43 Phil. 873

[G. R. No. 16109. October 02, 1922]

M. D. TAYLOR, PLAINTIFF AND APPELLANT, VS. UY TIENG PIAO AND TAN LIUAN, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF TAN LIUAN & COMPANY, DEFENDANTS. UY TIENG PIAO, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

This case conies by appeal from the Court of First Instance of the city of Manila, in a case where the court awarded to the plaintiff the sum of P300, as damages for breach of contract. The plaintiff appeals on the ground that the amount of damages awarded is inadequate; while the defendant Uy Tieng Piao appeals on the ground that he is not liable at all. The judgment having been heretofore affirmed by us in a brief opinion, we now avail ourselves of the occasion of the filing of a motion to rehear by the attorneys for the plaintiff to modify the judgment in a slight measure and to state more fully the reasons underlying our decision.

It appears that on December 12, 1918, the plaintiff contracted his services to Tan Liuan & Co., as superintendent of an oil factory which the latter contemplated establishing in this city. The period of the contract extended over two years from the date mentioned; and the salary was to be at the rate of P600 per month during the first year and P700 per month during the second, with electric light and water for domestic consumption, and a residence to live in, or in lieu thereof P60 per month.

At the time this agreement was made the machinery for the contemplated factory had not been acquired, though ten expellers had been ordered from the United States; and among the stipulations inserted in the contract with the plaintiff was a provision to the following effect:

> "It is understood and agreed that should the machinery to be installed in the said

> factory fail, for any reason, to arrive in the city of Manila within a period of six months from date hereof, this contract may be cancelled by the party of the second part at its option, such cancellation, however, not to occur before the expiration of such six months."

The machinery above referred to did not arrive in the city of Manila within the six months succeeding the making of the contract; nor was other equipment necessary for the establishment of the factory at any time provided by the defendants. The reason for this does not appear with certainty, but a preponderance of the evidence is to the effect that the defendants, in the first months of 1919, seeing that the oil business no longer promised large returns, either cancelled the order for the machinery from choice or were unable to supply the capital necessary to finance the project. At any rate on June 28, 1919, availing themselves in part of the option given in the clause above quoted, the defendants communicated in writing to the plaintiff the fact that they had decided to rescind the contract, effective June 30th then current, upon which date he was discharged. The plaintiff thereupon instituted this action to recover damages in the amount of P13,000, covering salary and perquisites due and to become due under the contract.

The case for the plaintiff proceeds on the idea that the stipulation above quoted, giving to the defendants the right to cancel the contract upon the contingency of the nonarrival of the machinery in Manila within six months, must be understood as applicable only in those cases where such nonarrival is due to causes not having their origin in the will or act of the defendants, as delays caused by strikes or unfavorable conditions of transportation by land or sea; and it is urged that the right to cancel cannot be admitted unless the defendants affirmatively show that the failure of the machinery to arrive was due to causes of that character, and that it did not have its origin in their own act or volition. In this connection the plaintiff relies on article 1256 of the Civil Code, which is to the effect that the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties, and to article 1119, which says that a condition shall be deemed fulfilled if the obligor intentionally impedes its fulfillment.

It will be noted that the language conferring the right of cancellation upon the defendants is broad enough to cover any case of the nonarrival of the machinery, due to whatever cause; and the stress in the expression "for any reason" should evidently fall upon the word "any." It must follow of necessity that the defendants had the right to cancel the contract in the contingency that occurred, unless some clear and sufficient reason can be adduced for

limiting the operation of the words conferring the right of cancellation. Upon this point it is our opinion that the language used in the stipulation should be given effect in its ordinary sense, without technicality or circumvention ; and in this sense it is believed that the parties to the contract must have understood it.

Article 1256 of the Civil Code in our opinion creates no impediment to the insertion in a contract for personal service of a resolutory condition permitting the cancellation of the contract by one of the parties. Such a stipulation, as can be readily seen, does-not make either the validity or the fulfillment of the contract dependent upon the will of the party to whom is conceded the privilege of cancellation; for where the contracting parties have agreed that such option shall exist, the exercise of the option is as much in the fulfillment of the contract as any other act which may have been the subject of agreement. Indeed, the cancellation of a contract in accordance with conditions agreed upon beforehand is fulfillment.

In this connection, we note that the commentator Manresa has the following observation with respect to article 1256 of the Civil Code. Says he: “It is entirely licit to leave fulfillment to the will of either of the parties in the negative form of rescission, a case frequent in certain contracts (the letting of service for hire, the supplying of electrical energy, etc.), for in such supposed case neither is the article infringed, nor is there any lack of equality between the persons contracting, since they remain with the same faculties in respect to fulfillment.” (Manresa, 2d ed., vol. 8, p. 610.)

Undoubtedly one of the consequences of this stipulation was that the employers were left in a position where they could dominate the contingency, and the result was about the same as if they had been given an unqualified option to dispense with the services of the plaintiff at the end of six months. But this circumstance does not make the stipulation illegal.

