

STANLEY L. DARBY, Appellant

v.

NGIRKELAU, Appellee

Civil Action No. 145

Trial Division of the High Court

Palau District

November 18, 1960

In action to recover on oral contract, the Palau District Court awarded seller damages for logs allegedly delivered by him to buyer in accordance with contract. On appeal, buyer contends he was authorized to make agreement on behalf of government and therefore is not personally liable on the contract. The Trial Division of the High Court, Chief Justice E. P. Furber, held that seller sustained burden of showing that buyer made personal contract and that seller reasonably relied on buyer's credit alone.

Affirmed.

1. Agency—Liability of Principal

Where one known to be agent for another deals with third person within scope of agent's authority, presumption is that credit is extended to principal alone.

2. Agency—Liability of Principal

Where one known to be agent for another deals with third person within scope of agent's authority, presumption is that act or contract is principal's obligation as if he were personally present and acting.

3. Agency—Personal Liability of Agent

Presumption that contract made with known agent is principal's obligation may be overcome by evidence that other party gave credit to agent exclusively, and burden of proof is on party seeking to charge such agent.

4. Agency—Personal Liability of Agent

An agent may bind himself to perform principal's obligation.

DARBY v. NGIRKELAU

5. Agency—Personal Liability of Agent

Mere fact that person is agent for another does not prevent him from becoming personally liable on contract with third person.

6. Agency—Personal Liability of Agent

Where agent and third party enter into contract, question of whether credit was given to agent alone, where principal was known to other contracting party, is one of fact to be determined from consideration of all facts and circumstances attending transaction.

7. Agency—Personal Liability of Agent

Public officer may become personally liable on contract with third person if he uses appropriate words to bind himself.

8. Agency—Personal Liability of Agent

One who executes unambiguous personal undertaking may not escape liability by claiming public agency was real principal, and officer may thus become personally liable on contract.

9. Agency—Personal Liability of Agent

Seller sustains burden of showing that buyer made personal contract with him where evidence shows buyer undertook to personally pay seller for goods in question and that seller reasonably relied on buyer's credit alone.

10. Contracts—Performance

Where party has completed his part of contract in delivering goods, it is immaterial, so far as his rights are concerned, what anyone unconnected with him did or did not do with regard to such goods.

11. Judgments—Damages

Any error in reduction of damages awarded to party by district court is not prejudicial to adverse party nor matter of which he can justly complain.

Assessor:
Interpreter:
Counsel for Appellant:

Counsel for Appellee:

JUDGE CHARLEY GIBBONS
FRANCISCO K. MOREI
ALFRED J. GERGELY, ESQ.,
District Attorney
WILLIAM O. WALLY,
Public Defender and
Counselor's Representative,
Palau District

FURBER, *Chief Justice*

This is an appeal from a judgment in favor of the appellee, who was the plaintiff in the District Court, for

two hundred twenty-four dollars and eleven cents (\$224.11), without costs, for logs allegedly cut and delivered by the plaintiff to the defendant in accordance with an oral contract between them, and then lost.

Counsel for appellee expressly waived any objection to the failure of the appellant to state any grounds for his appeal in the notice of appeal.

Counsel for the appellant's prime contention is that the defendant in the District Court was an agent for the government, as the plaintiff well knew, and that therefore the defendant was not liable. He claimed that the plaintiff's contract was with the government and not with the defendant. Counsel for the appellant called particular attention to the fact that certain logs had been paid for under the contract; that receipts presented in the District Court showed that Mr. Jack Wheat, the Director of Agriculture and Fisheries for the Trust Territory, had approved the defendant's purchasing procedure; that the plaintiff had appealed to the District Administrator for assistance in obtaining payment, and the District Administrator sent a representative to investigate the situation, and that there was no evidence that the government had ever rejected the contract. Counsel for the appellant argued that these facts showed that the defendant was authorized to make the alleged contract on behalf of the government. In support of these contentions, he cited 2 Am. Jur., Agency, §§ 239, 240, and 408.

Counsel for the appellant secondarily claimed that before the defendant could be liable to the plaintiff for any damage caused by negligence, the burden is on the plaintiff to show some duty owed by the plaintiff toward the defendant, and that the storm or flood in which the logs were allegedly lost was an act of God for which the defendant was not responsible. Counsel for the appellant

further claimed that the terms of the contract were not clear, the identity of the logs not clear, and that from the evidence it was hard to see how the court could determine what logs had been paid for and what logs, if any, had not been paid for.

Counsel for the appellee argued that there was very clearly an oral contract between the plaintiff and the defendant personally; that the defendant made a private business to some extent of operation of the cacao plantation by selling lumber to individuals; that if the defendant was a government agent, he had all the more obligation, under the trusteeship system, to make clear to a Micronesian doing business with him that he was acting purely for the government and assumed no personal responsibility, as the Micronesians were a special responsibility of the government and not in a position to know the exact extent of the authority of any particular government agent, and were entitled to equitable rather than strictly legal consideration. He argued that the plaintiff's appealing to the District Administrator was simply in the hope of getting help in settling a personal dispute between himself and an American, and that the District Administrator in sending a representative to look into the matter, was simply endeavoring to render such help. Counsel for the appellee further argued that it was clear from the record that the logs in question had been left with the defendant in accordance with the former practice of the parties, had been measured and checked by three or four representatives of the defendant, and worked on for about three days before their loss, and that therefore the plaintiff had no further responsibility for the care of them, and so far as he was concerned, it was immaterial whether the logs were then lost through negligence of the defendant or some other cause unconnected with the plaintiff.

