

GREGORIO ARANETA, INC., PLAINTIFF AND APPELLANT, VS. TUASON DE PATERNO AND JOSE VIDAL, DEFENDANTS AND APPELLANTS.

G.R. No. L-2886. August 22, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is a three-cornered contest between the purchasers, the seller, and the mortgagee of certain portions (approximately 40,703 square meters) of a big block of residential land in the district of Santa Mesa, Manila. The plaintiff, which is the purchaser, and the mortgagee elevated this appeal. Though not an appellant, the seller and mortgagor has made assignments of error in her brief, some to strengthen the judgment and others for the purpose of new trial.

The case is extremely complicated and multiple issues were raised.

The salient facts in so far as they are not controverted are these. Paz Tuason de Paterno is the registered owner of the aforesaid land, which was subdivided into city lots. Most of these lots were occupied by lessees who had contracts of lease which were to expire on December 31, 1953, and carried a stipulation to the effect that in the event the owner and lessor should decide to sell the property, the lessees were to be given priority over other buyers if they should desire to buy their leaseholds, all things being equal. Smaller lots were occupied by tenants without a formal contract.

In 1940 and 1941 Paz Tuason obtained from Jose Vidal several loans totalling P90,098 and constituted a first mortgage on the aforesaid property to secure the debt. In January and April, 1943, she obtained additional loans of P30,000 and P20,000 upon the same security. On each of the last-mentioned occasions the previous contract of mortgage was renewed and the amounts received were consolidated. In the first novated contract the time of payment was fixed at two years and in the second and last at four years. New conditions not relevant here were also incorporated into the new contracts.

There was, besides, a separate written agreement entitled "Penalidad del Documento de Novacion de Esta Fecha" which, unlike the principal contracts, was not registered. The tenor of this separate agreement, all copies, of which were alleged to have been destroyed or lost, was in dispute and became the subject of conflicting evidence. The lower court did not make categorical findings on this point, however, and it will be our task to do so at the appropriate place in this decision.

In 1943 Paz Tuason decided to sell the entire property for the net amount of P400,000 and entered into negotiations with Gregorio Araneta, Inc. for this purpose. The result of the negotiations was the execution on October 19, 1943, of a contract called "Promesa de Compra y Venta" and identified as Exhibit "1." This contract provided that subject to the preferred right of the lessees and that of Jose Vidal as mortgagee, Paz Tuason would sell to Gregorio Araneta, Inc. and the latter would buy for the said amount of P400,000 the entire estate under these terms.

"El precio será pagado como sigue; un 40 por ciento juntamente con la carta de aceptación del arrendatario, un 20 por ciento del precio al otorgarse la escritura de compromiso de venta, y el remanente 40 por ciento al otorgarse la escritura de venta definitiva, la cual será otorgada después de que se hubiese cancelado la hipoteca a favor de Jose Vidal que pesa sobre dichos lotes. La comisión del 5 por ciento que corresponde a Jose Araneta será pagada al otorgarse la escritura de compromiso de venta.

"Paz Tuason se obliga a entregar mediante un propio las cartas que entregar mediante un propio las cartas que dirigirá a este efecto a los arrendatarios, de conformidad con el formulario adjunto, que se marca como Apéndice A.

"Expirado el plazo arriba mencionado, Paz Tuason otorgará las escrituras correspondientes de venta a los arrendatarios que hayan decidido comprar sus respectivos lotes.

"9. Los alquileres correspondientes a este año se prorratearán entre la vendedora y el comprador, correspondiendo al comprador los alquileres correspondientes a Noviembre y Diciembre de este año, y asimismo será por cuenta del comprador el amillaramiento correspondiente a dichos meses.

"10. Paz Tuason, reconoce haber recibido en este acto de Gregorio Araneta, Inc., la suma de Ciento Noventa Mil Pesos (P190,000) como adelanto del precio de venta que Gregorio Araneta, Inc., tuviere que pagar a Paz Tuason.

"La cantidad que Paz Tuason recibe en este acto será aplicada por ella a saldar su deuda con Jose Vidal, los amillaramientos, sobre el terreno cuyo pago ya han vencido y solo el saldo que quedare será utilizado por Paz Tuason para otros fines.

"11. Una vez determinados los lotes que Paz Tuason podrá vender a Gregorio Araneta, Inc., Paz Tuason otorgará una escritura de definitiva sobre dichos lotes a favor de Gregorio Araneta, Inc.

"Gregorio Araneta, Inc., pagará el precio de venta como sigue 90 por ciento del mismo al otorgarse la escritura de venta definitiva descontándose de la cantidad que entonces se tenga que pagar el adelanto de P190,000 que se entrega en virtud de esta escritura El 10 por ciento remanente se pagará a Paz Tuason, una vez se haya cancelado la hipoteca que pesa actualmente sobre el terreno.

"No obstante lo dispuesto en el párrafo 8, cualquier arrendatario que decida comprar el lote que ocupa con contrato de arrendamiento podrá optar por pedir el otorgamiento inmediato a su favor de la escritura de venta definitiva pagando en el acto el 50 por ciento del precio (además del 40 por ciento que debió incluir en su carta de aceptación) y el remanente de 10 por ciento inmediatamente después de cancelarse la hipoteca que pesa sobre el terreno.

