103 Phil. 351

[G.R. No. L-9300. April 18, 1958]

MARIANO A. ALBERT, PLAINTIFF AND APPELLEE, VS. UNIVERSITY PUBLISHING CO., INC., DEFENDANT AND APPELLANT. .

PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Manila, ordering the defendant corporation to pay to the Administrator of the estate of the late Mariano A. Albert, who died during the pendency of the case, the sum of P23,000, interest thereon from the date of the filing of the complaint, and costs, and dismissing the defendant's counterclaim, certified- to this . Court by the Court of Appeals for the reason that the total amount sought to be recovered by the defendant corporation exceeds P50,000.

On 19 July 1948 the plaintiff and the defendant corporation entered into a contract whereby, for and in consideration of the exclusive right to publish or cause to be published a manuscript containing commentaries on " 'The Revised Penal Code of the Philippines,' as amended until July 15, 1948," written by the plaintiff, for a period of five years from the date of execution of the contract; of the liquidated balance due the plaintiff as his share in the sale of the reprinted copies of the book as stipulated in a contract executed on 21 May 1946 by and between him and the defendant corporation (Exhibit 1); and of the liquidated share of the plaintiff in the sale of 1,500 reprinted copies of the book, the defendant corporation undertook to pay- the plaintiff the sum of P30.000 in eight quarterly installments of P3,750 each, beginning 15 July 1948 (Exhibit A). The most important stipulations of the contract are the following:

> 1. That the tarty of the first part is the author and sole proprietor of a manuscript which is his revised commentaries of "'The Revised Penal Code of the Philippines" as amended until July 15, 1943;
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> 2. That the party of the first part hereby grants to the party of THE SECOND

> PART the exclusive right to publish or cause to be published the said manuscript within a period of 5 years from the execution of this document, provided that the total number of copies to be printed within said period shall not he more than 4,000 copies;
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> 4. That the party of the second fart hereby agrees to pay to the party of the first part, for the exclusive right, to publish the manuscript, object" of this contract, for a period of 6 years counted from the date of execution of this document; for the liquidated balance due him as his share in the sales of the reprinted copies of the first edition of this book as per contract between both parties dated May 21, 1946; and for Ms liquidated share in the sales of another 1,500 reprinted copies in 1948 of said book, now in the press: the total amount of (P30,000 payable in 8 quarters at the rate of P3,750 a quarter, the first quarter to begin from July 15, 1948. It is also agreed that should the PARTY OF THE SECOND PART fail to pay to the PARTY OF THE FIRST PART any one of the eight installments referred to when due, the rest of the installments shall be deemed due and payable, whether there is judicial or extra-judicial demand made by the PARTY OF THE FIRST PART. In this event , the PART OF THE FIRST PART shall take charge of the publication of this book, and in case it has already been published, will take over the sale and distribution of the printed book, without any right on the part of the PARTY OF THE SECOND PART to participate in its proceeds:
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> 7. That the party of the first part obligates himself to deliver to the PARTY OF THE SECOND PART the manuscript in its final form not later than December 31, 1948; provided, however, that the party of the second part shall have no right to make any change in the manuscript as prepared by the party of the first fart who, if the circumstances do permit, must stamp his approval in the printer's final proof.

In the event of the impossibility for the party of the first part to deliver the manuscript complete by December 31, 1948, the party of the SECOND part shall no longer be under obligation to pay the installments remaining payable by virtue of the provisions of the Contract, unless the party op the second part undertakes to complete the same by inserting the latest decisions of the Supreme Court as digested and/or commented upon by the PARTY OF THE FIRST PART.

The defendant corporation paid P1,000 to the plaintiff on 31 July 1948 (Exhibits E and 2) ; Pl,000 on 10 September 1948 (Exhibit 2-A) ; P2,000 on 10 November 1948 (Exhibits C, C-l and 2-B) ; P2,000 on 29 November 1948 (Exhibit S) ; and Pl,000 on 24 December 1948 (Exhibit 3-A), or a total of P7,000. The defendant corporation made no other or further payment to the plaintiff on account of the contract.

