

ROCHIRAM DHARAMDAS ET AL., PLAINTIFFS AND APPELLEES, VS. GOPALDAS HAROOMALL ET AL., DEFENDANTS AND APPELLANTS, (NO. 10463) AND

G.R. Nos. 10463, 10440. October 27, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

The complaint in this case alleges:

"1. That the plaintiffs are copartners in a business conducted in the city of Manila, Philippine Islands, under the firm name and style of Dharandas & Watumull, and that the said firm is duly registered in the commercial registry of the city of Manila.

"2. That the defendants Gopaldas Haroomall, Rochiram Haroomall, Deteram Toloram and Hashimattrai Kesawdas are associated together in business and doing business under the name of Gopaldas Haroomall, in the city of Manila, Philippine Islands, but that neither said association or copartnership, nor the business conducted by it are registered in the commercial register.

"3. That the defendant Gopaldas Haroomall is not a resident of the Philippine Islands.

"4. That on about the 9th day of May, 1913, the defendants herein using the name 'Gopaldas Haroomall,' entered into a written agreement with these plaintiffs and with a number of other East Indian merchants of the city of Manila, which agreement is in Indian Arabic, a translation of which in English is hereinafter set forth, to wit:

" 'May 9, 1913.

" 'God be helpful to me.

" 'I, the undersigned, Rochiram Haroomall, of my own free will and accord and on behalf of Gopaldas HaroomaJI, promise and agree that from and after this date I will not under any circumstances give employment to nor in any way help or advise any man who may be in the service of any of the following named Indian firms of Manila to wit: Wassiamull Assiamull & Co., Dhunamall Chellaram, Pohoomull Brothers, Dharandas & Watumull.

" 'I further agree that if I break the above promise my firm will be held responsible in the sum of five hundred pesos (P500) as liquidated damages or penalty to be paid for each person so employed, given help or advised.

" 'I further agree that this promise shall extend to and include the managers of our firm for whose such doings our firm will be bound and held responsible.

(Sgd.) " 'Gopaldas Haroomall.

" 'By Rochiram Haroomall.

""Witnesses:

(Sgd.) " 'Jeamull Murjeal.

" 'Having asked Rochiram we sign this as witnesses:

(Sgd.) "'Khenchand Shswaran,

" 'Lakeriral Dagarae,

" 'Watumull Dharandas.'

"5. That on the 3d day of March, 1912, the defendant, Veromal Lilliram, entered into a written contract with the plaintiff to perform services as a 'salesman, clerk, peddler or manager' for the said plaintiffs for a period of three years from said date which contract was in words and figures as follows, to wit:

" 'AGREEMENT FOR PERSONAL SERVICES.

" 'This contract for personal services, made and entered into in the city of Manila, Philippine Islands, this 3d day of March, 1912, by and between Dharandas & Watumull, a commercial copartnership organized and doing business in the said city, as party of the first part, and Veronal Lilliram, a resident of said city, as party of the second part, witnesseth:

" 'I. That the said party of the first part hereby agrees to employ the party of the second part as a salesman, clerk, peddler or manager in the store of said first party in the city of Manila, or in any other town, or district, or in any place of business owned or controlled by said first party, within the Philippine Islands, and that the said second party agrees and binds himself to serve the said first party to the best of his ability, in any position that may be assigned to him, the said party of the second part, during the term of this contract.

" 'II. That the term of this contract shall be for the period of three years, commencing the 3d day of March, 1912, and ending on the 3d day of March, 1915, at 6 o'clock p. m.

" 'III. That as compensation for the work to be done by the said second party, as hereinabove set forth, the said first party agrees to pay said second party during his term of service, the sum of twenty pesos (P20) per month.

" 'IV. That the first party agrees that the second party may authorize his family in India to collect, out of salary due the latter, the sum of twenty rupees (R. 20) per month, the same being payable in Nydarabad, Sindh; and all such payments shall be charged against the salary of said second party. But in case of overpayment the excess must be repaid to the first party by the second party.