"12. Si la mencionada cantidad de P190,000 excediere del 90 por ciento de la cantidad que Gregorio Araneta, Inc., tuviere que pagar como precio de venta de los lotes que Paz Tuason pudiere vender a dicho comprador, el saldo será pagado inmediatamente por Paz Tuason, tomándolo de las cantidades que reciba de los arrendatarios como precio de venta."

In furtherance of this promise to buy and sell, letters were sent the lessees giving them until August 31, 1943, an option to buy the lots they occupied at the price and terms stated in said letters. Most of the tenants who held contracts of lease took advantage of the opportunity thus extended and after making the stipulated payments were given their deeds of conveyance. These sales, as far as the record would show, have been respected by the seller.

With the elimination of the lots sold or to be sold to the tenants there remained unencumbered, except for the mortgage to Jose Vidal, Lots 1, 8-16 and 18 which have an aggregate area of 14,810.20 square meters; and on December 2, 1943, Paz Tuason and Gregorio Araneta, Inc. executed with regard to these lots an absolute deed of sale, the terms of which, except in two respects, were similar to those of the sale to the lessees. This deed, copy of

which is attached to the plaintiff's complaint as Exhibit A, provided, among other things, as follows:

"The aforesaid lots are being sold by the Vendor to the Vendee separately at the prices mentioned in paragraph (6) of the aforesaid contract entitled "Promesa de Compra y Venta," making total sum of One Hundred Thirty-Nine Thousand Eighty-three pesos and Thirty-two centavos (P139,083.32), ninety (90%) per cent of which amount, i.e., the sum of One Hundred Twenty-five Thousand One Hundred Seventy-four Pesos and Ninety-nine centavos (P125,174.99) the Vendor acknowledges to have received by virtue of the advance of One Hundred Ninety Thousand (P190,000) Pesos made by the Vendee to the Vendor upon the execution of the aforesaid contract entitled "Promesa de Compra y Venta". The balance of Sixty-Four Thousand Eight Hundred Twenty-five Pesos and One centavo (P64,825.01) between the sum of P190,000 advanced to the Vendor and the aforesaid sum of P125,174.99, has been returned by the Vendor to the Vendee, which amount the Vendee acknowledges to have received by these presents;

"The aforesaid sum of P190,000 was delivered by the Vendee to the Vendor by virtue of four checks issued by the Vendee against the Bank of the Philippine Islands, as follows:

No. C-286445 in favor of Paz Tuason de Paterno

P13,476.62

No. C-286444 in favor of the City Treasurer, Manila

3,373.38

No. C-286443 in favor of Jose Vidal

30,000.00

No. C-286442 in favor of Jose Vidal

143,150.00

Total

P190,000.00

"The return of the sum of P64,825.01 was made by the Vendor to the Vendee in a liquidation which reads as follows:

"Hemos recibido de Da. Paz Tuason de Paterno la cantidad de Sesenta y Cuatro mil Ochocientos Veinticinco Pesos y un centimo (P64,825.01) en concepto de devolución que nos hace del exceso de lo pagado a ella de

P190,000.00

Menos el 90% de P139,083.32, importe de los lotes que vamos a comprar

125,174.99

Exceso

P64,825.01

Cheque BIF No. D-442988 de Simplicio del Rosario

P21,984.20

Cheque PNB No. 177863-K de L. E. Dumas

21,688.60

Cheque PNB No. 267682-K de Alfonso Sycip

20,000.00

Cheque PNB No. 83940 de Josefina de Pabalan

4,847.45

Rilletes reeibidos de Alfonso Sycip

42.96

P68,563.21

Menos las comisiones de 5% recibidas de Josefina de Pabalan

P538.60

L. E. Dumas

1,084.43

Angela S, Tuason

1,621.94

3,224.97

P65,318.24

Menos cheque BIF No. C-288642 a favor de Da. Paz Tuason de Paterno que le entregamos como exceso

493.23

P64,825.01

Manila, Noviembre 2, 1943.

"GREGORIO ARANETA, INCORPORATED

"Por:

(Fdo.) "JOSE ARANETA

Presidente

"Recibido cheque No. C-288642 BIF-P493.23.

"Por:

(Fdo.) "M. J. GONZALEZ"

"In view of the foregoing- liquidation, the Vendor acknowledges fully and unconditionally, having received the sum of P125,174.99 of the present legal currency and hereby expressly declares that she will not hold the Vendee responsible for any loss that she might suffer due to the fact that two of the checks paid to her by the Vendee were issued in favor of Jose Vidal and the latter has, up to the present time, not yet collected the same.

"The ten (10%) per cent balance of the purchase price not yet paid in the total sum of P13,908.33 will be paid by the Vendee to the Vendor when the existing mortgage over the property sold by the Vendor to the Vendee is duly cancelled in the office of the Register of Deeds, or sooner at the option of the Vendee.

