, and that the minutes, No. 135 of the Board of Directors (Exhibit C-2), approved in its session held on December 23, 1932, had been manipulated by the insertion in the last portion thereof of the clause approving the said contract Exhibit C.

"IV. The trial court erred in holding that plaintiff was not employed by defendant corporation as Consulting Architect under contract for a period of one year at an annual salary of P3,900.

"V. The trial court erred in holding that plaintiff was not employed by defendant as President of the Appraisement Committee under contract for a period of one year at an annual salary of P2,080.

"VI. The trial court erred in dismissing the first, second and third causes of action in plaintiff's complaint without express finding as to costs, and in not awarding judgment in favor of plaintiff and against defendant (a) on the first cause of action for the sum of P48,300 with legal interest thereon from the date of filing the original complaint; (b) on the second cause of action for the sum of P3,250, with legal interest thereon from the date of filing the original complaint; (c) on the third cause of action for the sum of P1,760, with legal interest thereon from the date of filing the original complaint, and (d) for the costs of the action.

"VII. The trial court erred in denying plaintiff's motion for a new trial."

Defendant-appellant, on the other hand, presents the following assignment of errors:

"I. The lower court erred in not declaring that defendant is entitled to recover from plaintiff the sum of P14,100 received by said plaintiff as salary under the void contract, Exhibit C.

"II. The lower court erred in denying defendant the right to prove its counterclaim for damages in the sum of P10,000.

"III. The lower court erred in not allowing defendant to amend its counterclaim.

"IV. The lower court erred in denying defendant's motion for a new trial."

The appeal of the plaintiff is directed against the dismissal by the lower court of the first, second and third causes of action of the complaint. The first three errors assigned in the brief of the appellant have reference to the

execution and validity of the contract, Exhibit C. It is claimed that this contract was entered into by and between the parties concerned, pursuant to articles 34 and 42 of the by-laws of the corporation and the resolution (Exhibit C-1) adopted by the board of directors on December 19, 1929. Article 34 of the by-laws of the corporation, as amended, provides as follows:

"Una vez que hayan tomado posesion de sus cargos, los Directores elegiran de entre ellos los que hayan de desempeñar los cargos de la Directiva; un Presidente, un Vice Presidente, un Tesorero, un Vice Tesorero y tres (3) Vocales. Los Directores nombraran al Secretario de la Sociedad que podra ser bien un accionista no-Director o un Director-Vocal. Tambien nombraran a un Gerente, un Vice Gerente, un Abogado y Consultor Legal y podran, si lo creen conveniente, contratar sus servicios y los de los que desempeñen cargos tecnicos en la Sociedad que sean convenientes y necesarios para la buena marcha de los negocios de la misma."

Article 42 of the by-laws, as amended, also provides that the manager shall be appointed by the board of directors and he may be either un accionista no Director o un Director-Vocal. Resolution (Acta No. 134, Exhibit C-1) alleged to have been adopted and approved by a majority of the board of directors on December 19, 1929, pursuant to article 34 of the by-laws, is as follows:

"Se resuelve por esta Junta autorizar, como por la presente se autoriza al Presidente actuante o interino Don Miguel Romualdez y al Gerente de esta Corporacion Don Vicente L. Legarda, para que en nombre de la Sociedad y de la Junta Directiva de la misma retengan y contraten a todos aquellos oficiales y actuales empleados de esta Sociedad que por su integridad, honradez y pericia en el cargo que desempeñan en 'La Previsora Filipina' sus servicios son convenientes y necesarios para el buen funcionamiento de la administracion de los negocios de la misma. Se resuelve, ademas, que todos los contratos una vez hechos se dara cuenta a la Directiva para su conocimiento y efectos consiguientes."

The directors present at the approval of the above resolution were the plaintiff Legarda, his wife Clara Tambunting de Legarda, Miguel Romualdez, Pedro Mata, Ariston de Guzman and Gonzalo Go Quiolay.

