

5 Phil. 391

[G.R. No. 1556. December 07, 1905]

**JOAQUIN LAFONT, PLAINTIFF AND APPELLANT, VS. MARIA YIA PASCASIO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

On the 13th day of November, 1899, the appellant, Joaquin Lafont, was the owner of an undivided half of the building known as the Philippine Theater, in Manila, and the appellee, Maria Yia Pascasio, was the owner of the other half. On the day named these parties made a contract, the seventh, eighth, and ninth clauses of which are as follows:

“7. Don Antonio de Elizalde e Isusi en nombre de Don Joaquin Lafont y Pon vende en este acto a Dona Maria Yia Pascasio en el concepto de libre de toda carga y gravamen la expresada mitad del edificio denominado ‘Teatro Filipino,’ que queda deslindado en el parrafo primero de este documento por precio de mil pesos que recibe en este acto de manos de la compradora a mi presencia y a la de los testigos instrumentales por lo que yo el notario de ello doy fe, el efectivo metalico y a su entera satisfaccion por lo que, formaliza a su favor la carta de pago mas firme y eficaz que a su derecho y seguridad convenga obligando a su mandante el saneamiento con arreglo a derecho.

“8.

Que esta venta se otorga con el pacto o condicion de que el vendedor Sr. Lafont o sus herederos y sucesores, devuelven a la compradora o los suyos en el termino de seis meses contados desde. el 31 de Octubre ultimo a cuya fecha retrotraen los efectos de esta escritura los mil

pesos, precio de la presente venta, podran retraer o recomprar la mitad o participacion vendida de dicho edificio, pero no asi, si dejare transcurrir el indicado plazo sin hacer uso del derecho de retracto que por esta clausula se reserva, pues que en este caso adquirira esta venta el caracter absoluto e" irrevocable.

"9. Es asimismo

condicion convenida la de que durante el termino fijado para la condicion resolutoria las utilidades o rendimientos producidos por la mitad o participacion vendida por este documento, seran para el vendedor Don Joaquin Lafont y Pon y sus herederos, a cuyo efecto le debera ser entregada por la compradora o los suyos."

On the 25th of April, 1900, the plaintiff caused to be delivered to the defendant, by means of a notary public, a letter, a copy of which is as follows:

"Muy Distinguida Sra. Mia : Estando proximo el dia fijado para el vencimiento del plazo, por virtud del cual tengo derecho a recomprar la participacion en el edificio denominado 'Teatro Filipino' que le vendi con el pacto de retro, por medio de mi apoderado en 31 de Octubre del ano ultimo, y deseando adquirir de nuevo mi dicha participacion utilizando al efecto aquel derecho, pongo en su conocimiento que desde esta fecha tengo a su disposicion mil pesos que satisfizo como precio y que habre" de entregar tan pronto como otorgue a mi favor la correspondiente escritura de retroventa, para lo cual se servira entregar al notario que esta carta le presente o al que tenga a bien designar el documento necesario al objeto de que por 61 se proceda a la redaccion de la escritura de referenda."

To this defendant answered as follows:

"Muy Sr. Mio: Contesto la suya fecha 25 de los corrientes que me fue" entregada por acta notarial. Estoy pronta a revender a V. su participacion en el 'Teatro Filipino' pero la recompra

en los terminos que expresa su dicha carta es un imposible al cual no puedo acceder en forma alguna.”

On the next day, the 26th of April, the plaintiff; caused to be delivered to the defendant a letter which is in part as follows:

“Muy Distinguida Senora Mia: De conformidad con lo que en mi anterior carta la manifesto, tengo el gusto de anunciarle que los mil pesos a que en la misma me referi y que tengo que entregarle como precio de la participacion que he de recomprar en el edificio denominado Teatro Filipino, se hallan depositados en poder del notario que esta carta le entregue, a fin de que, a su vez se los entregue tan pronto como firme a mi favor la correspondiente escritura de retroventa.”

The answer of the defendant to this letter is as follows:

“Muy Sr. Mio: Contesto a la suya de esta misma fecha que me ha sido entregada por acta notarial. Reproduzco en esta ani anterior fechada ayer insistiendo en todo su contenido. En orden a la segunda parte de su carta de esta fecha, debo de manifestarle que, duena actualmente en absolute, del edificio ‘Teatro Filipino,’ no me explico pueda V. pretender lo que en dicha carta pretende; pues le supongo a V. enterado de sus derechos y deberes.”