OPINION

1. The basic issue in this case is as to what inferences are to be drawn from the course of conduct of the parties and their oral statements in connection with a clearly shown but somewhat loosely worded oral contract for the delivery of logs. It clearly appears that the defendant, while the manager of the Trust Territory Cacao Plantation on Babelthuap, arranged for the cutting and delivery of logs by the plaintiff at a particular dock and paid the plaintiff for them himself, obtaining reimbursement from the Trust Territory Government for such expenditure, but that for some unexplained reason he refused to pay for the particular logs involved in this action—presumably because he didn't believe they had been delivered to his subordinates. There was express and categorical evidence that the logs had been delivered and no evidence to contradict this beyond the fact that the logs had disappeared a few days later.

[1-6] 2. The court recognizes that where one known to be an agent for another deals or contracts with a third person within the scope of the agent's authority, the presumption is that credit is extended to the principal alone and that the act or contract is the principal's obligation as if he were personally present and acting. This presumption, however, may be overcome by evidence that the other party gave credit to the agent exclusively and the burden of proof is regularly upon the party seeking to charge such agent. The agent, however, may bind himself to perform the principal's obligation. 2 Am. Jur., Agency, § 315, notes 4, 5, and 7. The mere fact that a person is an agent for another does not prevent him from becoming personally liable on a contract with a third person. 2 Am. Jur., Agency, § 239, note 4. The question of whether credit was given to the agent alone, where his principal was known to the other contracting party, is one of fact to be determined

from a consideration of all the facts and circumstances attending the transaction. 2 Am. Jur., Agency, § 454, note 15.

[7, 8] 3. A public officer may similarly become personally liable if he uses appropriate words to bind himself, and one who executes an unambiguous personal undertaking may not escape liability by claiming that some public agency was the real principal and the officer will be held liable personally on the contract if he has used appropriate words to bind himself. 43 Am. Jur., Public Officer, § 303, notes 5 and 7; and § 305, note 18.

4. In applying the above principles to the present action, the following facts are of particular significance. The defendant himself testified concerning his dealings with the plaintiff about logs, "We bought more and I indicated to Ngirkelau that I would buy them little by little . . .". The conversations between the plaintiff and the defendant involved none of the usual formalities of a government contract. Neither a government finance officer nor any government employee other than the defendant and his subordinates took any part in the matter so far as the plaintiff was concerned. The defendant gave every appearance of acting on his own authority and at his own discretion. The plaintiff regularly received payment directly from the defendant. Three (3) of the four (4) receipts put in evidence on behalf of the defendant to show reimbursements to the defendant from the government for funds paid by the defendant to Ngirkelau, specifically state that these were in reimbursement of "personal funds spent" or "pers funds spent" and the fourth merely leaves this to inference. The statement which counsel for the appellant has called attention to, that Mr. Jack Wheat, Director of Agriculture and Fisheries, had approved the defendant's purchasing procedure, was on these receipts signed by Mr. Darby, but not on any of the receipts given

by Ngirkelau to Mr. Darby, and there is no indication that Ngirkelau ever saw the receipts for the reimbursements to Mr. Darby before the trial of this action. The District Administrator's representative, Mr. Martin, who endeavored to straighten this matter out did not act or talk as if he considered any contract binding on the government was involved. Mr. Martin testified in part as follows:—

“ . . . I asked him (Ngirkelau) whether he was responsible for the logs or not. He said he was not. So I told him at that very moment that from there on he would be responsible. But before that I didn't know the contract between him and Darby.”

Q: What was your business on that, to settle the problem of these two men, or what?

A: Yes, I want to settle the problem of Darby and Ngirkelau.

Q: Anything else?

A: And to set the price.

[9,10] 5. The court considers from all the evidence that the plaintiff sustained the burden of showing that the defendant made a personal contract with him in which defendant undertook to personally pay the plaintiff for the logs in question and that the plaintiff reasonably relied on the defendant's credit alone. The finding that the logs were lost due to the carelessness of the defendant Darby is considered surplusage. Once the plaintiff had completed his part of the contract it was immaterial, so far as his rights are concerned, what anyone unconnected with him did or didn't do with regard to the logs.

[11] 6. It is difficult to see what specific evidence the District Court relied on in making its detailed analysis and computation of the damages due from the defendant. It is apparent, however, that the District Court subjected this matter of damages to close scrutiny and endeavored to give the defendant the benefit of any reasonable doubts. The result reached was substantially lower than the amount the evidence would warrant. If there was any error

RANIPU v. TRUST TERRITORY

in this reduction of the damages shown, it certainly was not prejudicial to the defendant and is not a matter of which he can justly complain.

JUDGMENT

The judgment of the Palau District Court in its Civil Action No. 515 is affirmed without costs.