

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. The plaintiff shall take nothing by reason of this action.
2. That the defendant shall be entitled to judgment against the plaintiff for costs legally incurred.

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THOMAS C. MENDIOLA, Plaintiff

v.

DAVID R. QUITUGUA, Defendant

Civil Action No. 291

Trial Division of the High Court

Mariana Islands District

July 16, 1969

*See, also, 4 T.T.R. 314*

Action to recover for dry dock fees. The Trial Division of the High Court, Robert .clifton, Temporary Judge, held that the failure of the plaintiff to have a lease from owner of land upon which dry dock was situated and failure to obtain a license to conduct such a business were not, without more, valid defenses to the action to recover for services rendered.

1. Public Lands—Leases

The failure of plaintiff to have a lease on the property on which his business was situated, which property was owned by the Trust Territory Government, would not afford a good defense to an action by him for services rendered by such business.

2. Licenses and Permits--Failure to Obtain License or Permit

Failure to get a license under a mere revenue producing licensing law should not cause a seller of goods or service to lose the amounts due him.

3. Licenses and Permits--Failure to Obtain License or Permit

The general rule is that the purpose of the legislature in enacting a licensing statute, that is, as to the enactment of a revenue measure or a police regulation, is controlling in determining whether or not failure to procure a license renders contracts illegal and unenforceable.

4. Licenses and Permits--Failure to Obtain License or Permit

Where a statute merely prescribes a license fee for the following of a designated vocation, and contains neither a penalty nor a prohibition,

such statute does not invalidate a contract made by an unlicensed person, assuming, of course, that the statute does not expressly invalidate such contracts.

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CLIFTON, *Temporary Judge*

FINDINGS OF FACT

The court finds as follows:-

1. It is not true that the plaintiff and that the defendant agreed that the plaintiff should dry-dock and put on the ground the defendant's boat, the *China Seas*, for the sum of \$300.00 plus free use of the plaintiff's dry dock for 30 days and that thereafter a charge of \$20.00 per day would be made for allowing the *China Seas* to remain on the said dry dock, but it was agreed that the total charge for dry-docking said vessel would be \$300.00 and said sum was paid by the defendant to the plaintiff.

2. That it is true that the plaintiff did not at any time have a license to operate a dry dock on Rota Island, but there is no law requiring a license to operate a dry dock on Rota Island.

3. That it is true that the plaintiff does not have a lease on the land on which his dry dock is located, but that the said dry dock has been located on property belonging to the Trust Territory Government for a long time and plaintiff has never been requested to remove it or to cease using the land on which the dry dock is located.

OPINION

In one respect this is a very unusual case. Plaintiff's claim for \$4,200 for dry-docking the defendant's boat, is based on an alleged oral agreement between the plaintiff and the captain of the defendant's boat that there would be a charge of \$300 for dry-docking and then placing the boat on the ground, plus 30 days use of the dry dock-

and that after the 30 day period the charges would be \$20 per day (actually double the rate during the 30 day period). Defendant denies that there was any agreement except an agreement to pay \$300 for the use of the dry dock without any time limitation-and that the \$300 has been paid. The unusual aspect of this case is that the captain of the defendant's boat and the person who is alleged to have bound the defendant by the alleged agreement, is the son of the plaintiff.

The court has found that there was no agreement to pay the sum of \$20 per day, that the \$300 was to cover the full period of use of the dry dock. There were a number of things brought out in the testimony which support this finding. The circumstances all indicate that the plaintiff falsely fabricated this claim because of another lawsuit between the plaintiff and defendant which ended in a judgment in favor of the plaintiff herein on March 26, 1969, 4 T.T.R. 314. In that action the defendant herein had asserted as counterclaims against the plaintiff a repair bill which the defendant falsely claimed was for repairs on plaintiff's automobile, a check which was paid to cover an obligation of the defendant to plaintiff, but which the defendant falsely claimed was for a loan to the plaintiff, and the defendant also attempted to claim as offsets to the plaintiff's claims in that action sums that were alleged to cover sales to the plaintiff of a washing machine and dryer and a stereo-phonograph but which were actually gifts made to plaintiff before the plaintiff and defendant became involved in the lawsuit. The plaintiff herein, apparently angry at the defendant because of the same false counterclaims and apprehensive about the possible result of the action, contacted his counsel and his counsel drafted a letter by the plaintiff to the defendant demanding payment of the defendant for the \$4200 allegedly due the plaintiff. In other words, the plaintiff, irked

at the defendant's false claims decided that he would make a false claim himself and also indulge in a little perjury. As this court said in Case #249,4 T.T.R. 314, in rejecting the false claims there, the facts show the reasons for the false claims but do not justify them or the perjury.

The testimony of plaintiff's son was weak and unconvincing. In addition, the circumstance that plaintiff made no request or demand for the alleged amounts due him from the dry-docking until after the trial mentioned indicate that there was no valid claim. And the alleged agreement itself shows that it is spurious-\$300 for 30 days (that is, \$10 per day) after that \$20 per day! Finally, we are not dealing with a dry dock in a bustling marina full of hundreds of boats. This small dry dock or marine railway is located on a local beach by a small dock with not a boat in sight (except the defendant's boat) on the days in March and June that this court sat on Rota.

**[1-4]** The conclusion reached above renders it unnecessary to discuss at length several defenses of the defendant which are very tenuous. The failure of the plaintiff to have a lease on the property on which the dry dock (actually a small marine railway) was situated would afford no good defense to this action. See the article, Public Lands, Sec. 72, note 6, 42 Am. Jur. 848. Defendant's claim that plaintiff could not recover because of a failure to pay a license fee and obtain a license to conduct a dry dock business is not valid. Failure to get a license under a mere revenue producing licensing law should not cause a seller of goods or service to lose the amounts due him. This sort of a situation is far different than one which might be presented if a person or corporation failed to get a license or permit to do business under a licensing or permit law aimed at protecting the public or legally limiting the class of persons or corporations eligible to get a

license or permit. See 33 Am. Jur. 384, note 6, in which it is said:-

"The general rule is that the purpose of the legislature in enacting a licensing statute, that is, as to the enactment of a revenue measure or a police regulation, is controlling in determining whether or not failure to procure a license renders contracts illegal and unenforceable."

Finally, at 33 Am. Jur. 388, it is said:-

"It seems to be without question that where a statute merely prescribes a license fee for the following of a designated vocation, and contains neither a penalty nor a prohibition, such statute does not invalidate a contract made by an unlicensed person, assuming, of course, that the statute does not expressly invalidate such contracts."

Although these two defenses are invalid, as there was no agreement to pay the \$20 per day as claimed by the plaintiff, the judgment must be entered in favor of the defendant.

#### JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. The plaintiff shall take nothing by reason of this action.
2. That the defendant shall be entitled to judgment against the plaintiff for costs legally incurred.