

CLIFFORD *v.* WALKER.

Opinion delivered December 9, 1929.

1. CORPORATIONS—SALARY OF OFFICER—IMPLIED CONTRACT.—Where the president or other officer of a corporation performs services not within the scope of his duties as an officer, for instance that of general manager, under circumstances authorizing an inference that he is to be paid therefor, he is entitled to compensation on an implied contract.
2. CORPORATIONS—SALARY OF MANAGER—IMPLIED CONTRACT.—Evidence *held* to sustain the chancellor's finding that there was no implied contract to pay for the services of the general manager of a corporation during the first 18 months of its existence.

Appeal from Pulaski Chancery Court; *Frank H. Dodge*, Chancellor; affirmed.

STATEMENT OF FACTS.

Jams A. Clifford prosecutes this appeal to reverse a decree of the chancery court disallowing his claim as president of a domestic business corporation for services as general manager thereof. The assignee in charge of the affairs of the corporation denied liability, and by way of cross-complaint asked for judgment against Clifford for an amount alleged to be due by him to the corporation.

It appears from the record that James A. Clifford organized the Little Rock Hardware & China Company, a retail business corporation, at Little Rock, Arkansas, in June, 1924, with an authorized capital stock of \$50,000, of which \$43,000 or \$44,000 was paid up. Clifford was the owner of all the stock except \$2,000 or \$2,500 issued to W. H. Burns, and one share, of the par value of \$25,

issued to one Whitten, for the purpose of helping to organize the corporation. Clifford was elected president of the corporation, and also became its general manager. He continued to fill both these positions until the 16th day of April, 1928, when, as president of said corporation, he executed a deed of assignment of all the real and personal property of said corporation to A. V. Walker, trustee, for the benefit of the creditors of said corporation.

On the 18th day of April, 1928, said corporation and A. V. Walker, assignee, filed a petition in the chancery court asking it to take charge of the affairs of said corporation and distribute its assets to the creditors thereof. James A. Clifford was allowed to intervene and claim \$3,376.87 as back salary.

According to the testimony of W. H. Burns, he had about \$2,500 worth of stock in the corporation that he was to pay out monthly, and he had paid about \$2,000 on it. James A. Clifford became general manager, and hired Burns at a salary of \$200 per month to begin with. Later Burns was paid \$250 per month. When the business was first commenced Clifford told Burns that he was not going to draw any salary until the business got in better shape. The corporation became in debt in 1928, and was insolvent at the time the deed of assignment was executed. After the corporation had been in business about a year and one-half, Clifford began to charge his salary on the books at the rate of \$400 per month.

James A. Clifford was a witness in his own behalf. He admitted that he did not charge himself with any salary for the first year and one-half. From that time on he credited himself on the books of the corporation with a monthly salary of \$400. He did not credit himself, however, with any back salary. He also admitted that, in making up statements of the financial condition of the company to the creditors thereof, he did not credit himself with salary for the first year and one-half which the corporation was in business.

It is conceded that, if Clifford was entitled to receive a salary as general manager for the first year and one-half, \$400 per month is a reasonable sum.

The chancery court dismissed the intervention of Clifford for want of equity, and he has duly prosecuted an appeal to this court. A. V. Walker, assignee, has been allowed a cross-appeal.

Carmichael & Hendricks, for appellant.

Cockrill & Armistead, for appellee.

HART, C. J., (after stating the facts). Where the president or other officer of a corporation performs services not within the scope of his duties as an officer, for instance, that of general manager, under circumstances authorizing an inference that he is to be paid therefor, he is entitled to compensation on an implied contract. *Mt. Nebo Anthracite Coal Co. v. Martin*, 86 Ark. 608, 111 S. W. 1002, 112 S. W. 882; *Red Bud Realty Co. v. South*, 96 Ark. 281, 131 S. W. 340; *Corning Custom Gin Co. v. Oliver*, 171 Ark. 175, 283 S. W. 977; and *Fitzgerald & Mallory Construction Co. v. Fitzgerald*, 137 U. S. 98, 11 S. Ct. 36; *Corinne Mill, Canal & Stock Co. v. Toponce*, 152 U. S. 405, 14 S. Ct. 632.

In the Red Bud Realty Company case the court said that, in considering whether or not there was an implied contract to pay the president of a corporation, the nature of the corporation and its business, the character and extent of the services, the value thereof, and all other attendant circumstances, must be considered. The court further stated that, in determining the matter, it would consider whether or not the services were rendered under circumstances tending to show that it was understood or that it was intended that the services were to be paid for.

It is conceded that the services were outside of Clifford's duties as president and director, and that the services of a general manager of the corporation were worth \$400 per month.

This brings us to a consideration of whether the services for the first eighteen months of the business were

rendered under such circumstances as to raise an implied promise on the part of the corporation to pay Clifford a salary as general manager. With reference to this question of fact, it may be said that Clifford organized the corporation, and owned substantially all its stock. The shares were of the par value of \$25 each. There was a paid-up capital of about \$44,000. Clifford owned all of it except \$2,500, sold to Burns, to be paid out monthly, and one share which was owned by Whitten to enable him to qualify as a director. Burns and Whitten were employed by Clifford to help in running the business. Clifford had entire charge of the business, and told Burns that he did not mean to charge the corporation with any salary for himself until he got the business on a paying basis. Clifford said he had other means out of which to live until the corporation was placed on a paying basis. The fact that Clifford, who had charge of the books, did not charge the corporation with any salary for himself for the first eighteen months, and during that time sent out financial statements to the creditors of the corporation which did not contain any salary charge for himself, tends strongly to show that the claim for back salary was an afterthought.

Under all the circumstances, we cannot say that the chancery court erred in finding that there was no implied contract to pay Clifford for his services as general manager for the first eighteen months; and in this connection it may be stated that no express contract is claimed. We also think that the chancery court properly denied the assignee of the corporation the right to recover on his cross-complaint. Clifford denied that he was indebted to the corporation, and the chancery court was justified in finding that his testimony in this respect was not overcome by that of appellee.

Therefore the decree of the chancery court will be affirmed.