"This Deed of Sale is executed by the Vendor free from all liens and encumbrances, with the only exception of the existing lease contracts on parcels Nos. 1, 10, 11, and 16, which lease contracts will expire on December 31, 1953, with the understanding, however, that this sale is being executed free from any option or rig on the part of the lessees to purchase the lots respectively leased by them.

"It is therefore clearly understood that the Vendor will pay existing mortgage on her property in favor of Jose Vidal.

"The liquidation of the amounts respectively due between that the Vendor and the Vendee in connection with

the rents and real estate taxes as stipulated in paragraph (9) of the contract entitled 'Promesa de Compra y Venta' will be adjusted between the parties in a separate document.

"Should any of the aforesaid lessees of lots Nos. 2, 3, 4, 5, 6, 7, 9 and 17 fail to carry out their respective obligations under the option to purchase exercised by them so that the rights of the lessee to purchase the respective property leased by him is cancelled, the Vendor shall be bound to sell the same to the herein Vendee, Gregorio Araneta, Incorporated, in conformity with the terms and conditions provided in the aforesaid contract of 'Promesa de Compra y Venta';

"The documentary stamps to be affixed to this deed will be for the account of the Vendor while the expenses for the registration of this document will be for the account of the Vendee.

"The remaining area of the property of the Vendor subject to Transfer Certificates of Title Nos. 60471 and 60472, are lots Nos. 2, 3, 4, 5, 6, 7, 9, and 17, all of the Consolidation of lots Nos. 20 and 117 of plan 11-4755, G.L.E.O. Record No. 7680."

Before the execution of the above deed, that is, on October 20, 1943, the day immediately following the signing of the agreement to buy and sell, Paz Tuason had offered to Vidal the check for P143,150 mentioned in Exhibit A, in full settlement of her mortgage obligation, but the mortgagee had refused to receive that check or to cancel the mortgage, contending that by the separate agreement before mentioned payment of the mortgage was not to be effected totally or partially before the end of four years from April, 1943.

Because of this refusal of Vidal's, Paz Tuason, through Atty, Alfonso Ponce Enrile, commenced an action against the mortgagee in October or the early part of November, 1943. The record of that case was destroyed and no copy of the complaint was presented in evidence. Attached to the complaint or deposited with the clerk of court by Attorney Ponce Enrile simultaneously with the docketing of the suit were the check for P143,150 previously turned down by Vidal, another certified check for P12,932.61, also drawn by Gregorio Araneta, Inc., in favor of Vidal, and one ordinary check for P30,000 issued by Paz Tuason. These three checks were supposed to cover the whole indebtedness to Vidal including the principal and interest up to that and the penalty provided in the separate agreement.

But the action against Vidal never came on for trial and the record and the checks were destroyed during the war operations in January or February, 1945; and neither was the case reconstituted afterward. This failure of the suit for the cancellation of Vidal's mortgage, coupled with the destruction of the checks tendered to the mortgagee, the nullification of the bank deposit on which those checks had been drawn, and the tremendous rise of real estate value following the termination of the war, gave occasion to the breaking off of the schemes outlined in Exhibits 1 and A; Paz Tuason after liberation repudiated them for the reasons to be hereafter set forth. The instant action was the offshoot, begun by Gregorio Araneta, Inc. to compel Paz Tuason to deliver to the plaintiff a clear title to the lots described in Exhibit A free from all liens and encumbrances, and a deed of cancellation of the mortgage to Vidal. Vidal came into the case in virtue of a summon issued by order of the court, and filed a cross-claim against Paz Tuason to foreclose his mortgage.

It should be stated at the outset that all the parties are in agreement that Vidal's loans are still outstanding. Paz Tuason's counsel concede that the tender of payment to Vidal was legally defective and did not operate to discharge the mortgage, while the plaintiff is apparently uninterested in this feature of the case considering the matter one largely between the mortgagor and the mortgage, although to a certain degree this notion is incorrect. At any rate, the points of discord between Paz Tuason and Vidal concern only the accrual of interest on the loans, Vidal's claim to attorney's fees, and the application of the debt moratorium law which the debtor now invokes. These matters will be taken up in the discussion of the controversy between Paz Tuason and Jose Vidal.

The principal bone of contention between Gregorio Araneta, Inc. and Paz Tuason was the validity of the deed of sale Exhibit A on which the suit was predicated. The lower court's judgment was that this contract was invalid and was so declared, "sin perjuicio de que la demandada paz Tuason de Paterno pague a la entidad demandante todas las cantidades que había estado recibiendo de la referida entidad demandante, en concepto de pago de los terrenos, en moneda corriente, según el cambio que debía regir al tiempo de otorgarse la escritura según la escala de 'Ballentine', descontando, sin embargo, de dichas cantidades cualesquiera que la demandante haya estado recibiendo como alquileres de los terrenos supuestamente vendidos a ella." The court based its opinion that Exhibit A was invalid on the theory that it was at variance with Exhibit 1. His Honor, Judge Sotero Rodas, agreed with the defendant that under paragraph 8 of Exhibit 1 there was to be no absolute sale to Gregorio Araneta, Inc., unless Vidal's mortgage was cancelled.