The evidence for the plaintiff shows that on 16 December 1948 he wrote a letter advising the defendant corporation that "The manuscript of my Commentaries on the Revised Penal Code, subject matter of our Contract executed on the 19th of July this year, is now at your disposal." (Exhibit D.)

The plaintiff claims that the defendant corporation breached the contract when it failed to pay the full amount of the installment for the first quarter on or before 15 October 1948, the last day within which to pay it. The defendant corporation contends that 'the plaintiff failed to deliver to it the manuscript in its final form not later than 31 December 1948 as stipulated in paragraph 7 of the contract (Exhibit A).

The first point then to determine is whether the 'plaintiff had performed his part of the contract as stipulated in paragraph 7 of the aforesaid contract.

Upon plaintiff's demand and defendant's failure to produce and exhibit the original of the letter dated 16 December 1948 already referred to, the plaintiff read in evidence the contents of a copy of said letter (Exhibit D). Concepcion K. de Vera, the stenographer who took down by shorthand the dictation of the plaintiff, identified it as the carbon copy of the original and testified that the original was sent to the defendant corporation. On cross-examination she exhibited and read to the Court the notes from which she typed the original letter. The President of the defendant corporation denies having received not only the original of the letter dated 16 December 1948 but also the original of a letter dated 27 April 1949 (Exhibit E) written by the plaintiff to the defendant corporation. In the last letter reference to the preceding letter of 16 December 1948 (Exhibit D) was made and a demand for payment of the installments due and unpaid was also made. The defendant corporation admits, however, the receipt of the original of the letters dated 15 August 1949 (Exhibit F) and 6 June 1949 (Exhibit G). In the first letter (Exhibit F) the plaintiff reminded the defendant corporation of its promise to settle the installment due on 15 April and 15 . July and the balance of the installment due and unpaid of 15 December (January) ; and in the second (Exhibit G) the plaintiff reminded the defendant of its due and unpaid installments and stated that, in view of the apparent inability of the defendant corporation

to fulfill its part of the contract, he would consider the contract rescinded and would publish the revised edition next month (July) at his expense. The defendant corporation has not answered these two letters.

The mere denial by the President of the defendant corporation is not sufficient to outweigh and overcome the evidence showing that the plaintiff advised the defendant corporation that the manuscript of the commentaries on the Revised Penal Code, subject matter of the contract executed on 19 July 1948, was ready for delivery to, and at the disposal of, the defendant corporation for publication. The defendant corporation failed to pay on or before 15 October 1948 the first installment due, because it had paid only Pl,000 on 31 July 1948 and another P1,000 on 10 September 1948. When the defendant corporation paid P2.000 on 10 November 1948, it was after the last day fixed for the payment of the first installment. But that delay in the payment of the first quarterly installment may not amount to a breach to justify the enforcement of the stipulation set forth, in paragraph 4 of the contract (Exhibit A) because the plaintiff accepted the payment of P2,000 on 10 November 1948, which completed and paid the lull amount of the first installment due and left a, balance of P250 to be credited to the second installment due on 15 January 1949. On this last mentioned date the total amount paid by the defendant corporation, including the sum of P250 in excess of the amount paid for the first quarterly installment, was P3.250 or P500 short of the total amount due on such date corresponding to the second quarterly installment. As the defendant corporation has made no further payment, the stipulation in paragraph 4 of the contract has to be enforced.

