

45 Phil. 235

[G.R. No. 20721. October 12, 1923]

**G. E. THOMPSON, PLAINTIFF AND APPELLANT, VS. MOODY, ARONSON, INC.,
DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

As a result of negotiations between them, A. G. Moody, who was then the owner of the Camera Supply Company, wrote F. A. Thompson, the brother of the plaintiff, the following letter:

“CAMERA SUPPLY COMPANY

“MANILA

“*October 18, 1919.*

“Mr. F. A. THOMPSON

“*c/o Thompson Commercial Co.*

“*Manila, P. I.*

“MY DEAR THOMPSON:

“Re your brother as per our conversation on several recent occasions. If he were on the spot at this time I would make him a proposition along these lines: I would pay him a salary of P400 a month and during my absence would put him in charge of the business and as a bonus would pay him 10 per cent of the net profits which have not been less than P26,000 annually for three years. I would figure this bonus from the first of January 1920. I expect to go to the States

not later than July 1st next year and sooner if I can possibly arrange my affairs.

“The position I offer should be permanent, if he renders such service as I know he is capable of, altho I am not making this feature a part of the contract. But, I do not expect to remain in the Islands more than two consecutive years in the future and will need a man to take charge indefinitely.

“I will incorporate the Cebu and Manila concerns on the first of January and Aronson will be in command of both but his Cebu business has grown to such proportions that he will be able to spend little or no time here.

“If you wish to cable your brother a proposition such as I have outlined I will hold the position open for 30 days pending a cable reply and if acceptable to him will hold the proposition open until the 1st of January, 1920.

“I will thank you to take the matter up with him immediately and request an early reply.

“Very truly yours,

“A. G. MOODY”

The plaintiff accepted the proposition. Being without funds, Moody let him have P1,000, and he obtained from his brother about P2,000 with which money plaintiff and his family came from the United States to Manila, and he entered the employ of Moody. Later, it was arranged that, in addition to his salary of P400 per month, the plaintiff should draw P100 per month on account of his share of the net profits, and that the amount thus paid him should be deducted from his pro rata share of the net profits when they were ascertained and determined. Moody went to the United States and later returned and organized the defendant corporation. As a result of differences between them, the plaintiff was discharged on January 24, 1921, and on March 1, 1921, filed his complaint in this action, alleging the execution of the contract and the performance of his duties, and that on January 24, 1921, he was wrongfully discharged, and “that plaintiff has received his fixed salary at the rate of P400 a month during the term of his service in the said business, but has not received his participation

in the net profits of the same which exceed the sum of P100,000 for the period of plaintiff's employment, or any accounting therefor, notwithstanding his demand for such accounting and the payment of the balance found due him thereon." Plaintiff prays for an accounting during the period from January 1, 1920, to January 24, 1921, and that the defendant be required to pay him 10 per cent of the net profits of the business during that time.

For an amended answer, the defendant admits paragraphs 1 and 2, and denies the allegations of paragraph 3, except that the parties "mutually agreed that the plaintiff would take charge of the said business of the said Moody in the City of Manila at a fixed salary of P400 a month," and further alleges that at the time the contract was made, Moody was contemplating a trip to America, after the plaintiff had become familiar with the business, and that the purpose of the contract was to have a reliable person to take charge of his business while he was absent. It is then alleged that Moody left for America about the middle of the year 1920, leaving the plaintiff in charge of the business, subject to the control of H. Aronson of Cebu; that during the year 1920, plaintiff took from the funds of the defendant P316; that about January 10, 1921, he took from, and converted to his own use, funds of the defendant in the sum of P1,905.60, by reason of which he was discharged.

As a counterclaim, it is then alleged that the plaintiff misappropriated P2,221.60 of the defendant's money, and that he overdrew his salary in the sum of P1,200 to be repaid out of the profits; that about January 1, 1920, Moody advanced the plaintiff the sum of P1,000 to be repaid out of the profits of the business, and defendant prays that plaintiff, through his actions and conduct, be declared to have forfeited any right to participate in the profits, and that it have judgment against him for P4,421.60.

After hearing the evidence upon such issues, the trial court rendered judgment for the plaintiff for P2,862, with legal interest from March 1, 1921, the date of the filing of the complaint, with costs, from which both parties appeal, the plaintiff contending that the lower court erred as to the term for which plaintiff is entitled to his bonus of 10 per cent of the net profits, in holding that he was legally discharged, in not holding that he had a right to prorate in the net profits to January 24, 1921, in finding that the net profits for the year 1921, was P38,154 instead of P97,591, in failing to render judgment

for the plaintiff for the sum of P8,343.10 with interest, and in denying his motion for a new trial.

The defendant contends that the trial court erred in rendering judgment for the plaintiff, in denying defendant's motion for a new trial, in holding that plaintiff was entitled to share in the net profits, and that plaintiff is entitled to be reimbursed for his travelling expenses from America to Manila, and in denying the counterclaim of the defendant.

JOHNS, J.:

Contracts of this nature are very productive of law suits.