" 'V. That as long as he remains in the employ of the first party in the Philippine Islands and performs faithful services, the second party shall also receive free from the first party his board, lodging, necessary laundry work, and barber's attendance, as well as traveling expenses when obliged to travel in the service of the first party.

" 'VI. That the second party also agreed that during the term of this contract he will not engage in any sort of business in the Philippine Islands, directly nor indirectly either for himself or as the employee of any person or firm other than that of the party of the first part.

" 'VII. That any misconduct or dissolute or immoral habits on the part of the said party of the second part, shall be sufficient ground for his immediate discharge by party of the first part, with forfeiture of his pay.

" 'VIII. That at the end of said period of service, to wit, three years and six months from March 3d, 1912, in the event that the second party shall have performed faithful services during said period, he shall be entitled to receive from the second party transportation to his home in India at a cost not to exceed the sum of. sixty-six and 67/100 pesos (P66.67), Philippine currency. But in case said second party should not return to his home in India, at the expiration of his said term of service, but should remain in the Philippine Islands or in some other

part of the Far East, then he shall have no right to such transportation. Nor shall he have such right in case of his being discharged for cause as herein above set out.

" 'In witness whereof, the parties hereto have hereunto set their hands the day and year first hereinabove written.

" 'DHARANDAS & WATUMULI.

" 'By (Sgd.) DHARANDAS ROCHIRAM,

" 'Gen. mgr. and mem. of firm, party of the first part.

(Sgd.) In arabic characters)

" 'Party of the second part.

" 'In presence of:

(Sgd.) "'E. E. Zook.

" 'United States of America,

" 'Philippine Islands,

" 'CITY OF MANILA.

'On the 16th day of May, 1912, at the city of Manila, Philippine Islands, before me, J. Courtney Hixson, a notary public in and for said city of Manila, personally appeared Dharandas Rochiram and Veromal Lilliram with cedula, dated at Manila, P. I., April 19, 1911, and numbered F-46523, and March 26, 1912, and numbered F-35069, respectively; and they, and each of them, acknowledged to that they executed the foregoing contract and agreement freely and voluntarily.

" 'In witness whereof, I have hereunto set my hand and seal the day and year first hereinabove written.

(Sgd.) "'J. COURTNEY HIXSON,

" 'Notary Public.

" 'Commission expires Dec. 31, 1912.

" 'Reg. No. 59, page 13.'

"6. That thereafter, to wit, on or about the 6th day of December, 1913, at the instance and request and under the advice of the defendants herein and particularly at the instance and request and under the advice of the defendants Gopaldas Haroomall, Hashimattrai Kesawdas, and Rochiram Haroomall, the said Veromal Lilliram left the employ of these plaintiffs in violation of his contract as above set forth, and to the prejudice and damage of these plaintiffs in the sum of five hundred pesos;

"7. That the defendants generally and particularly the defendant Gopaldas Haroomall, Hashimattrai Kesawdas, and Rochiram Haroomall, did on the said 6th day of December, 1913, render and have since said date rendered, help, assistance and advice to the said Veromal Lilliram, and have furnished him goods, wares, and merchandise for sale in violation of the contract set forth in paragraph 4 hereof, thereby incurring a penalty of five hundred pesos in favor of the plaintiffs herein in accord with the terms of said contract;

"8. That on or about the 6th day of December, 1913, the defendants full well knowing that the said Veromal Lilliram was then under contract to perform work and labor and render services to the plaintiffs, enticed the said servant away from said employment and induced him to leave the service of the plaintiffs and become instead a

servant of the said defendants, knowingly and maliciously procuring the said servant to break his contract with these plaintiffs;

"9. That as a result of said malicious interference by the defendants with the said Veromal Lilliram, and with the contract relation subsisting between him and the plaintiffs the said plaintiffs were damaged in the sum of five hundred pesos;

"10. That on or about the 6th day of February, 1914, one Dodimo Vifto, an employee of the plaintiffs and who had been such employee since September, 1912, left such employ at the instance and request and under the advice of the defendants herein, in violation of his contract of employment with said plaintiffs, and was employed by the said defendants in violation of the contract set forth in paragraph 4 hereof, all to the prejudice and damage of these plaintiffs in the amount of five hundred pesos.