The defendant corporation argues that the fact that the mimeographed copies of plaintiff's book or commentaries on. the Revised Penal Code published by the PHILAW Publishing Company does not contain cases decided by the Supreme Court up to 1948 is proof that contrary to plaintiff's claim the manuscript which the plaintiff bound himself to write and finish on or before 31 December 1948 was not ready for publication on 16 or 31 December 1948. There is no evidence, however, that the mimeographed copies of the book published and sold in November 1949 by the plaintiff or the PHILAW Publication Company were the same as that offered for delivery by the plaintiff to the defendant corporation on 16 December 1948. Besides, there is no stipulation in the contract that the commentaries would include cases decided by the Supreme Court up to 1948. Nowhere in the contract may such stipulation be found.

The action brought by the plaintiff is not for recission of a contract, under which theory or belief both parties seem to have proceeded and labored, but for a resolution of reciprocal

obligations because one of the obligors failed to comply with that which was incumbent upon him. The injured party could choose between requiring specific performance of the obligation or its resolution with indemnity for losses and payment of interest.[1] The stipulation in paragraph 4 of the contract (Exhibit A) may be considered as liquidated damages to be paid in case of breach of the contract.[2] The defendant corporation has not paid the share of the plaintiff in the proceeds of the sale of the first 1,000 copies of' the book printed and sold by the defendant corporation as agreed upon in the contract entered into by and between the parties on 21 May 1946 (Exhibit A). In the original and amended answers of the defendant corporation it is alleged that said copies remained unsold, but on the witness stand Jose M. Aruego, President of the defendant corporation, admitted that 800 copies thereof had been sold. There is also a share due the plaintiff in the sale of 1,500 reprinted copies of the book. But how much that share amounts to, the evidence does not throw any light, in like manner that there is no evidence to show how much is due the plaintiff as his share in the sale of 800 copies of the book.

The counterclaim of the defendant was correctly dismissed by the trial court, because it found that the one who had breached the contract is the defendant corporation. Such being the case, the defendant corporation cannot claim any damage against the plaintiff. Aside from that, it is difficult to believe that from 1946 to the time when the contract of 16 July 1948 was signed, the defendant corporation could not and had not disposed of the 1,000 copies of the book. Such is the import of the letter of 18 June 1948 written by the plaintiff to Jose M. Aruego, President of the defendant corporation (Exhibit H). It is also difficult to believe that not a single copy of the 1,500 copies of the book subsequently reprinted was sold, because of the publication and sale by the PHILAW Publishing Company of the mimeographed copies of the book. From 1948 to November 1949 when the mimeographed copies of the book were sold, there was sufficient time for the sale and disposition of the 1,500 reprinted copies of the book. There is no evidence that long before November 1949 there had been an announcement or publication that copies of commentaries on the Revised Penal Code by the plaintiff would be mimeographed and ready for distribution and sale.

Although the defendant corporation breached the contract, as found by the trial court, and there is no reason which may find support in the evidence for disturbing such finding, yet we believe that in the absence of evidence to show the, amount that should accrue to the plaintiff as his share in the proceeds of the sale of 1,000 copies of the book and of 1,500 copies of the reprinted book that were in press when the contract of 19 July 1948 was entered into, and the amount of profits that the plaintiff would derive from the sale of the

books to be1 printed, as agreed upon in the contract of 19 July 1948, the amount of liquidated damages is rather excessive, because even if the books were sold at P40, P35 or P30, as hinted by Jose M. Aruego, the president of the defendant corporation, in his testimony, the cost of paper, printing, binding, advertising, sales promotion and other incidental disbursements should be deducted from the gross proceeds.. For that reason and in accordance with the provisions of article 2227 of the new Civil Code, the reasonable amount of liquidated damages that must be awarded to the plaintiff as a result of the breach by the defendant corporation of the contract is- equitably reduced to f 15,000.

With this modification as to the amount of liquidated damages, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and *Felix, JJ,,* concur.

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[1] Article 1124, old civil code; article 1191, new civil code.
[2] Article 2226, new civil code.

R E S O L U T I O N

PADILLA, *J.:*

This is a motion for reconsideration of the judgment rendered in this case on the ground that "the plaintiff did not deliver the manuscript on or before December 31, 1948," as agreed upon in the contract entered into by and between the parties on 19 July 1948 (Exhibit A).