The case of Hall vs. Hardaker (61 Fla., 267) cited by the appellant Taylor, though superficially somewhat analogous, is not precisely in point. In that case one Hardaker had contracted to render competent and efficient service as manager of a corporation, to which position it was understood he was to be appointed. In the same contract it was stipulated that if “for any reason” Hardaker should not be given that position, or if he should not be permitted to act in that capacity for a stated period, certain things would be done by Hall. Upon being installed in the position aforesaid, Hardaker failed to render efficient service and was discharged. It was held that Hall was released from the obligation to do the things that he had agreed to perform. Some of the judges appear to have thought that the case

turned on the meaning of the phrase “for any reason,” and the familiar maxim was cited that no man shall take advantage of his own wrong. The result of the case must have been the same from whatever point of view, as there was an admitted failure on the part of Hardaker to render competent service. In the present case there was no breach of contract by the defendants; and the argument to the contrary apparently suffers from the logical defect of assuming the very point at issue.

But it will be said that the question is not so much one concerning the legality of the clause referred to as one concerning the interpretation of the resolutory clause as written, the idea being that the court should adjust its interpretation of said clause to the supposed precepts of article 1256, by restricting its operation exclusively to cases where the nonarrival of the machinery may be due to extraneous causes not referable to the will or act of the defendants. But even when the question is viewed in this aspect the result is the same, because the argument for the restrictive interpretation evidently proceeds on the assumption that the clause in question is illegal in so far as it purports to concede to the defendants the broad right to cancel the contract upon nonarrival of the machinery due to any cause; and the debate returns again to the point whether in a contract for the prestation of service it is lawful for the parties to insert a provision giving to the employer the power to cancel the contract in a contingency which may be dominated by himself. Upon this point what has already been said must suffice.

As we view the case, there is nothing in article 1256 which makes it necessary for us to warp the language used by the parties from its natural meaning and thereby in legal effect to restrict the words “for any reason,” as used in the contract, to mean “for any reason *not having its origin in the will or acts of the defendants*.” To impose this interpretation upon those words would in our opinion constitute an unjustifiable invasion of the power of the parties to establish the terms which they deem advisable, a right which is expressed in article 1255 of the Civil Code and constitutes one of the most fundamental conceptions of contract right enshrined in the Code.

The view already expressed with regard to the legality and interpretation of the clause under consideration disposes in a great measure of the argument of the appellant in so far as the same is based on article 1119 of the Civil Code. This provision supposes a case where the obligor intentionally impedes the fulfillment of a condition which would entitle the obligee to exact performance from the obligor; and an assumption underlying the provision is that the obligor prevents the obligee from performing some act which the obligee is entitled to perform as a condition precedent to the exaction of what is due to him. Such an

act must be considered unwarranted and unlawful, involving *per se* a breach of the implied terms of the contract. The article can have no application to an external contingency which, like that involved in this case, is lawfully within the control of the obligor.

In Spanish jurisprudence a condition like that here under discussion is designated by Manresa a facultative condition (vol. 8, p. 611), and we gather from his comment on articles 1115 and 1119 of the Civil Code that a condition, facultative as to the debtor, is obnoxious to the first sentence contained in article 1115 and renders the whole obligation void (vol. 8, p. 131). That statement is no doubt correct in the sense intended by the learned author, but it must be remembered that he evidently has in mind the suspensive condition, such as is contemplated in article 1115. Said article can have no application to the resolutory condition, the validity of which is recognized in article 1113 of the Civil Code. In other words, a condition at once facultative and resolutory may be valid even though the condition is made to depend upon the will of the obligor.

If it were apparent, or could be demonstrated, that the defendants were under a positive obligation to cause the machinery to arrive in Manila, they would of course be liable, in the absence of affirmative proof showing that the nonarrival of the machinery was due to some cause not having its origin in their own act or will. The contract, however, expresses no such positive obligation, and its existence cannot be implied in the face of stipulation, defining the conditions under which the defendants can cancel the contract.

Our conclusion is that the Court of First Instance committed no error in rejecting the plaintiff’s claim in so far as damages are sought for the period subsequent to the expiration of the first six months, but in assessing the damages due for the six-month period, the trial judge evidently overlooked the item of P60, specified in the plaintiff’s fourth assignment of error, which represents commutation of house rent for the month of June, 1919. This amount the plaintiff is clearly entitled to recover, in addition to the P300 awarded in the court below.

We note that Uy Tieng Piao, who is sued as a partner with Tan Liuan, appealed from the judgment holding him liable as a member of the firm of Tan Liuan & Co.; and it is insisted in his behalf that he was not bound by the act of Tan Liuan as manager of Tan Liuan & Co. in employing the plaintiff. Upon this we will merely say that the conclusion stated by the trial court in the next to the last paragraph of the decision with respect to the liability of this appellant is in our opinion in conformity with the law and facts.

The judgment appealed from will be modified by declaring that the defendants shall pay to the plaintiff the sum of P360, instead of P100, as allowed by the lower court, and as thus modified the judgment will be affirmed with interest from November 4, 1919, as provided in section 510 of the Code of Civil Procedure, and with costs. So ordered.

Araullo, C. J., Johnson, Malcolm, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.*, concur.

Date created: June 06, 2014