"11. That on or about the 6th day of February, 1914, the defendants full well knowing that the said Sosino Cidro was then in the employ of these plaintiffs and under contract to perform work and labor and render service to the plaintiffs, did entice the said Sosino Cidro away from said employment and did induce him to leave service of the plaintiffs and become instead a servant of the said defendants, knowingly and maliciously procuring the said servant to break his said contract with these plaintiffs;

"12. That as a result of said malicious and unwarranted interference by the defendants with the said Sosino Cidro, and with the contract relations subsisting between him and the plaintiffs, the said plaintiffs were injured in the sum of five hundred pesos;

"13. That on February 8, 1914, the defendant Rochiram Haroomall shamefully abused the plaintiff Jhamandas Watumull in the home of Wassiamull Assiamull & Co. in Manila, in the presence of a number of respectable persons, to the prejudice and injury of said plaintiff in the sum of P5,000;

"14. That during the month of April, 1913, the defendant Gopaldas Haroomall delivered to the plaintiffs for sale on consignment certain goods, wares and merchandise of an estimated value of two thousand five hundred pesos, of which said goods, wares and merchandise the plaintiffs have sold a part thereof to the total value of approximately one thousand pesos, of which latter sum the plaintiffs have delivered to the said defendant approximately three hundred and fifty pesos.

"Wherefore, plaintiffs pray judgment against the defendants, Gopaldas Haroomall, Imtaran Toloram, Hashimattrai Kesawdas, Veromal Lilliram, and Rochiram Haroomall, for the sum of seven thousand five hundred pesos, Philippine currency; that a writ of attachment issue against the property of the said Gopaldas Haroomall described in paragraph 14 of this complaint and now in the hands of these plaintiffs ; for their costs and for other and further relief as to this court may seem just and equitable."

The defendants answered as follows:

"I. That the allegations of paragraph I of the complaint are admitted.

"II. That the defendants, Gopaldas Haroomall and Rochiram Haroomall, are copartners, residents of the city of Manila, and doing business under the firm name of Gopaldas Haroomall; that Doteram Toloram and Hashimattrai Kesawdas are employees of Gopaldas Haroomall; and that Veromal Lilliram is not connected with the firm in any way.

"III. That on or about May 9, 1913, the defendant Rochiram Haroomall signed the firm name to a paper written in an Indian dialect which the said Rochiram Haroomall could not read, which said paper translated by plaintiffs, purported to be an agreement that none of the firms signing said paper would employ any East Indian to whose employment objection should be made by any of the said firms. That plaintiffs informed the

said Rochiram Haroomall that plaintiffs and other East Indian firms would also sign the said paper.

"IV. That the allegations of paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 of the complaint are denied.

"V. That the allegations of paragraph 14 of the complaint are admitted.

"Wherefore, defendants ask the court that plaintiffs take nothing for their complaint and that the cost of this action be assessed against the plaintiffs/"

By an order of the court made on consent of parties in both actions this case was heard jointly with case No. 10440 and both were decided together.

Case No. 10440 is entitled Gopaldas Haroomall and Rochiram Haroomall, doing business under the firm name of Gopaldas Haroomall vs. Rochiram Dharamdas and Jhamandas Watumull, doing business under the firm name and style of Dharamdas & Watumull. The complaint in that case alleges:

"First. That plaintiffs are copartners, residents of and doing business in the City of Manila under the firm name of Gopaldas Haroomall.

"Second. That defendants are copartners, and doing business in the city of Manila under the firm name of Dharandas & Watumull.

"Third. That during the month of April, 1913, plaintiffs delivered to the defendants, on consignment, for sale, certain goods, wares and merchandise to the value of twenty-six hundred sixty-one pesos and twenty-seven centavos (P2661.27), under an agreement that the money received by defendants for the sale of such goods, wares and merchandise, or any part thereof, during the month, should be turned over to the plaintiffs at the end of each month and that the said goods, wares and merchandise, or such part thereof as should not have been sold, should be turned over to plaintiffs on demand.

