45 Phil. 381

[G.R. No. 20659. November 03, 1923]

MARIANO S. TUASON, PLAINTIFF AND APPELLANT, VS. CRISANTO MARQUEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

MALCOLM, J.:

Out of the vicissitudes of the unfortunate Electric Light Company of Lucena, Tayabas, has arisen the present liti gation between Mariano S. Tuason, plaintiff and appellant, and Crisanto Marquez, defendant and appellee. The facts are not in dispute, and the legal phases of the case are fairly evident.

On March 5, 1921, Crisanto Marquez, the owner of the electric light plant of Lucena, Tayabas, called *Sucesores del Lucena Electric*, gave an option to Antonio Tuason for the purchase of the plant for P14,400. The option was taken advantage of by Mariano S. Tuason, the real principal, on the 9th of the same month and year, and the contract as then formulated was ratified before a notary public on the 18th of that month and year. The agreement was, that Tuason was to pay Marquez a total of P14,400; P2,400 within sixty days, and the remainder, P12,000, within a year. The first installment was paid subsequent to the sixty-day period; the second installment has not been paid.

Tuason being once in possession of the electric light plant, it was run under the management of the Consolidated Electric Company for about sixteen months, that is, from March 20, 1921, to July 19, 1922. On the date last mentioned, the property was sold under execution by reason of a judgment in the case of Levy Hermanos *vs*. The Philippine Electric Light Company. The purchaser at said sale was Gregorio Marquez, brother of Crisanto Marquez, who paid P5,501.57 for the property.

With this the general background of the controversy, we have to give special

attention to one clause in the contract and its antecedents. The contract Exhibit B entered into by Tuason and Marquez included as a portion of the property sold by Marquez to Tuason "*el derecho a la franquicia concedido a la Compañia para la explotacion de la industria a que la misma esta dedicada*."

It appears that originally in either 1913 or 1914, a franchise for thirty-five years was granted the Lucena Electric Company. The rights of this company passed to Crisanto Marquez at a sheriff's sale on September 10, 1919. The company seems never to have functioned very efficiently either at that time or at any other time, as appears from the constant complaint of the municipal authorities of Lucena. Evidently, Marquez became disgusted with the business, with the result that on February 28, 1921, that is, prior to the accomplishment of the contract, he announced to the Public Utility Commissioner his intention to give up the franchise. On March 29, 1921, that is, subsequent to the accomplishment of the contract, the Public Utility Commissioner took action and declared cancelled the franchise acquired by Crisanto Marquez from the Lucena Electric Light, Ice & Water Company.

Tuason and his outfit were permitted to operate the company pursuant to a special license which was to continue until they obtained a new franchise. The new franchise was finally granted by the Public Utility Commissioner with certain conditions, which amounted to a renovation of the entire plant. It was then, following a knowledge of what was expected by the Government, and following the execution sale, that Tuason conceived the idea of bringing action against Marquez for a rescission of the contract.

In the complaint filed in the Court of First Instance of Manila, Mariano S. Tuason, the plaintiff, asked for judgment against Crisanto Marquez, defendant, for a total of P37,400. The answer and cross-complaint of the defendant asked for a dismissal of the action and for an allowance of a total of P12,654.50 from the plaintiff. The case was submitted on an agreed statement of facts in relation with certain telegrams of record. Judgment was rendered, absolving the defendant from the complaint and permitting the defendant to recover from the plaintiff P12,240, with legal interest from August 1, 1922. Parenthetically, it may be explained that P12,000 of this judgment represented the amount still due on the contract, and P240 represented rent which the plaintiff was expected to

pay the defendant.

The plaintiff claims in effect that the contract should be rescinded and that he should be allowed his damages, on account of the misrepresentation and fraud perpetrated by the defendant in selling an electric light plant with a franchise, when the defendant had already given up his rights to that franchise. In this connection, however, it should be emphasized that the contract, in making mention of the property of the electric light company, merely renewed a previous inventory of the property. The franchise, therefore, was not the determining cause of the purchase. Indeed, the franchise was then in force and either party could easily have ascertained its status by applying at the office of the Public Utility Commissioner. The innocent non-disclosure of a fact does not affect the formation of the contract or operate to discharge the parties from their agreement. The maxim *caveat emptor* should be recalled.

The equitable doctrine termed with questionable propriety "estoppel by laches," has particular applicability to the facts before us. Inexcusable delay in asserting a right and acquiescence in existing conditions are a bar to legal action. The plaintiff operated the electric light plant for about sixteen months without question; he made the first payment on the contract without protest; he bestirred himself to secure what damages he could from the defendant only after the venture had proved disastrous and only after the property had passed into the hands of a third party.

We find no proof of fraud on the part of the defendant and find the plaintiff in estoppel to press his action.

In accordance with the foregoing, we are clearly of the opinion that judgment should be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Johnson, Street, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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