It is pursuant to this resolution that the contract, Exhibit C, was executed on December 23, 1929, by and between the plaintiff Legarda and defendant corporation, the latter represented by M. Romualdez, acting president of the corporation. The contract, Exhibit C, is of the following tenor:

"Sepan todos los que el presente vieren y leyeren: Que

"En esta Ciudad de Manila, Islas Filipinas, hoy, a 23 de diciembre de 1929, 'La Previsora Fiiipina', Sociedad Mutua de Construcccion y Prestamos, una corporacion debidamente organizada y registrada de conformidad con las leyes vigentes en las Islas Filipinas y representada en este acto por su Presidente interino Don Miguel Romualdez, de acuerdo con la resolucion de la Junta Directiva de dicha Sociedad aprobada en su sesion del dia 19 de diciembre de 1929, de una parte, y Don Vicente L. Legarda, Arquitecto, mayor de edad y vecino de esta Ciudad de Manila, Islas Filipinas, de otra parte,

"HACEN CONSTAR:

"1. Que Don Vicente L. Legarda (actual gerente de 'La Previsora Filipina') sera el gerente de esta corporacion, 'La Previsora Filipina', Sociedad Mutua de Construcccion y Prestamos," por el periodo de seis (6) años a contar desde el dia 1.º de enero de 1930, y automaticamente prorrogable por otro periodo de tiempo de igual duracion siempre que noventa (90) dias antes de llegar el termino de duracion de este contrato no presentara objecion a ello ninguna de las partes aqui contratantes, y con plenos y amplios poderes y autoridad tal como se especifica en los estatutos vigentes de esta Sociedad, 'La Previsora Filipina';

"2. Que 'La Previsora Filipina', Sociedad Mutua de Construcccion y Prestamos, por y en consideracion a los servicios que le ha de prestar dicho Gerente Don Vicente L. Legarda, pagara a este al final de cada mes en curso, esto es, por meses vencidos, y en moneda filipina corriente, una suma o cantidad mensual equivalente al

diez por ciento (10%) del medio por ciento (0.50%) del Capital Colocado de dicha Sociedad computado hasta el ultimo dia del año inmediato anterior: Entendiendose, sin embargo, Que para el año 1930 dicho haber o sueldo mensual sera no menor de trescientos treinta y tres pesos con treinta y tres centimos (P333.33); y Entendiendose, ademas, Que despues del primer año de la vigencia de este contrato, o sea, despues del dia 31 de diciembre de 1930, dicho haber o sueldo mensual se ira aumentando el dia primero de cada año a una suma o cantidad no menor del diez por ciento (10%) del medio por ciento (0.50%) del capital colocado arriba referido:

"3. Que dicho Don Vicente L. Legarda, como Gerente de la sociedad, hard todo cuanto este de su parte para fomentar y promover el adelanto y mejoramiento de los intereses de la referida sociedad, 'La Previsora Filipina', desempeñando sus deberes y obligaciones de una manera leal y eficiente, tal como lo ha estado desempeñando hasta el presente;

"4. Que dicho Gerente Don Vicente L. Legarda procurara por todos los medios a su alcance y disposicion atraer capital para la Sociedad sujeto a las limitaciones que se provee en los estatutos vigentes de esta Sociedad y por las leyes que rigen sobre la materia; y

"5. Que, sin motivo justificado, este contrato no podra ser modificado ni anulado sino por mutuo convenio y consentimiento de ambas partes, Entendiendose, sin embargo, Que si la sociedad 'La Previsora Filipina' quisiere dar por terminado este contrato antes de llegar el termino de duracion del mismo, entonces 'La Previsora Filipina' pagara al Gerente Don Vicente L. Legarda la suma o cantidad (en moneda filipina) que equivalga o pudiera equivaler al tiempo no expirado del presente contrato tomando por base al ultima haber o sueldo mensual que hubiere percibido dicho Don Vicente L. Legarda, Entendiendose, ademas, Que para el caso de que dicho Don Vicente L. Legarda quisiese dar por rescindido o cancelado este contrato antes de haber llegado el termino de duracion del mismo, notificara al Presidente de 'La Previsora Filipina' por escrito y con no menos de noventa (90) dias de anticipacion a la fecha en que deseare cancelar este contrato.

"Y para que conste y surta los efectos consiguientes firmamos el presente hoy, a 23 de diciembre de 1929, en Manila, Islas Filipinas.

"LA PREVISORA FILIPINA

"Sociedad Mutua de Construccion y Prestamos

"Por: (Fdo.) M. ROMUALDEZ

"MIGUEL ROMUALDEZ

"Presidente Interino

"(Fdo.) V. L. LEGARDA

"VICENTE LEGARDA

"Gerente

"Firmado en presencia de:

"(Fdo.)