It must be borne in mind that the price or the sum of P30,000 payable in eight quarterly installments at the rate of P3.750, the, first quarter to begin 15 July 1948, is not only for the exclusive right of the appellant corporation to publish or cause to be published the manuscript to be written by the appellee on Ms commentaries of the Revised Penal Code of the Philippines, as amended, until 15 July 1948, but also for the liquidated balance due the appellee as his share in the sale of the reprinted copies of the first edition of his book as per contract between both parties dated 21 May 1946, and for his liquidated share in the

sale of another 1,500 reprinted copies in 1948 of said book then in the press. The first installment of P3,750 was due on 15 October 1948. The appellant breached the contract when it paid only the sum of P1,000 on 31 July and another of the same amount on 10 September 1948, thereby leaving an unpaid balance of P1,750. That breach of the contract entitled the appellee to the payment of the rest of the installments by the appellant whether there was a judicial or extrajudicial demand as agreed upon, and the appellee could then take charge of the publication of the book and, if it had already been published, he could take over the sale and distribution of the printed books without any right on the part of the appellant to participate in its proceeds (paragraph 4, Exhibit A). It is only the acceptance by the appellee of the sum of P2,000 paid by the appellant on 10 November 1948 (Exhibits C, C-l, 2-B) that prevented the appellee from enforcing the stipulation in the contract already referred to, to wit: that "the rest of the installments shall be deemed due and payable, whether there is judicial or extrajudicial demand made by the PARTY OF THE FIRST PART" (appellee). The payment of P2,000 made on 10 November 1948 accepted by the appellee completed the payment of the first installment due on 15 October 1948 with an excess of P250 credited to the second quarterly installment due on 15 January 1949. But, in the opinion of this Court, the delay in the payment of the first quarterly installment may not amount to a breach of contract to justify the enforcement of the stipulation set forth in paragraph 4 of the contract. The appellant justifies its refusal to complete the payment of the second quarterly installment because of the failure of the appellee to deliver the manuscript on or before 31 December 1948. But the evidence shows that on 16 December 1948 the appelleee wrote a letter advising the appellant that—

> The manuscript of my Commentaries on the Revised Penal Code, subject matter of our Contract executed on the 19th of July this year, is now at your disposal. It is ready to go to the printer should you desire to publish the same next month. I am keeping the manuscript in the office because I am afraid that it may be copied by others, spoiled or lost in your possession. Besides, I desire to add new decisions of the Supreme Court that may be published from time to time before the manuscript is actually sent to the printer. Should you insist in keeping the manuscript, make me know and I shall deliver it to you. (Exhibit D.)

Although the appellant's President denies having received the letter, yet the trial court found that such letter was written and delivered to the appellant, a finding supported by a

preponderance of evidence. The appellant also denies having received the original of a letter dated 27 April 1949 (Exhibit E) where reference to the previous letter of 16 December 1948 was made and demand for payment of installments due and unpaid was also made. However, the appellant corporation admits having received the original of the letters dated 15 August 1949 (Exhibit F) and 6 June 1949 (Exhibit G). In the first letter the appellee reminded the appellant corporation of its promise to settle the quarterly installments due on 15 April and] 5 July and the unpaid balance of the second installment due on 15 January, and in the second, the appellee reminded the appellant of its due and unpaid quarterly installments, and warned that in view of the apparent inability of the appellant corporation to fulfill its part of the contract he would consider it rescinded and would publish the revised edition next month (July) at his expense.

The appellant's contention and claim that it did not pay the balance of P500 due on 15 January 1949, because the appellee failed to deliver the manuscript on or before 31 December 1948 cannot be true. The appellant would have answered the two letters it received from the appellee and stated that its refusal to pay the unpaid balance of the second installment was due to the failure of the appellee to deliver the manuscript on or before 31 December 1948, and that for that reason it was no longer under obligation to pay the unpaid balance of the second installment and the subsequent installments. Yet the appellant never answered the two letters.

