44 Phil. 19

[G. R. No. 19001. November 11, 1922]

HARRY E. KEELER ELECTRIC CO., INC., PLAINTIFF AND APPELLANT, VS. DOMINGO RODRIGUEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

STATEMENT

The plaintiff is a domestic corporation with its principal office in the city of Manila and engaged in the electrical business, and among other things in the sale of what is known as the "Matthews" electric plant, and the defendant is a resident of Talisay, Occidental Negros, and A. C. Montelibano was a resident of Iloilo.

Having this information, Montelibano approached plaintiff at its Manila office, claiming that he was from Iloilo and lived with Governor Yulo; that he could find purchasers for the "Matthews" plant, and was told by the plaintiff that for any plant that he could sell or any customer that he could find he would be paid a commission of 10 per cent for his services, if the sale was consummated. Among other persons, Montelibano interviewed the defendant, and, through his efforts, one of the "Matthews" plants was sold by the plaintiff to the defendant, and was shipped from Manila to Iloilo, and later installed on defendant's premises after which, without the knowledge of the plaintiff, the defendant paid the purchase price to Montelibano. As a result, plaintiff commenced this action against the defendant, alleging that about August 18, 1920, it sold and delivered to the defendant the electric plant at the agreed price of P2,513.55 no part of which has been paid, and demands judgment for the amount with interest from October 20, 1920.

For answer, the defendant admits the corporation of the plaintiff, and denies all other material allegations of the complaint, and, as an affirmative defense, alleges "that on or about the 18th of August, 1920, the plaintiff sold and delivered to the defendant a certain electric plant and that the defendant paid the plaintiff the value of said electric plant, to wit:

P2,513.55."

Upon such issues the testimony was taken, and the lower court rendered judgment for the defendant, from which the plaintiff appeals, claiming that the court erred in holding that the payment to A. C. Montelibano would discharge the debt of defendant, and in holding that the bill was given to Montelibano for collection purposes, and that the plaintiff had held out Montelibano to the defendant as an agent authorized to collect, and in rendering judgment for the defendant, and in not rendering judgment for the plaintiff.

Johns, J.:

The testimony is conclusive that the defendant paid: the amount of plaintiff's claim to Montelibano, and that no part of the money was ever paid to the plaintiff. The defendant, having alleged that the plaintiff sold and delivered the plant to him, and that he paid the plaintiff the purchase price, it devolved upon the defendant to prove the payment to the plaintiff by a preponderance of the evidence.

It appears from the testimony of H. E. Keeler that he was president of the plaintiff and that the plant in question was shipped from Manila to Iloilo and consigned to the plaintiff itself, and that at the time of the shipment the plaintiff sent Juan Cenar, one of its employees, with the shipment, for the purpose of installing the plant on defendant's premises. That plaintiff gave Cenar a statement of the account, including some extras and the expenses of the mechanic, making a total of P2,563.95. That Montelibano had no authority from the plaintiff to receive or receipt for money. That in truth and in fact his services were limited and confined to the finding of purchasers for the "Matthews" plant to whom the plaintiff would later make and consummate the sale. That Montelibano was not an electrician, could not install the plant and did not know anything about its mechanism.

Cenar, as a witness for the plaintiff, testified that he went with the shipment of the plant from Manila to IloIlo, for the purpose of installing, testing it, and to see that everything was satisfactory. That he was there" about nine days, and that he installed the plant, and that it was tested and approved by the defendant. He also says that he personally took with him the statement of account of the plaintiff against the defendant, and that after he was there a few days, the defendant asked to see the statement, and that he gave it to him, and the defendant said, "he was going to keep it." I said that was all right "if you want." "I made no effort at all to collect the amount from him because Mr. Rodriguez told me he was going to pay for the plant here in Manila." That after the plant was installed and approved, he

delivered it to the defendant and returned to Manila.

The only testimony on the part of the defendant is that of himself in the form of a deposition in which he says that Montelibano sold and delivered the plant to him, and "was the one who ordered the installation of that electrical plant," and he introduced in evidence as part of his deposition a statement and receipt which Montelibano signed to whom he paid the money. When asked why he paid the money to Montelibano, the witness says:

"Because he was the one who sold, delivered, and installed the electrical plant, and he presented to me the account, Exhibits A and A-I, and he assured me that he was duly authorized to collect the value of the electrical plant." The receipt offered in evidence is headed:

"STATEMENT Folio No. 2494

"Mr. DOMINGO RODRIGUEZ,
"*Iloilo, Iloilo, P. I.*
"In account with "
"HARRY E. KEELER ELECTRIC COMPANY, INC.
"221 Calle Echague, Quiapo, Manila, P. I.
" MANILA, P. I., *August 18,1920."*

The answer alleges and the receipt shows upon its face ;hat the plaintiff sold the plant to the defendant, and that tie bought it from the plaintiff. The receipt is signed as follows:

"*Received payment*
"HARRY E. KEELER ELECTRIC CO. INC.,
"Recib
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(Sgd.) "A. C. MONTELIBANO."

There is nothing on the face of this receipt to show that Montelibano was the agent of, or that he was acting for, the plaintiff. It is his own personal receipt and his own personal signature. Outside of the fact that Montelibano received the money and signed this receipt, there is no evidence that he had any authority, real or apparent, to receive or receipt for the money. Neither is there any evidence that the plaintiff ever delivered the statement to Montelibano, or authorized anyone to deliver it to him, and it is very apparent that the statement in question is the one which was delivered by the plaintiff to Cenar, and is the one which Cenar delivered to the defendant at the request of the defendant.