"Fourth. That since the said delivery of the said goods, wares and merchandise to the defendants by the plaintiffs, defendants have sold a portion of the said goods, wares and merchandise to the value of one thousand pesos (P1,000).

"Fifth. That defendants have paid to the plaintiffs of the moneys received from the sale of the said goods, wares and merchandise as aforesaid, only the sum of three hundred thirty-two pesos and fifty centavos (P332.60).

"Sixth. That on March 3, 1914, plaintiffs made demand upon defendants for the delivery of such portions of the said goods, wares and merchandise as have not been sold by defendants and for the payment to the plaintiffs of such moneys as now remain in the hands of the defendants for sale of the said goods, wares and merchandise, but that defendants have failed and refused to deliver to the plaintiffs the said goods, wares and merchandise and to pay the plaintiffs the said moneys or any part thereof.

"Wherefore, plaintiffs ask for judgment against the defendants for the return of the unsold portion of the said goods, wares, and merchandise and for the payment of six hundred sixty-seven pesos and fifty centavos (P667.50) together with the costs of this action."

In case No. 10463 the trial court rendered judgment against defendants for the sum of P1,000 for breach of the contract set out in the complaint and also for the sum of P200 against the defendant Rochiram Haroomall personally as damages resulting from the defamation set out in the complaint.

In case No. 10440 judgment was rendered against the defendants as follows:

"Judgment is hereby rendered against the defendants to restore to the plaintiffs the merchandise not sold and to pay the plaintiffs P868.76, which represents the value of that portion of the goods sold and not paid for. In case

the restitution is not made on account of their having been sold, the defendants shall pay to the plaintiffs the sum of P2,661.27, less the sum of P332.50 already paid by the defendants. No costs."

Appeals were taken in both cases.

In case No. 10463 the defendants claim that the trial court committed the following errors:

"I. The lower court erred in admitting in evidence over the objection of counsel for the defense, the written agreement signed Gopaldas Haroomall by Rochiram Haroomall Bet out in paragraph 4 of plaintiff's complaint.

"II. The lower court erred in enforcing said written agreement shown to be contrary to public policy, as being in restraint of trade and further shown to be totally devoid of consideration or founded solely on an illegal consideration.

"III. The lower court erred in sentencing the appellants to pay the appellees the sum of P200 as damages for the 'injurias' alleged to have been committed against the latter by the former."

Counsel discusses the two first assignments together.

We do not believe that the contract is contrary to public policy, when properly interpreted. It amounts simply to an agreement that those executing the contract will not induce the employees of those with whom the contract is made to leave their service. So interpreted the contract is a legal contract and in no way against public policy. Indeed, the act contracted against was actionable under the common law when done willfully and maliciously. If the contract was held to mean what appellant claims it means, it would be a serious question whether it could be enforced.

The penalty prescribed by the contract was P500 "to be paid for each person so employed, given help, or advised." Judgment was rendered for P1,000, two employees having been induced by defendants to leave plaintiffs' service in violation of the agreement. (Lambert vs. Fox, 26 Phil. Rep., 588, 591; Yu Tek & Co. vs. Gonzalez, 29 Phil. Rep., 384; Palacios vs. Municipality of Cavite, 12 Phil. Rep., 140.)

We are of the opinion that counsel for the appellant is right in their third contention. Punitive damages are not allowed in cases of slander. No actual damages were shown; and, consequently, no judgment for damages should have been awarded. The contention of counsel for appellees that "the claim is filed under section 3 of Act No. 1773, providing for civil damages separate from a criminal action," and that, therefore, exemplary damages should be allowed here as in the United States (Day vs. Wood worth, 54 U. S., 362, 371; Scott vs. Donald, 165 U. S., 58; Washington Gaslight Co. vs. Lansden, 172 U. S., 534), cannot be sustained. The Act referred to is "An Act to provide for the public prosecution of the crimes of adulterio, estupro, rapto, violation, calumnia, and injuria, to abolish the right of pardon by the aggrieved party in such cases, to provide for a special civil action for damages therein, and for other purposes."