In our opinion the trial court was in error in its interpretation of Exhibit 1. The contemplated execution of an absolute deed of sale was not contingent on the cancellation of Vidal's mortgage. What Exhibit 1 did provide (eleventh paragraph) was that such deed of absolute sale should be executed "una vez determinado los lotes que Paz Tuason podrá vender a Gregorio Araneta, Inc. The lots which could be sold to Gregorio Araneta, Inc. were definitely known by October 31, 1943, which was the expiry of the tenants' option to buy, and the lots included in the absolute deed of sale, executed on December 2, were the lots of which the occupants' option to buy had lapsed unconditionally. Such deed as Exhibit A was then in a condition to be made.

Vidal's mortgage was not an obstacle to the sale. An amount had been set aside to take care of it, and the parties, it would appear, were confident that the suit against the mortgagee would succeed. The only doubt in their minds was in the amount to which Vidal was entitled. The failure of the court to try and decide that case was not foreseen either.

This refutes, we think, the charge that there was undue rush on the part of the plaintiff to push across the sale. The fact that simultaneously with Exhibit A similar deeds were given the lessees who had elected to buy their leaseholds, which comprise an area about twice as big as the lots described in Exhibit A, and the further fact that the sales to the lessees have never been questioned and the proceeds thereof have been received by the defendant, should add to dispel any suspicion of bad faith on the part of the plaintiff. If anyone was in a hurry it could have been the defendant. The clear preponderance of the evidence is that Paz Tuason was pressed for cash and that the payment of the mortgage was only an incident, or a necessary means to effectuate the sale. Otherwise she could have settled her mortgage obligation merely by selling a portion of her estate, say, some of the lots leased to tenants who, except two who were in concentration camps, were only too anxious to buy and own the lots on which their houses were built.

Whatever the terms of Exhibit 1, the plaintiff and the defendant were at perfect liberty to make a new agreement different from or even contrary to the provisions of that document. The validity of the subsequent sale must of necessity depend on what it said and not on the provisions of the promise to buy and sell.

It is as possible proof of fraud that the discrepancies between the two documents bear some attention. It was alleged that Attorneys Salvador Araneta and J. Antonio Araneta who the defendant said had been her attorneys and had drawn Exhibit A, had not informed or had misinformed her about its contents; that being in English, she had not read the deed of sale; that if she had not trusted the said attorneys she would not have been so foolish as to affix her signature to a contract so one-sided.

The evidence does not support the defendant. Except in two particulars, Exhibit A was a substantial compliance with Exhibit 1 in furtherance of which Exhibit A was made. One departure was the proviso that 10 per cent of the purchase price should be paid only after Vidal's mortgage should have been cancelled. This provisional deduction

was not onerous or unusual. It was not onerous or unusual that the vendee should withhold a relatively-small portion of the purchase price before all the impediments to the final consummation of the sale had been re-moved. The tenants who had bought their lots had been granted the privilege to deduct as much as 40 per cent of the stipulated price pending discharge of the mortgage, although this percentage was later reduced to 10 as in the case of Gregorio Araneta, Inc. It has also been seen that the validity of the sales to the tenants has not been contested; that these sales embraced in the aggregate 24,245.40 square meters for P260,916.68 as compared to 14,811.20 square meters sold to Gregorio Araneta, Inc. for P139,083.32; that the seller has already received from the tenant purchasers 90 per cent of the purchase money.

There is good reason to believe that had Gregorio Araneta, Inc. not insisted on charging to the defendant the loss of the checks deposited with the court, the sale in question would have gone the smooth way of the sales to the tenants. Thus Dindo Gonzales, defendant's son, declared:

"P. Despues de haberse presentado esta demanda, recuerda usted haber tenido conversacion con Salvador Araneta acerca de este asunto?

"R. Si, señor.

"P. Usted fue quien se acerco al señor Salvador Araneta?

"E. Si, señor.

"P. Quiero usted decir al Honorable Juzgado que era lo que usted dijo al señor Salvador Araneta?

"R. No creo que es propio que yo diga, por tratarse de mi madre.

"P. En otras palabras, usted quiere decir que no quiere usted que se vuelva decir o repetir ante este Honorable Juzgado lo que usted dijo al señor Salvador Araneta, pues, se trata de su madre?

"R. No, señor.

"P. Puede usted decirnos que quiso usted decir cuando dijo que no quisiera decir?

"R. Voy a decir lo que yo tuve con el señor Araneta: yo me acerque a Don Salvador Araneta, y yo le dije que es una vergüenza de que nosotros, en la familia tengamos que ir a la Corte por este, y tambien dije que mi nmdre de por si quierc vender el terreno a ellos, porque mi madre quiere pagar al señor Vidal, y que es una vergüenza, siendo entre parientes, tener que venir por este; era lo que yo dije al señor Salvador Araneta.

"P. No recuerda usted que usted también dijo al señor Salvador Araneta que usted no comulgaba con ella (su madre) en este asunto?