Delivery of the manuscript does not necessarily mean physical or material delivery thereof. In his letter of 16 December 1948 (Exhibit D) the appellee advised the appellant that the manuscript was then at its disposal, ready to go to the printer should the appellant desire to publish it next month; that he was keeping the manuscript in his office, because he was afraid that it might be copied by others, spoiled or lost in its possession; and that it was his desire to add new decisions of the Supreme Court that might be published from time to time before the manuscript was actually sent to the printer, but that if the appellant would insist on having the manuscript, it should let him know, because he would deliver it. This constitutes delivery of the manuscript. The fact that in spite of the receipt of that letter by the appellant, as found by the trial court, the appellant did not insist on the delivery of the manuscript on or before 31 December 1948, and the further fact that on 24 December 1948 after the receipt of that letter the appellant made another payment of Pl,000 was a clear indication that it accepted the appellee's suggestion because it was not then ready to print the manuscript.

As Manrosa says:

La jurisprudencia se ha encargado tie establecer la armonm entre el nuevo prbicipio cxageradamenle espiritualista y el sentido qtie se ha de dar a la tradicion o entrega tie la cosa. Lo que el vendedor csta obligado a realixar, segun la jufisprudencia es cl traspaso de .la cosa veiidida al disfrute (*jouisnance*) y posesion del comprador; no a su poutu1 (*puissance*), porque en poder del comprador, en el sentido do pertenecer a su patrimotiio juridico, estaba ya la cosa Vendida desde el momento en que medio el consentimlento.

Es decir, que aunque la transmision de la propiedad se habia ya opcrado desde la perfeccion del contrato, como quiera' que el comprador no podria obtener log rfectos utiles de este si la cosa permaneciese perpetuamente a la disposition, al alcance del vendedor y no ai aleanco y a la disposicion material del comprador es meiicster poner la eosa en estu situaoion de mero hecho para que el adquirontc este en ponibiliclad de ejercer siis facultades dominicales, que' no dependen ciertamente, en cuanto a su integridad, de eso tmspaso material, puesto que nacieron desde que so presto el consentimiento; pero que necesitan de esa situacion de hecho en la cosa. Hemos repetido lo do la situacion de hecho o de rnero hecho para, evitando toda confusion, hacer notar una vca mas que no se trata con la entrega. dela cosa, a la manera como la entiende la jurisprudencia francesa, de ningun cambio on la situacion juridica de la cosa, ya que esta antes y despnes do la entrega perteneia al pafci/imonio del corapi'ador poy haberse transmitido el domino de la misma en virlud del solo consentimiento.

* * * * * * *

Por lo tanto, la entrega de la cosa, de cualquiera de los modos . que enumcran los articulos que conicntamos y qus seguidamente explicaremos, signifiea que la transmision de la propiedad sc ha verifieado del vendedor al comprador. (Comentarios al Codigo Civil Español, Tomo X, paginas 121-122, 4.a edicion.)

Castan on this point says:

Puede, pues, ser definida la entrega en nucstro Derecho como el

> transferimiento do la posesion jurfdica de la cosa, que hace adquirir 3U propiedad o el derecho real por el comprador. El articulo 1.462 del Codigo quiere dar idea de clla diciendo que "se cntondera entregada la cosa vendida cuando sc ponga en poder y poscsion del comprador". (Defecho Civil Español, Comun y Foral, Tonio 4, pagina 67, 8.a edicioti.)

The resolution of a contract because of the breach thereof by one of the parties to it does not preclude an award of damages. And there is more reason for such award when it is stipulated.

The motion for reconsideration is denied.

Paras, C. J., Montemayor, Reyes, A., Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

Date created: January 22, 2015