

ISIDRO P. SIBUG, AND MAXIMA SY-JUECO, PLAINTIFFS AND APPELLANTS, VS. MUNICIPALITY OF HAGONoy; PROVINCE OF BULACAN, DEFENDANT AND APPELLEE.*G.R. No. L-7131. February 29, 1956*

Ponente: PARAS, C.J.

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After public hearing the defendant-appellee (Municipality of Hagonoy, Province of Bulacan) leased to the plaintiff-appellant (Isidro P. Sibug) two fishponds located in barrio Pugad, identified in the contract of lease as lots Nos. 3 and 6, and described as having, respectively an area of 86 and 74 hectares. The stipulated annual rentals are P11,000 for lot No. 3 and P12,500 for lot No. 6, the term being five years from July 1, 1950. The appellant duly paid the rentals for the first two years. Instead of paying the rental for the third year, he filed on August 4, 1952 an action in the Court of First Instance of Bulacan against the appellee, praying that the annual rentals be reduced to the total sum of P10,000, retroactive to the first year, and that the appellee be ordered to pay the sum of P28,000 representing expenses incurred by the appellant for repairs of the dikes of the fishponds in the years 1950 and 1951 as a result of typhoons and the waves of the Manila Bay, plus attorney's fees in the sum of P10,000. The appellee filed an answer, with a counterclaim for damages in the sum of P150,000. After trial the court rendered a decision dismissing appellant's complaint, and ordering the appellant to pay to the appellee the amount of P23,500, unpaid rental from July 1, 1952 to June 30, 1953, plus a surcharge of twenty-five per cent and the costs. The decision also ordered that, upon failure of the appellant to pay within 90 days, the properties mortgaged under the performance bond executed by Maxima Sy Jueco (co-plaintiff-appellant) be sold at public auction to satisfy the judgment. Appellee's counter-claim was dismissed. Both Isidro P. Sibug (plaintiff) and Maxima Sy-Jueco (co-plaintiff) appealed.

The contentions made by appellant Isidro P. Sibug in support of his action are (1) that the appellee was guilty of misrepresentation as to the areas of the fishponds, because while lot No. 3 was described as having 86 hectares and lot No. 6, 74 hectares, they actually contain upon a resurvey only 40 and 31 hectares respectively, and (2) that the appellant incurred expenses in the sum of P14,000 in 1950 and P6,000 in 1951 for repairs of the dikes of the fishponds resulting from typhoons and action of the Manila Bay, which were fortuitous events. These contentions were overruled by the court, and in our opinion correctly.

The evidence shows that the notice of bid expressly stated that the bidding was by lot and not by the hectares; and that just before the bidding, the mayor made the announcement that the bidding was by lot (not by unit) and in "as is" condition. It is furthermore admitted that the appellant had gone to and investigated the fishponds before the public bidding, and his findings undoubtedly led him to offer a higher rental for the smaller lot and a lower rental for the larger lot, a strong indication that the areas were not the principal consideration for his bids. The areas mentioned in the contract of lease and in the notice of bid were merely descriptive of the fishponds and not intended as a unit measure for computing the rentals; and said areas had to be given in the absence as yet of a resurvey or new title. The resurvey relied upon by the, appellant, showing new reduced areas of the fishponds in

question, has never been verified or approved by the Bureau of Lands. Even as late as January, 1952, when the appellant invited the new mayor and other town officials to the fishponds, he only talked of his plan to improve: the fishponds by using adobe stones, provided his lease be extended without necessity of any bidding, and this, is rather inconsistent with appellant's alleged dissatisfaction. With reference to the claim for reimbursement of the expenses incurred by the appellant for repairing the dikes due to damage resulting from typhoons and waves of the Manila Bay, it is sufficient to point out that in the contract of lease it is expressly provided that the appellant obligates himself to make all the necessary repairs and to maintain the dikes at any and all times at his own expense during the existence of the contract in good order and condition. The fishponds are along the Manila Bay; and it is of common knowledge that dikes are usually damaged or destroyed by typhoons and action of the sea. These considerations must have prompted the insertion of the aforesaid comprehensive condition. That there was an awareness on the part of the contracting parties as to the common causes of destruction of fishponds, is further shown by condition No. 6 of the contract of lease, which provides that "the lessee has the right to gather nipa leaves except the young ibos and to cut firewood trees except the bakawan and those which serve as shields and protection of the fishponds from the action of the sea."

Wherefore, the appealed judgment is affirmed, and it is so ordered with costs against the appellants.

Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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