"R, Si, señor; porque yo creia que mi madre solamente quería anular esta venta, pero cuando me dijo el señor La O y sus abogados que, encima de guitar la propiedad, todavía tendría ella que pagar al señor Vidal, este no veo claro.

"P. Ahora bien; de tal suerte que, tal como nosotros desprendemos de su testimonio, tanto usted, como su madre, estaban muy conformes en la venta, es así?

"R. Si, senor."

The other stipulation embodied in Exhibit A which had no counterpart in Exhibit 1 was that by which Gregorio Araneta, Inc. would hold Paz Tuason liable for the lost checks and which, as stated, appeared to be at the root of the whole trouble between the plaintiff and the defendant. The stipulation reads:

"In view of the foregoing liquidation, the Vendor acknowledges fully and unconditionally, having received the

sum of P125,174.99 of the present legal currency and hereby expressly declares that she will not hold the Vendee responsible for any loss that she might suffer due to the fact that two of the checks paid to her by the Vendee were issued in favor of Jose Vidal and the latter has, up to the present time, not yet collected the same."

It was argued that no person in his or her right senses would knowingly have agreed to a covenant so iniquitous and unreasonable.

In the light of all the circumstances, it is difficult to believe that the defendant was deceived into signing Exhibit A, in spite of the provision of which she and her son complain. Intelligent and well educated who had been managing her affairs, she had an able attorney who was assisting her in the suit against Vidal, a case which was Instituted precisely to carry into effect Exhibit A or Exhibit 1, and a son who is a leading citizen and a businessman and knew the English language very well if she did not. Dindo Gonzales took active part in, if he was not the initiator of, the negotiations that led to the execution of Exhibit 1, of which he was an attesting witness besides. If the defendant signed Exhibit A without being apprised of its import, it can hardly be conceived that she did not have her attorney or her son read it to her afterward. The transaction involved the alienation of property then already worth a fortune and now assessed by the defendant at several times higher. Doubts in defendant's veracity are enhanced by the fact that she denied or at least pretended in her answer to be ignorant of the existence of Exhibit A, and that only after she was confronted with a signed copy of the document on the witness stand did she spring up the defense of fraud. It would look as if she gambled on the chance that no signed copy of the deed had been saved from the war. She could not have forgotten having signed so important a document even if she had not understood some of its provisions.

From the unreasonableness and inequity of the afore-quoted Exhibit A it is not to be presumed that the defendant did not understand it. It was highly possible that she did not attach much importance to it, convinced that Vidal could be forced to accept the checks and not foreseeing the fate that lay in store for the case against the mortgagee.

Technical objections are made against the deed of sale. First of these is that Jose Araneta, since deceased, was defendant's agent and at the same time the president of Gregorio Araneta, Inc.

The trial court found that Jose Araneta was not Paz, Tuason's agent or broker. This finding is contrary to the clear weight of the evidence, although the point would, be irrelevant if the court were right in its holding that Exhibit A was void on another ground, i.e., it was inconsistent with Exhibit 1.

Without taking into account defendant's Exhibits 7 and 8, which the court rejected and which, in our opinion, should have been admitted, Exhibit 1 is decisive of the defendant's assertion. In paragraph 8 of Exhibit 1 Jose Araneta was referred to as defendant's agent or broker "who acts in this transaction" and who as such was to receive a commission of 5 per cent, although the commission was to be charged to the purchasers, while in paragraph 13 the defendant promised, in consideration of Jose Araneta's services rendered to her, to assign to him all her right, title and interest to and in certain lots not embraced in the sales to Gregorio Araneta, Inc. or the tenants.

However, the trial court hypothetically admitting the existence of the relation of principal and agent between Paz Tuason and Jose Araneta, pointed out that not Jose Araneta but Gregorio Araneta, Inc. was the purchaser, and cited the well-known distinction between the corporation and its stockholders. In other words, the court opined, that the sale to Gregorio Araneta, Inc. was not a sale to Jose Araneta the agent or broker.

The defendant would have the court ignore this distinction and apply to this case the other well-known principle which is thus stated in 18 C. J. S. 380: "The courts, at law and in equity, will disregard the fiction of corporate

entity apart from the members of the corporation, when it is attempted to be used as a means of accomplishing a fraud or an illegal act."

It will at once be noted that this principle does no fit in with the facts of the case at bar. Gregorio Araneta, Inc. Had long been organized and engaged in real estate business. The corporate entity was not used to circumvent the law or perpetrate deception. There is no denying that Gregorio Araneta, Inc. entered into the contract for itself and for its benefit as a corporation. The contract and the roles of the parties who participated therein were exactly as they purported to be and were fully revealed to the seller. There is no pretense, nor is there reason to suppose, that if Paz Tuason had known Jose Araneta to be Gregorio Araneta, Inc.'s president, which she knew, she would not have gone ahead with the deal. From her point of view and from the point of view of public interest, it would have made no difference, except for the brokerage fee, whether Gregorio Araneta, Inc. or Jose Araneta was the purchaser. Under these circumstances the result of the suggested disregard of a technicality would be, not to stop the commission of deceit by the purchaser but to pave the way for the evasion of a legitimate and binding commitment by the seller. The principle invoked by the defendant is resorted to by the courts as a measure of protection against deceit and not to open the door to deceit. The courts it has been said, "will not ignore the corporate entity in order to further the perpetration of a fraud." (18 C. J. S. 381.)