On the 30th, day of April, 1900, plaintiff deposited 1,000 pesos in the Court of First Instance as the sum required to be paid by him under the contract. He brought this action on the 7th of October, 1902, and in his complaint asked the court to declare, among other things, that his right to repurchase the property under the terms of the contract still existed, and that the defendant be required to render an account of the profits of the theater from the 1st day of March, 1899, to the time when the property should be resold to the plaintiff. The court below decided that the only relief to which the plaintiff was entitled

was to an accounting from October, 1899, to April, 1900, as provided in clause 9, and that he had lost the right to repurchase the one-half interest in the property. The plaintiff has brought the case here by bill of exceptions.

The contract of *pacto de retro* is denned, and the obligations of the parties thereto are stated, in articles 1507 to 1520 of the Civil Code. The agreement which the parties to this suit made on the 13th day of November, 1899, is a contract of *pacto de retro*, as the same is denned in said articles. It is so called in clause 8, above quoted. The rights and obligations of the parties must be determined by a reference to said articles.

It is claimed by the defendant that the plaintiff was required to deliver the money to the defendant, and she was entitled to receive it before she was under any obligation to execute a deed. In other words, that the payment must precede the execution of the deed. This is based upon the words used in the eighth clause, which the defendant claims indicate that the money must be returned before the right to reclaim the property arises. The language used, however, in this particular contract does not differ from that used in other contracts of a similar nature which have come before us, and the question raised by the claim of the defendant is whether in a contract of *pacto de retro* the acts of paying the money and executing the deed are simultaneous, or whether the former must precede the latter. Title IV of Book IV of the Civil Code relates to the contract of purchase and sale, and the provisions above cited with reference to an agreement of *pacto de retro* are found in chapter 6 of this title. The general laws governing contracts of purchase and sale were undoubtedly intended to apply to an agreement of this character. In a contract of purchase and sale the seller is not required to deliver the thing sold until the price is paid, in the absence of an agreement to the contrary (art. 1466). Neither is the purchaser bound to pay the price before the article is delivered to him (art. 1500.), and we hold in this case that the payment of the price and the execution of the deed of resale were simultaneous acts, and that the plaintiff was not required to deliver the money in advance of the execution of the deed.

The question remains whether the plaintiff did all that he was required by law to do in order to preserve the rights secured to Him by the contract. Article 1518, which defines the obligations of the seller, is as follows:

“The vendor can not exercise the right of repurchase without returning to the vendee the price of the sale, and furthermore:

“1. The expenses of the contract and any other legitimate payment made by reason of the sale.

“2. The useful and necessary expenses incurred by the thing sold.”

In regard to the payment of the money the plaintiff did all that the law required him to do. He offered to pay it to the defendant, and deposited it in the hands of the notary for her.

The defendant in her brief states that repairs exceeding 10,000 pesos in value were made upon the theater, one-half of which the plaintiff was required to pay before he was entitled to repurchase the property. But in her answer she did not allege that any such repairs had been made. Neither in her letter of the 25th of April nor in her letter of the 26th did she so state. The judgment of the court below makes no finding upon that subject. Whether any evidence was offered in the court below in regard to this matter we do not know, for the bill of exceptions does not contain any of the proof presented at the trial, except certain documents relating to the ownership of the building. There is therefore nothing before us to show that any repairs had been made, and the plaintiff was therefore under no obligation, so far as this case shows, to pay the defendant anything on that account.

In regard to the expenses of the contract of repurchase, it was not necessary that the plaintiff should make any tender of this amount to the defendant. It would be his duty under the law to pay the notary the fees due to him in this respect. It appears, moreover, that the plaintiff provided a notary and placed him at the disposition of the

defendant.

It is not necessary to decide the question as to whether the six months mentioned in the contract expired on the 30th day of April, as claimed by the plaintiff, or on the 28th day of April, as claimed by the defendant, for the plaintiff, on the 25th and 26th of April, did all that the law required him to do to preserve his rights to repurchase the property.

The judgment of the court below is reversed, and after the expiration of twenty days judgment should be entered in accordance herewith, and the case remanded, with instructions to enter judgment in favor of the plaintiff, with costs, declaring that he has a right to repurchase the property sold by him by virtue of the contract of the 13th of November, 1899, by paying 1,000 pesos and the expenses attendant upon the execution of the contract of resale, and requiring the defendant to render an account, as provided in clause 9 of the contract, from the 31st day of October, 1899, to the time when the deed of resale of the property by the defendant to the plaintiff shall be executed. No costs will be allowed in this court. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.