The evidence of the defendant that Montelibano was the one who sold him the plant is in direct conflict with his own pleadings and the receipted statement which he offered in evidence. This statement also shows upon its face that P81.60 of the bill is for:

> "To Passage round trip, 1st Class @
> P40.80 a trip……P81.60."

and

> "Plus Labor @ P5.00 per day—
> "Machine's transportation……. 9.85."

This claim must be for the expenses of Cenar in going to Iloilo from Manila and return, to install the plant, and is strong evidence that it was Cenar and not Montelibano who installed the plant. If Montelibano installed the plant, as defendant claims, there would not have been any necessity for Cenar to make this trip at the expense of the defendant. After Cenar's return to Manila, the plaintiff wrote a letter to the defendant requesting the payment of its account, in answer to which the defendant on September 24 sent the following telegram:

> "Electric plant accessories and installation are paid to Montelibano about three weeks Keeler Company did not present bill."

This is in direct conflict with the receipted statement, which the defendant offered in evidence, signed by Montelibano. That shows upon its face that it was an itemized statement of the account of plaintiff with the defendant. Again, it will be noted that the receipt which Montelibano signed is not dated, and it does not show when the money was paid: Speaking of Montelibano, the defendant also testified: "and he assured me that he was duly authorized to collect the value of the electrical plant." This shows upon its face that the question of Montelibano's authority to receive the money must have been discussed between them, and that, in making the payment, defendant relied upon Montelibano's own statements and representations, as to his authority, to receipt for the money.

In the final analysis, the plant was sold by the plaintiff to the defendant, and was consigned by the plaintiff to the plaintiff at Iloilo where it was installed by Cenar, acting for, and representing, the plaintiff, whose expense for the trip is included in, and made a part of, the bill which was receipted by Montelibano.

There is no evidence that the plaintiff ever delivered any statement to Montelibano, or that he was authorized to receive or receipt for the money, and defendant's own telegram shows

that the plaintiff "did not present bill" to defendant. He now claims that at the very time this telegram was sent, he had the receipt of Montelibano for the money upon the identical statement of account which it is admitted the plaintiff did render to the defendant.

Article 1162 of the Civil Code provides:

> "Payment must be made to the person in whose favor the obligation is constituted, or to another authorized to receive it in his name."

And article 1727 provides:

> "The principal shall be liable as to matters with respect to which the agent has exceeded his authority only when he ratifies the same expressly or by implication." In the case of Ormachea Tin-Congco vs. Trillana (13 Phil., 194), this court held:
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> "The repayment of a debt must be made to the person in whose favor the obligation is constituted, or to another expressly authorized to receive the payment in his name." Mechem on Agency, volume I, section 743, says:
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> "In approaching the consideration of the inquiry whether an assumed authority exists in a given case, there are certain fundamental principles which must not be overlooked. Among these are, as has been seen, (1) that the law indulges in no bare presumptions that an agency exists: it must be proved or presumed from facts; (2) that the agent cannot establish his own authority, either by his representations or by assuming to exercise it; (3) that an authority cannot be established by mere rumor or general reputation; (4) that even a general authority is not an unlimited one; and (5) that every authority must find its ultimate source in some act or omission of the principal. An assumption of authority to act as agent for another of itself challenges inquiry. Like a railroad crossing, it should be in itself a sign of danger and suggest the duty to 'stop, look, and listen.' It is therefore declared to be a fundamental rule, never to be lost sight of and not easily to be overestimated, that persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal, to ascertain not only the fact of the agency but the nature and extent of the authority, and in case either is

> controverted, the burden of proof is upon them to establish it."
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> " * * * It is, moreover, in any case entirely within the power of the person dealing with the agent to satisfy himself that the agent has the authority he assumes to exercise, or to decline to enter into relations with him." (Mechem on Agency, vol. I, sec". 746.)
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> "The person dealing with the agent must also act with ordinary prudence and reasonable diligence. Obviously, if he knows or has good reason to believe that the agent is exceeding his authority, he cannot claim protection. So if the suggestions of probable limitations be of such a clear and reasonable quality, or if the character assumed by the agent is of such a suspicious or unreasonable nature, or if the authority which he seeks to exercise is of such an unusual or improbable character, as would suffice to put an ordinarily prudent man upon his guard, the party dealing with him may not shut his eyes to the real state of the case, but should either refuse to deal with the agent at all, or should ascertain from the principal the true condition of affairs." (Mechem on Agency, vol. I, sec. 752.)
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> "And not only must the person dealing with the agent ascertain the existence of the conditions, but he must also, as in other cases, be able to trace the source of his reliance to some word or act of the principal himself if the latter is to be held responsible. As has often been pointed out, the agent alone cannot enlarge or extend his authority by his own acts or statements, nor can he alone remove limitations or waive conditions imposed by his principal. To charge the principal in such a case, the principal's consent or concurrence must be shown." (Mechem on Agency, vol. I, section 757.)

This was a single transaction between the plaintiff and the defendant.

Applying the above rules, the testimony is conclusive that the plaintiff never authorized Montelibano to receive or receipt for money in its behalf, and that the defendant had no right to assume by any act or deed of the plaintiff that Montelibano was authorized to receive the money, and that the defendant made the payment at his own risk and on the sole representations of Montelibano that he was authorized to receipt for the money.

The judgment of the lower court is reversed, and one will be entered here in favor of the

plaintiff and against the defendant for the sum of P2,513.55 with interest at the legal rate from January 10, 1921, with costs in favor of the appellant. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ., concur.*

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