The corporate theory aside, and granting for the nonce that Jose Araneta and Gregorio Araneta, Inc. were identical and that the acts of one were the acts of the other, the relation between the defendant and Jose Araneta did not fall within the purview of article 1459 of the Spanish Civil Code.[1]

Agency is defined in article 1709 in broad term, and we have not come across any commentary or decision dealing directly with the precise meaning- of agency as employed in article 1459. But in the opinion of Manresa (10 Manresa 4th ed. 100), agent in the sense there used in one who accepts another's representation to perform in his name certain acts of more or less transcendancy, while Scaevola (Vol. 23, p. 403) says that the agent's incapacity to buy his principal's property rests in the fact that the agent and the principal form one juridical person. In this connection Scaevola observes that the fear that greed might get the better of the sentiments of loyalty and disinterestedness which should animate an administrator or agent, is the reason underlying the various classes of incapacity enumerated in article 1459. And as American courts commenting on similar prohibition at common law put it, the law does not trust human nature to resist the temptations likely to arise out of antagonism between the interest of the seller and the buyer.

So the ban of paragraph 2 of article 1459 connotes the idea of trust and confidence; and so where the relationship does not involve considerations of good faith and integrity the prohibition should not and does not apply. To come under the prohibition, the agent must be in a fiduciary relation with his principal.

Tested by this standard, Jose Araneta was not an agent within the meaning of article 1459. By Exhibits 7 and 8 he was to be nothing more than a go between or middleman between the defendant and the purchaser, bringing them together to make the contract themselves. There was no confidence to be betrayed. Jose Araneta was not authorized to make a binding contract for the defendant. He was not to sell and he did not sell the defendant's property. He was to look for a buyer and the owner herself was to make, and did make, the sale. He was not to fix the price of the sale because the price had been already fixed in his commission. He was not to make the terms of payment because these, too, were clearly specified in his commission. In fine, Jose Araneta was left no power or discretion whatsoever, which he could abuse to his advantage and to the owner's prejudice.

Defendant's other ground for repudiating Exhibit A is that the law firm of Araneta & Araneta who handled the preparation of that deed and represented by Gregorio, Araneta, Inc., were her attorneys also. On this point the trial court's opinion is likewise against the defendant.

Since Attorney Ponce Enrile was the defendant's lawyer, in the suit against Vidal, it was not likely that she employed Atty. Salvador Araneta and J. Antonio Araneta as her attorneys in her dealings with Gregorio Araneta, Inc., knowing, as she did, their identity with the buyer. If she had needed legal counsels, in this transaction it seems certain that she would have availed herself of the services of Mr. Ponce Enrile who was already representing her in another case to pave the way for the sale.

The fact that Attys. Salvador Araneta and J. Antonio Araneta drew Exhibits 1 and A, undertook to write the letters to the tenants and the deeds of sale to the latter, and charged the defendant the corresponding fees for all this work, did not in themselves prove that they were the seller's attorneys. These letters and documents were wrapped up with the contemplated sale in which Gregorio Araneta, Inc. was interested, and could very well have been written by Attorneys Araneta and Araneta in furtherance of Gregorio Araneta's own interest. In collecting the fees from the defendant they did what any other buyer could have appropriately done since all such expenses normally were to be defrayed by the seller.

Granting that Attorneys Araneta and Araneta were attorneys for the defendant, yet they were not forbidden to buy the property in question. Attorneys are only prohibited from buying their client's property which is the subject of litigation. (Art. 1459, No. 5, Spanish Civil Code.) The questioned sale was effected before the subject thereof became involved in the present action. There was already at the time of the sale a litigation over this property between the defendant and Vidal, but Attys. Salvador Araneta and J. Antonio Araneta were not her attorneys in that case.

From the pronouncement that Exhibit A is valid, however, it does not follow that the defendant should be held liable for the loss of the certified checks attached to the complaint against Vidal or deposited with the court, or of the funds against which they had been issued. The matter of who should bear this loss does not depend upon the validity of the sale but on the extent and scope of the clause hereinbefore quoted as applied to the facts of the present case.

The law and the evidence on this branch of the case revealed these facts, of some of which passing mention has already been made.

The aforesaid checks, one for P143,150 and one for P12,932.61, were issued by Gregorio Araneta, Inc. and payable to Vidal, and were drawn against the Bank of the Philippines with which Gregorio Araneta, Inc. had a deposit in current account. They were certified by the President of the Bank and the certification stated that they were to be "void if not presented for payment at this office (Bank) within 90 days from date of acceptance."