At the time plaintiff was in the United States, and the defendant was in Manila and the owner of the Camera Supply Company. The defendant wanted to make a trip to the United States, and to that end and for that purpose desired to obtain the services of a competent man with whom he could entrust his business. The contract between them was largely based upon the letter in question abovequoted. On the strength of that letter, the plaintiff left his home in the United States and came to Manila, and took charge of the business. Apparently, he was without any funds, and Moody advanced him P1,000 for his traveling expenses, and the plaintiff obtained the balance of his expenses for the trip from his brother.

The result largely depends upon what was the actual contract which was made between them. Although both parties may have contemplated that the employment was more or less permanent, yet, the time is not specified, and is not of the essence of the contract. Although under the circumstances the law might imply a reasonable time, yet, upon its face, the defendant had a legal right to, and did, terminate the contract on January 24, 1921. The contract is somewhat ambiguous; yet, we construe it to mean that the plaintiff is entitled to 10 per cent of the net profits during the period of his employment, or to his share of the net profits from January 1, 1921, to January 24, 1921. Upon that point, we agree with the plaintiff.

Except as to the item of travelling and personal expenses of Mr. Moody in his visit to the United States, the trial court based its finding of the amount of the net profits on the report of Henry Hunter Bayne & Co., chartered

accountants. As shown by their report, the net profits of the business for the year 1920, was P38,154. In making this report, the accountants included an item of P4,627 for the personal and travelling expenses of Mr. Moody on his visit to the United States. That item was not allowed by the trial court, among other things, for the reason that Mr. Moody had said that he would not make a charge against the company for that expense. Upon that point we agree with the trial court.

Among other items, which the accountants found should be deducted, was P6,855 for the "Goodwill of the New Corporation: balance written off to close account." In our opinion, that was error, and the amount of that item should not be deducted from the net profits.

The plaintiff vigorously protests against the allowance of P47,052 for the deterioration and depreciation of stock on hand on December 31, 1920.

In Words and Phrases, volume 5, page 4781, it is said:

"The term 'net profits' means the surplus left after deducting for all losses. * * *

" 'Net profits,' as used in a contract providing that a party should receive a sum equal to one-third of the net profits, means the gain which accrues on an investment after deducting expenses and losses. They define themselves, and mean

what shall remain as the clear gain of any business, after deducting the capital invested in the business, the losses incurred in its conducting, and the losses sustained in its prosecution. * * *

"The 'net profits' of an adventure do not mean what is made over the loss, expenses, and interest on the amount invested. The term includes simply the gain that accrues on an investment after deducting the loss and expenses of the business."

In other words, the words "net profits," as used in the contract, should be construed to include the decreased value of the stock on hand on January 1, 1921, as compared with the invoice value of the stock on January 1, 1920.

If there had been an increase in the value of the stock, the plaintiff would be entitled to the benefit of the increase, and it must follow that he should be charged with the decrease.

It is a matter of common knowledge that there was a heavy depreciation in the market value of all kinds of goods during that period. The thirty-one per cent depreciation found: by the accountants is fair and reasonable to the plaintiff.

As we analyze the record, the amount of the net profits in which the plaintiff is entitled to his 10 per cent is P49,636, or P4,963.60 for the year 1920. He is also entitled to his share of 10 per cent on that amount from January 1, 1921, to January 24, 1921, or the further sum of P316.40, making a total of P5,280, which the plaintiff should receive as his share of the net profits during the period of his employment. During this period he received P100 a month for twelve months, under an agreement that the amount received should be deducted from his share of the net profits. He also admits that about January 10, 1921, he took from, and out of, the funds of the company the sum of P1,905.60, claiming that amount was due him as the balance for, and on account of, travelling expenses from the United States to Manila, the total amount of which was P3,105.60, P1,000 of which he received from Mr. Moody.

It will be noted that nothing is said in the contract about the travelling expenses of the plaintiff from the United States to Manila, and upon that point, the testimony is not clear or convincing, and is indefinite and uncertain. It is very apparent that the gross amount claimed for travelling expenses includes the expenses of both the plaintiff and his family, and that the P1,000, which Moody advanced, would about cover the personal traveling expenses of the plaintiff himself. In the absence of some contract, express or implied, the defendant should not be required to pay the travelling expenses of plaintiff's family, and there is no satisfactory testimony that Mr. Moody or the defendant ever agreed to pay the travelling expenses of plaintiff's family as one of the considerations of the contract. In fact, the agreement to pay the P1,000 is largely founded upon the fact that Moody advanced the amount at the time.

All things considered, we are of the opinion that the plaintiff ought not to be charged for the P1,000, which he received from Moody. The net result is this:

that the plaintiff is entitled to P5,280 as his share of the net profits during the period of his employment. Of this amount, he has received, and should be charged with, P1,200 as an advance out of his percentage, and the further sum of P1,905.60, which he admits that he took from the funds of the defendant and applied on travelling expenses, making a total of P3,105.60, leaving a balance of P2,374.40 due and owing the plaintiff at the time he was discharged.

The judgment of the lower court will be modified, and one will be entered here in favor of the plaintiff and against the defendant for the sum of P2,374.40, with interest from the 1st of March, 1921, at the rate of 6 per cent per annum. Neither party to recover costs in this court. So ordered.

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