221.

IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA

Appeal 13/61 - 279.

H.N. GREEN

Appellant

v.

A.A. HOPPER & CO. LIMITED

Respondent.

J U D G M E N T.

December, 1961.

A.A. Hopper & Co. Limited, the Respondent Company, sued the Appellant, H.N. Green, in the District Court at Rabaul to recover the sum of £202.19.5. being charges for electric light and power for the period 7th November, 1958 to 5th May, 1961 paid to the Administration by the Respondent for and on behalf of the Appellant at his request.

The evidence disclosed that Green was employed by A.A. Hopper & Co. Limited as Manager from June, 1958 until 17th May, 1961. The contract was an oral one, entered into between A.A. Hopper as governing director on behalf of the Company and Green. There was no substantial conflict of evidence as to the terms of the contract. Hopper stated that Green was to be paid a fixed salary and a commission on profits and was to be given a house, rent free, and the use of a car. Green's version was that the terms included a salary, a car, expenses associated with his occupation, full use of a house and a percentage of the net profits. He stated in evidence that Hopper had said, "I will supply the house."

It is not claimed by either party that anything was said by either of them as to the responsibility for payment for electricity and other services supplied by the Administration.

On taking up his employment, Green first lived at Taliligap in a house owned by one, Don Barrett. He paid part of the rent and the Company paid the balance, the portion paid by Green being reimbursed to him by the Company. No question as to the payment for electricity arose, the house not being supplied with this service. In October, 1958 Green left this house and went to live with his family in Hopper's house in Rabaul, Hopper being absent on leave. Again, no question of electricity charges arose, Hopper stating that Green was living in his house as his guest. On Hopper's return from leave in December, 1958, Green moved into a house in Bay Road, Rabaul, where he lived rent free until 5th May, 1961, about twelve days before he left the Company's employment. This house was owned by the Company and it is in connection with the liability for payment of electricity and sanitary services during Green's occupancy that the dispute arises.

In his evidence in the Court below, Hopper described how these expenses were paid. Green's wife was employed by the Company as a Clerk-Typist and she wrote out cheques which were used to pay the Company's accounts. These cheques could be signed by Hopper, Green and other signatories. It is not disputed that accounts from the Administration in respect of electricity and sanitary services during Green's occupancy of the Bay Road house were rendered against the Company, as the owner of the house, that cheques for the payment of these accounts were written out by Mrs. Green on the Company's cheques and after the cheques had been signed by an authorised signatory, the amounts were debited to the Company's account with the Commonwealth Trading Bank. No reimbursement of the Company was

made by Green in respect of these amounts, nor was he asked to reimburse the Company until a written demand was made by letter dated 25th May, 1961, eight days after he had left the Company's employment. Hopper's explanation for this was that he was unaware of the fact that no reimbursement had been made until after Green left the Company's employment, when his attention was drawn to the fact by the auditor who had made a recent audit of the Company's books. It is not disputed that, during his employment by the Company, Green had paid for certain personal purchases with the Company's cheques. These payments were debited against his credit account in the Company's books.

In the lower Court it was agreed between Counsel for the parties that, of the sum of £202.19.5. paid by the Company in respect of services supplied to the house by the Administration all but nine shillings was incurred during Green's occupancy.

The learned Magistrate found that the sum of £202.10.5. was paid by the Company for and on behalf of Green on his implied request and adjudged that Green was indebted to the Company in that amount.

Mr. Rissen, who appeared for the Appellant, relied on three arguments. Firstly, he contended that, since the terms of the agreement were not clear or complete, the Court was entitled to look at the conduct of the parties as evidence of their intention. The fact that the accounts were paid by the Company for a period of over two years, that the Company made no demand for repayment until after the Appellant had left its service that the amounts had not been debited to the Appellant's personal account and that Hopper, as governing director, had signed some of the cheques indicated that it was the intention of the parties that the Company would accept liability for the payment of services supplied by the Administration. Secondly, it was argued in the alternative that the payments were made voluntarily

by the Company with full knowledge of all the facts. Finally, Mr. Rissen submitted that there was no evidence that the payments were made by the Company at the request of the Appellant. Such request could not be implied since, although the cheques were written out by Mrs. Green, there was no evidence that Green requested her to do so, that he authorised the payment or that he ever saw the accounts.