Under banking laws and practice, by the certification "the funds represented by the check were transferred from the credit of the maker to that of the payee or holder, and, for all intents and purposes, the latter became the depositor of the drawee bank, with rights and duties of one in such relation". But the transfer of the corresponding funds from the credit of the depositor to that of the payee had to be co-extensive with the life of the checks, which in this case was 90 days. If the checks were not presented for payment within that period they became invalid and the funds were automatically restored to the credit of the drawer though not as a current deposit but as special depositor. This is the consensus of the evidence for both parties which does not materially differ on this proposition.

The checks were never collected and the account against which they were drawn was not used or claimed by Gregorio Araneta, Inc.; and since that account "was opened during the Japanese occupation and in Japanese currency," the checks "became obsolete as the account subject thereto is considered null and void in accordance with Executive Order No. 49 of the President of the Philippines," according to the Bank.

Whether the Bank of the Philippines could lawfully limit the negotiability of certified checks to a period less than the period provided by the Statute of Limitations does not seem material. The limitation imposed by the Bank as to time would adversely affect the payee, Jose Vidal, who is not trying to recover on the instruments but on the contrary rejected them from the outset, insisting that the payment was premature. As far as Vidal was concerned, it was of no importance whether the certification was or was not restricted. On the other hand, neither the plaintiff nor the defendant now insists that Vidal should present, or should have presented, the checks for collection. They in fact agree that the offer of those checks to Vidal did not, for technical reason, work to wipe out the mortgage.

But as to Gregorio Araneta and Paz Tuason, the conditions specified in the certification and the prevailing regulations of the Bank were the law of the case. Not only this, but they were aware of and abided by those regulations and practice, as instanced by the fact that the parties presented testimony to prove those regulations and practice. And that Gregorio Araneta, Inc. knew that Vidal had not cashed the checks within 90 days is not, and could not successfully be denied.

In these circumstances, the stipulation in Exhibit A that the defendant or seller "shall not hold the vendee responsible for any loss of these checks" was unconscionable, void and unenforceable in so far as the said stipulation would stretch the defendant's liability for these checks beyond 90 days. It was not in accord with law, equity or good conscience to hold a party responsible for something he or she had no access to and could not make use of but which was under the absolute control and disposition of the other party. To make Paz Tuason responsible for those checks after they expired and when they were absolutely useless would be like holding an obligor to answer for the loss or destruction of something which the obligee kept in its safe with no power given the obligor to protect it or interfere with the obligee's possession.

To the extent that the contract Exhibit A would hold the vendor responsible for those checks after they had lapsed, the said contract was without consideration. The checks having become obsolete, the benefit in exchange for which the defendant had consented to be responsible for them had vanished. The sole motivation on her part for the stipulation was the fact that by the checks the mortgage might or was to be released. After 90 days the defendant stood to gain absolutely nothing by them, which had become veritable scraps of paper, while the ownership of the deposit had reverted to the plaintiff which alone could withdraw and make use of it.

What the plaintiff could and should have done if the disputed stipulation was to be kept alive was to keep the funds accessible for the purpose of paying the mortgage, by writing new checks either to Vidal or to the defendant, as was done with the check for P30,000, or placing the deposit at the defendant's disposal. The check for P30,000 intended for the penalty previously had been issued in the name of Vidal and certified, too, but by mutual agreement it was changed to an ordinary check payable to Paz Tuason. Although that check was also deposited with the court and lost, its loss undoubtedly was imputable to the defendant's account, and she did not seem to disown her liability for it.

Let it be remembered that the idea of certifying the lost checks was all the plaintiff's. The plaintiff would not trust the defendant and studiously so arranged matters that she could not by any possibility put a finger on the money. For all practical intents and purposes the plaintiff dealt directly with the mortgagee and excluded the defendant from meddling in the manner of payment to Vidal. And let it also be kept in mind that Gregorio Araneta, Inc. was not a mere accommodator in writing these checks. It was as much interested in the cancellation of the mortgage as Paz Tuason.

Coming down to Vidal's cross-claim, Judge Rodas rendered no judgment other than declaring that the mortgage remained intact and subsisting. The amount to be paid Vidal was not named and the question whether interest and attorney's fees were due was not passed upon. The motion for reconsideration of the decision by Vidal's attorneys

praying that Paz Tuason be sentenced to pay the creditor P244,917.90 plus interest at the rate of 1 per cent monthly from September 10, 1948, and that the mortgaged property be ordered sold in case of default within 90 days, and another motion by the defendant seeking specification of the amount she had to pay the mortgagee, were summarily denied by Judge Potenciano Pecson, to whom the motions were submitted, Judge Rodas by that time having been appointed to the Court of Appeals.

All the facts and evidence on this subject are on the record, however, and we may just as well determine from these facts and evidence the amount to which the mortgage is entitled, instead of remanding the case for new trial, if only to avoid further delay in the disposition of this case.

It is obvious that Vidal had a right to a judgment for his credit and to foreclose the mortgage if the credit was not paid.