(Ilegible) (Fdo.) "JUSTO A. TORRES

(Here follows notarial acknowledgment)

On the same date, December 23, 1929, and pursuant to the same resolution, Exhibit C-1, two other contracts were executed for and in behalf of the defendant corporation: Exhibit 10 in favor of Romualdez brothers, represented by Miguel Romualdez and executed by Vicente Legarda in behalf of the corporation; and Exhibit 11 in favor of Pedro Mata as accountant of the corporation, the latter being represented by Miguel Romualdez as acting president thereof. An examination of these three contracts (Exhibits C, 10 and 11) will show that they are of the same tenor and coincide in the following respects: (a) the duration of the contracts (six years from January 1, 1930); (b) the augmentation of the remuneration provided; (c) the provision against modification or annulment of the contract within the stipulated period; and (d) the extension clause for another six years. It should be observed that in Exhibit C, Romualdez acted for the corporation in appointing Legarda as manager; in Exhibit 10, Legarda, in turn, acted for the corporation in contracting the services of Romualdez brothers, the latter represented by Miguel Romualdez, as attorneys of the corporation; and in Exhibit 11, Romualdez acted for the corporation in appointing Pedro Mata as accountant of the corporation, with Legarda as one of the witnesses to the contract. It is also noted that the resolution under which these appointments were made was approved by the board of directors constituted by Miguel Romualdez, Vicente L. Legarda, Clara Tambunting de Legarda (wife of Vicente L. Legarda), Pedro Mata, Ariston de Guzman and Gonzalo Go Quiolay. The first four of these constituted the majority of the seven members of the board of directors as then constituted. The plaintiff appears to have held not only the office of manager but also that of director of the corporation, chairman of the appraisal committee, inspector of buildings, and consulting architect. As stated, plaintiff and his wife were amongst the members of the board of directors that approved the resolution hereinabove quoted which authorized the execution of the contract Exhibit C. There was a time when the plaintiff not only held the five positions indicated but in the year 1931 he received as manager P8,000; as director P795; as chairman of the appraisal committee, P1,560; as inspector of buildings P3,527.05; and as consulting architect P3,840. Added to these amounts was the bonus amounting to P1,211.66, or a total of P18,933.71 which he received in that year. Under these circumstances, the lower court did well in looking with suspicion and in scrutinizing with care the contract involved in these proceedings, Exhibit C, for the protection of the corporation and its stockholders.

The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. But the board of directors, or a majority thereof, in drawing to themselves the powers of the corporation, occupies a position of trusteeship in

relation to the stockholders in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of corporate affairs (Sec. 28, Corporation Law; *Angeles vs. Santos* [1937], 36 Off. Gaz., 921). This is fundamental and elementary. And, the rule of strict integrity and moral responsibility required of directors and officers of a corporation is especially to be exacted from them in the case of building and loan associations because of the semi-philanthropic character of these organizations. (*Sundeheim, Building and Loan Association*, pp. 10, 11.) As observed in *Barretto vs. La Previsora Filipina* (57 Phil., 649, 654), "Building and loan associations are peculiar and special corporations. They are founded upon principles of strict mutuality and equality of benefits and obligations," and they stand "in a trust relation to the contributors in respect to the funds contributed * * *." Apart from the question raised by the defendant-appellant as to the legality of the amendment of article 34 of the by-laws of the corporation (sec. 22, Corporation Law; *Fischer, Philippine Law of Stock Corporations*, p. 191), and assuming the validity of the resolution, Exhibit C-1, under which the contract Exhibit C was entered into by and between the defendant corporation and the plaintiff Legarda, we find that the authority to contract the services of "todos aquellos oficiales y actuales empleados de esta sociedad" is given to both Romualdez and Legarda and not to either of them, separately, and that the same is subject to the condition that "todos los contratos una vez hechos se dara cuenta a la Directiva para su conocimiento y efectos consiguientes." It is contended by the plaintiff-appellant that contract, Exhibit C, was duly submitted to and approved by the board of directors in its session of December 23, 1932 (Exhibit C-2). The lower court, however, found otherwise, and ruled that Exhibit C-2 had been manipulated:

