

[G.R. No. 2412. April 11, 1906]

**PEDRO ROMAN, PLAINTIFF AND APPELLANT, VS. ANDRES GRIMALT,
DEFENDANT AND APPELLEE.**

D E C I S I O N

TORRES, J.:

On July 2 1904, counsel for Pedro Roman filed a complaint in the Court of First Instance of this city against Andres Grimalt, praying that judgment be entered in his favor and against the defendant (1) for the purchase price of the schooner *Santa Marina*, to wit, 1,600 pesos or its equivalent in Philippine currency, payable by installments in the manner stipulated; (2) for legal interest on the installments due on the dates set forth in the complaint; (3) for costs of proceedings; and (4) for such other and further remedy as might be considered just and equitable.

On October 24 of the same year the court made an order sustaining the demurrer filed by defendant to the complaint and allowing plaintiff ten days within which to amend his complaint. To this order the plaintiff duly excepted.

Counsel for plaintiff on November 5 amended his complaint and alleged that between the 13th and the 23d day of June, 1904, both parties through one Fernando Agusti Pastor, verbally agreed upon the sale of the said schooner; that the defendant in a letter dated June 23 had agreed to purchase the said schooner and offered to pay therefor in three installments of 500 pesos each, to wit, on July 15, September 1.5, and November 15, adding in his letter that if the plaintiff accepted the plan of payment suggested by him the sale would become effective on the following day; that plaintiff on or about the 24th of the same month had notified the defendant through Agusti Pastor that he accepted the plan of payment suggested by him and that from that date the vessel was at his disposal, and offered to deliver the same at once to defendant if he so desired; that the contract having been closed and the vessel being ready for, delivery to the purchaser, it was sunk about 3

o'clock p. m., June 25, in the harbor of Manila and is a total loss, as a result of a severe storm; and that on the 30th of the same month demand was made upon the defendant for the payment of the purchase price of the vessel in the manner stipulated and defendant failed to pay. Plaintiff finally prayed that judgment be rendered in accordance with the prayer of his previous complaint.

Defendant in his answer asked that the complaint be dismissed with costs to the plaintiff, alleging that on or about June 13 both parties met in a public establishment of this city and the plaintiff personally proposed to the defendant the sale of the said vessel, the plaintiff stating that the vessel belonged to him and that it was then in a seaworthy condition; that defendant accepted the offer of sale on condition that the title papers were found to be satisfactory, also that the vessel was in a seaworthy condition; that both parties then called on Calixto Reyes, a notary public, who, after examining the documents, informed them that they were insufficient to show the ownership of the vessel and to transfer title thereto; that plaintiff then promised to perfect his title and about June 23 called on defendant to close the sale, and the defendant, believing that plaintiff had perfected his title, wrote to him on the 23d of June and set the following day for the execution of the contract, but, upon being informed that plaintiff had done nothing to perfect his title, he insisted that he would buy the vessel only when the title papers were perfected and the vessel duly inspected.

Defendant also denied the other allegations of the complaint inconsistent with his own allegations and further denied the statement contained in paragraph 4 of the complaint to the effect that the contract was completed as to the vessel; that the purchase price and method of payment had been agreed upon; that the vessel was ready for delivery to the purchaser and that an attempt had been made to deliver the same, but admitted, however, the allegations contained in the last part of the said paragraph.

The court below found that the parties had not arrived at a definite understanding. We think that this finding is supported by the evidence introduced at the trial. A sale shall be considered perfected and binding as between vendor and vendee when they have agreed as to the thing which is the object of the contract and as to the price, even though neither has been actually delivered. (Art 1450 of the Civil Code.)

Ownership is not considered transmitted until the property is actually delivered and the purchaser has taken possession of the same and paid the price agreed upon, in which case the sale is considered perfected. When the sale is made by means of a public instrument the execution thereof shall be equivalent to the delivery of the thing which is the object of the

contract. (Art. 1462 of the Civil Code.)

Pedro Roman, the owner, and Andres Grimalt, the purchaser, had been for several days negotiating for the purchase of the schooner *Santa Marina*—from the 13th to the 23d of June, 1904. They agreed upon the sale of the vessel for the sum of 1,500 pesos, payable in three installments, provided the title papers to the vessel were in proper form. It is so stated in the letter written by the purchaser to the owner on the 23d of June.

The sale of the schooner was not perfected and the purchaser did not consent to the execution of the deed of transfer for the reason that the title of the vessel was in the name of one Paulina Giron and not in the name of Pedro Roman, the alleged owner. Roman promised, however, to perfect his title to the vessel, but he failed to do so. The papers presented by him did not show that he was the owner of the vessel.

If no contract of sale was actually executed by the parties the loss of the vessel must be borne by its owner and not by a party who only intended to purchase it and who was unable to do so on account of failure on the part of the owner to show proper title to the vessel and thus enable them to draw up the contract of sale.

The vessel was sunk in the bay on the afternoon of the 25th of June, 1904, during a severe storm and before the owner had complied with the condition exacted by the proposed purchaser, to wit, the production of the proper papers showing that the plaintiff was in fact the owner of the vessel in question.

The defendant was under no obligation to pay the price of the vessel, the purchase of which had not been concluded. The conversations had between the parties and the letter written by defendant to plaintiff did not establish a contract sufficient in itself to create reciprocal rights between the parties.

It follows, therefore, that article 1452 of the Civil Code relative to the injury or benefit of the thing sold after a contract has been perfected and articles 1096 and 1182 of the same code relative to the obligation to deliver a specified thing and the extinction of such obligation when the thing is either lost or destroyed, are not applicable to the case at bar.

The first paragraph of article 1460 of the Civil Code and section 335 of the Code of Civil Procedure are not applicable. These provisions contemplate the existence of a perfected contract which can not, however, be enforced on account of the entire loss of the thing or made the basis of an action in court through failure to conform to the requisites provided by

law.

The judgment of the court below is affirmed and the complaint is dismissed with costs against the plaintiff. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the Court of First Instance for proper action. So ordered.

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

Date created: April 29, 2014