Section 3 provides:

"In all cases wherein a criminal prosecution for any of the offenses mentioned in section one of this Act might be brought, the aggrieved person or such person's parents, grandparents, or guardian may also bring a civil action and recover therein civil damages from the guilty person. The remedy hereby given shall be deemed to be an additional remedy, apart from any other remedies which the existing law may afford, and nothing herein contained shall be so construed as to revoke, repeal, or modify any other civil remedy which the existing law, in such cases, affords, nor shall anything contained in this Act be construed to modify or repeal any of the provisions of Act Numbered Two hundred and seventy-seven, entitled 'An Act defining the law of libel and threats to publish a libel, making libel and threats to publish a libel misdemeanors, giving a right of civil action therefor, and making obscene or indecent publications misdemeanors,' as amended."

This, as will be seen at a glance, simply confers the right to bring a civil action to obtain the relief which, formerly, could be secured only in a criminal action. No rule or measure of damages is laid down by the Act; and the statute having for its only purpose the giving of an "additional remedy" and not revoking, repealing or modifying "any other civil remedy which the existing law may afford," affects in no way the law of the land relating to the rule or measure of damages in such cases. The statute really affects method only. It does not interfere with the substantive law. The right always existed in all cases. The statute simply offers another method of making that right effective. The nature of the right and the results flowing therefrom, both criminally and civilly, are unaffected by the Act.

As to case No. 10468, therefore, the judgment is affirmed except as to that part awarding P200 damages for defamation, and as to that part it is reversed and the cause of action based on that ground is dismissed. No costs in this instance.

In case No. 10440 no error is assigned. Counsel says:

"The defendants are perfectly willing to pay plaintiffs for all merchandise sold by them, in conformity with the value set out in the itemized statement (Bill of E. pp. 5 to 14), but they object to the order of the court as above (1) because then agreement under which this merchandise was delivered does not require its return at any specific time; (2) because in the interim of its return, defendants are authorized to sell such merchandise and account therefor to plaintiffs at the stipulated price; and (3) because pending the trial and subsequent thereto, portions of such merchandise have been sold by defendants."

Counsel argues as follows:

"By decision of the court the defendants are required to return all merchandise not sold at the time of trial, under penalty of having to pay plaintiffs the entire invoice value. The effect of this would be to compel defendants to purchase the portion of such merchandise remaining in their possession, notwithstanding it was received only on consignment. * * * It will be seen from the final paragraph of the above stipulation that by agreement of the parties, and subsequent to March 26, 1914 (when answer was filed), the defendants have continued to sell portions of this merchandise, the additional amount at that time of the hearing being valued as approximately P60. From this it is clear that it was the understanding and intention of the parties that notwithstanding this litigation the defendants might and should continue selling such merchandise, subject only to the liability of accounting to plaintiffs for the price fixed in the consignment invoice."

We do not believe this argument sound. Although no time was specified when the goods in question should be returned if not sold, that does not mean that defendants could hold them indefinitely. This failure could not be construed to mean more than that the defendants should retain possession of the merchandise for a reasonable time under all the circumstances. The demand of plaintiffs for the return of their property, the refusal of the defendants, and the bringing of the action, terminated the contract under which the property was delivered and placed on defendants the obligation to return. No attempt was made to show, and no one claims, that the demand was unseasonable. The obligation to return having arisen, a judgment to enforce that obligation was proper. The judgment appealed from, so far as attacked, is in the usual form. It requires a return of the merchandise or the payment of its value.

No objection was raised in the court below and none has been offered here relative to the form of the actions, the sufficiency in form or substance of the complaints or answers, the joinder of various causes of action, or the pendency of two actions between the same parties at the same time.

The judgment appealed from in case No. 10440 is affirmed, with costs.

So ordered.

Torres and Araullo, JJ., concur.

Carson and Trent, JJ., concur in the result.

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