"Pero el Juzgado no puede dejar de observar brevemente, que el Exhibit C en cuestion, tal como aparece, tampoco ha sido aprobado por la junta directiva en su session de 23 de diciembre de 1932 (Exhibit C-2), como se pretende por el demandante. Es verdad que este exhibit aparece como que la directiva ha considerado y aprobado los contratos otorgados el 19 de dicho mes y año, entre ellos el Exhibit C; pero se sostiene que la alusion a esta consideracion y aprobacion ha sido manipulada o insertada despues de firmado el acta Exhibit C-2. Acerca de esto, declararon testigos y peritos por una y otra parte. Despues de un examen minucioso del testimonio de los testigos y de la prueba pericial el Juzgado ha llegado a la conclusion de que el Exhibit C-2 ha sido realmente manipulado. Basta un ligero examen de las palabras cuestionadas para que se vea que comenzando desde la letra S final mayuscula de la palabra 'prestamos,' incluyendo las palabras 'Y Aprobacion de Contrato', que constituyen como epigrafe, y comenzando de nuevo desde las palabras 'Se sometio a la directiva' y terminando hasta la palabra "consiguiente" del Exhibit C-2, tales palabras y lineas aparecen realmente insertadas despues que el cuerpo de dicho exhibitio haya sido preparado. Las palabras cuestionadas que forman parte del epigrafe no guardan, en efecto, la linea horizontal del comienzo de dicho epigrafe. Exactamente puede decirse lo mismo desde las palabras 'Se sometio a la directiva' hasta la palabra 'consiguiente', inclusive. No solo aseguran sobre este extremo los testigos de la demandada, sino que los peritos Dr. Del Rosario por parte de esta, y el Teniente Andrews por parte del demandante, en sustancia, llegan a la misma conclusion a que ha llegado el Juzgado. Tal manipulacion o falsificacion del acta Exhibit C-2, va desfavorablemente en contra de las conten- ciones del demandante. Y al propio tiempo, revela un esfuerzo inusitado de parte del mismo de convalidar a todo trance el contrato Exhibit C en cuestion hasta sus temerarias consecuencias."

We have examined the rather voluminous evidence presented by the parties and we cannot say that the above finding and conclusion of the lower court is not supported by the weight or preponderance of evidence. Having reached this result, we do not find it necessary to pass upon the legal question raised with reference to the authority of a board of directors under our Corporation Law to appoint a manager for a longer period than that fixed by law for the board. The first three errors of the plaintiff-appellant are accordingly overruled.

The claim of the plaintiff-appellant under the fourth assignment of errors is predicated on Exhibit C-5, which is entitled the "presupuesto de gastos para el año 1932" of the corporation. This budget was prepared by a committee created by the board of directors on December 31, 1931 (Acta No. 244, Exhibit 6) and approved in principle by

the committee (Exhibit 7). On January 14, 1932, the board of directors agreed to approve "como por la presente se aprueba este presupuesto de gastos presentado por el Comite de Presupuestos en su totalidad. Entendiendose, sin embargo, de que el mismo puede ser modificado si las circunstancias lo exigen. Y, entendiendose, ademas, que si para el primero de abril de este año el capital colocado de la Sociedad no llegase a P1,500,000 se tomaran los pasos necesarios para llevar a cabo la modificacion aludida." This budget, Exhibit C-5, is not a contract of employment of Legarda as a consulting architect. A budget is a guide to business operations and "is intended to accomplish two definite purposes: (a) to supply the management with a means of control over financial expenditures, by planning them in advance to correspond with the estimate of current and prospective outlays of the corporation; and (b) to center the attention of department heads, whose reports form the basis of the estimates, upon the probable financial programs and reasons therefor" (Hoagland, *Corporation Finance*, p. 186). Approval of the budget should not be construed as tender of employment which, if accepted, places the corporation under a contractual obligation to all those whose names are indicated in the budget. Upon the other hand, the resolution of approval of the budget provides expressly that the same "puede ser modificado si las circunstancias lo exigen." The fourth assignment of error is overruled.

In view of the result reached regarding the first, second, third and fourth errors, it is not necessary to consider the fifth, sixth and seventh errors of the plaintiff-appellant.

Disposing now of the appeal taken by the defendant-appellant, the errors assigned by it center around its counterclaim for the recovery of P14,100 under the first assignment of error and P10,000 under the second. We accept the following conclusion of the trial court:

"* * * La suma reclamada ademas de P14,100, ha sido percibida por el demandante en concepto de salarios y emolumentos a cuenta de servicios debidamente prestados por el mismo a la demandada. Como se ha dicho arriba, el demandante ha manejado con exito los negocios de la demandada antes de ser despedido por la misma. Las utilidades netas de la corporacion demandada han registrado un aumento constante durante la administracion del demandante. En su virtud, el sueldo percibido por el demandante antes de ser despedido, era justo y razonable, y lo ha percibido en proporcion al volumen de los negocios y trabajos prestados por el. Continúa como basico de los mejores pronunciamientos judiciales aquella maxima, de que nadie debe enriquecerse a costa ajena.

"En cuanto a los P10,000 por daños y perjuicios tambien reclamados por la demandada, los mismos no solo son especulativos, sino que no han sido probados en juicio."

The judgment appealed from is accordingly affirmed in all respects, with costs against the plaintiff-appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, and Concepcion, JJ., concur.

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