For the Respondent, Mr. Jones argued that the Company, in supplying a house rent-free did all that was necessary to discharge that term of the agreement. There was no term of the agreement, express or implied, that the Company should also pay for services supplied by the Administration. Counsel agreed that the Court could look at the conduct of the parties but contended that the conduct of the Appellant in paying for lighting and fuel in the house at Taliligap negatived any implied intention that the Company should be liable for payment for electric and sanitary services. Had he remained in this house he would have continued to pay for lighting and fuel. In answer to the contention that the payments were made voluntarily by the Company, Mr. Jones agreed that the Company, as owner of the house, was primarily liable but was entitled to look to the Appellant for reimbursement. The Appellant had paid purely personal accounts with the Company's cheques, later reimbursing the Company by debits entered against his personal account with the Company and payment of the Administration charges in the same manner amounted to an implied request that the Company should pay these accounts on his behalf. It was only after Green had left the Company's employment that Hopper found that no debit had been entered in Green's account in respect of these payments, and promptly called on Green to make reimbursement.

I am satisfied that the oral agreement between the parties was in very general terms and that the only specific term so far as the house was concerned was that the Company should

provide the Appellant with a house, rent free. There was no specific agreement as to whether the Appellant or the Respondent should pay for the Administration services supplied in respect of such house. The Company, as owner of the house in Bay Road, was primarily liable for the cost of the services supplied and did, in fact, pay for them by means of the cheques which were drawn up by Mrs. Green, the wife of the Appellant.

Of the twenty-six cheques which were used in paying for these services, twelve were signed by both Green and Hopper, five were signed by Hopper and another signatory, seven were signed by Green and another signatory and two were signed by signatories other than Green and Hopper.

It may be assumed, therefore, that both Green and Hopper were aware of the fact that the Company was paying these accounts, as the cheques were attached to the accounts before the cheques were signed. But I see no reason to doubt Hopper's statement that he was unaware of the fact that no debit was entered in Green's personal account to offset such payments until the matter was brought to his attention by the auditor after Green had left the Company's employment. The conduct of the parties is therefore of little assistance in interpreting the actual terms of the contract.

It is a well established principle of law that where a voluntary payment has been made without the request or authority of another, the payer cannot recover the amount paid from the person on whose behalf it is alleged that payment was made: Exall v. Partridge 8 T.R. 308; Leigh v. Dickeson 15 Q.B.D. 60 at 64, 65. However, a request or authority may be implied from the general course of dealing between the parties or from the particular nature of the transaction, and such implication has been held to arise in cases where the defendant has had notice of payment being made for him and has not dissented.

Paynter v. Williams 1 C. & M. 810; Alexander v. Vane 1 M. & W. 511; or where the plaintiff, being legally compellable to pay, has paid a debt for which the defendant is primarily liable; Moule v. Garrett L.R. 7 Ex. 101; Edmunds v. Wallingford (1885) 14 Q.B.D. 811; Hebbardt v. Saunders (1892) 2 Q.B. 452. In such cases, ratification by the defendant may b e implied and relied on as evidence of a previous request.

In the present case, Green gave the following evidence in respect of the Bay Road house:

> "The electricity charges came in all addressed to Mr. Hopper. They were passed on to my wife. She drew the cheque, noted the payments on the butt, attached the cheque to the account or accounts and had them signed and paid."

It is clear, therefore, that he had notice that the payments were being made on his behalf and did not dissent.

It is true that his evidence continued:

> "At no instance can I remember directing my wife to pay a public utility account.
>
> "I deny emphatically that these charges were paid at my request. There was no arrangement in my employment that these claims should be paid and debited to my account."

But these denials avail him nothing in view of his admitted knowledge that the accounts were being paid on his behalf, particularly in view of the course of dealing between him and the Company whereby some of his purchases were paid for by the Company's cheques and debited to his account.

I consider that the general course of dealing between the parties and the nature of the transaction were such that

it should be implied that the payments by the Company were made on behalf of, and at the request of, the Appellant.

I therefore dismiss the Appeal and affirm the decision of the Court below.

I order that the Appellant pay the Respondent's costs of the Appeal.

A/J.