There is no dispute as to the amount of the principal and there is agreement that the loans made in 1943, in Japanese war notes, should be computed under the Bal-Jantyne conversion table. As has been said, where the parties do not see eye-to-eye was in regard to the mortgage's claim to attorney's fees and interest from October 1943, which has reached a considerable amount. It was contended that, having offered to pay Vidal her debt in that month, the defendant was relieved thereafter from paying such interest.

It is to be recalled that Paz Tuason deposited with the court three checks which were intended to cover the principal and interest up to October, 1943, plus the penalty provided in the instrument "Penalidad del Documento de Novacion de Esta Fecha." The mortgagor maintains that although these checks may not have constituted a valid payment for the purpose of discharging the debt, yet they did for the purpose of stopping the running of interest. The defendant draws attention to the following citations:

"An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if rejected, equivalent to the actual production and tender of the money, instrument or property." (Sec. 24, Rule 123.)

"It is not in accord with either the letter or the spirit of the law to impose upon the person effecting a redemption of property, in addition to 12 per cent interest per annum up to the time of the offer to redeem, a further payment of 6 per cent per annum from the date of the offer to redeem." (Fabros vs. Villa Agustin, 18 Phil., 336.)

"A tender by the debtor of the amount of his debt, if made in the proper manner, will suspend the running of interest on the debt from the time of such tender." (30 Am. Jur., 42.)

In the case of Fabros vs. Villa Agustin, supra, a parcel of land had been sold on execution to one Tabliga. Within the period for redemption Fabros, to whom the land had been mortgaged by the execution debtor, had offered to redeem the land from the execution creditor and purchaser at public auction. The trial court ruled that the redemptioner was not obliged to pay the stipulated interest of 12 per cent after he offered to redeem the property; nevertheless he was sentenced to pay 6 per cent interest from the date of the offer.

This court on appeal held that "there is no reason for this other (6 per cent) interest, which appears to be a penalty for delinquency while there was no delinquency." The court cited an earlier decision, Martinez vs. Campbell, 10 Phil., 626, where this doctrine was laid down: "When the right of redemption is exercised within the term fixed by section 465 of the Code of Civil Procedure, and an offer is made of the amount due for the repurchase of the property to which said right refers, it is neither reasonable nor just that the repurchaser should pay interest on the redemption money after the time when he offered to repurchase and tendered the money therefor."

In the light of these decisions and law, the next query is; Did the mortgagor have the right under the contract to

pay the mortgage on October 20, 1943? The answer to this question requires an inquiry into the provision of the "Penalidad del Documento de Novacion de Esta Fecha."

Vidal introduced oral evidence to the effect that he reserved unto himself in that agreement the right "to accept or refuse the total payment of the loan outstanding * * *, if at the time of such offer of payment he considered it advantageous to his interest." This was the gist of Vidal's testimony and that of Lucio M. Tiangco, one of Vidal's former attorneys who, as notary public, had authenticated the document. Vidal's above testimony was ordered stricken out as hearsay, for Vidal was blind and, according to him, only had his other lawyer read the document to him.

We are of the opinion that the court erred in excluding Vidal's statement. There is no reason to suspect that Vidal's attorney did not correctly read the paper to him. The reading was a contemporaneous incident of the writing and the circumstances under which the document was read precluded every possibility of design, premeditation, or fabrication.

Nevertheless, Vidal's testimony, like the testimony of Lucio M. Tiangco's, was based on recollection which, with the lapse of time, was far from infallible. By contrast the testimony of Attorneys Ponce Enrile, Salvador Araneta, and J. Antonio Araneta does not suffer from such weakness and is entitled to full faith and credit. The document was the subject of a close and concerted study on their part with the object of finding the rights and obligations of the mortgagee and the mortgagor in the premises and mapping out the course to be pursued. And the results of their study and deliberation were translated into concrete action and embodied in a letter which has been preserved. In line with the results of their study, action was instituted in court to compel acceptance by Vidal of the checks consigned with the complaint, and before the suit was commenced, and with the document before him, Atty. Ponce Enrile, in behalf of his client, wrote Vidal demanding that he accept the payment and execute a deed of cancellation of the mortgage. In his letter Atty. Ponce Enrile reminded Vidal that the recital in the "Penalidad del Documento de Novacion de Esta Fecha" was "to the effect that should the debtor wish to pay the debt before the expiration of the period therein stated (two years) such debtor would have to pay, in addition to interest due, the penalty of P30,000 this is in addition to the penalty clause of 10 per cent of the total amount due inserted in the document of mortgage of January 20, 1943."

Atty. Ponce Enrile's concept of the agreement, formed after mature and careful reading of it, jibes with the only possible reason for the insertion of the penalty provision. There was no reason for the penalty unless it was for defendant's paying her debt before the end of the agreed period. It was to Vidal's interest that the mortgage be not settled in the near future, first, because his money was earning good interest and was guaranteed by a solid security, and second, which was more important, he, in all probability, shared the common belief that Japanese war notes were headed for a crash and that four years thence, judging by the trends of the war, the hostilities would be over.

To say, as Vidal says, that the debtor could not pay the mortgage within four years and, at the same time, that there would be penalty if she paid after that period, would be a contradiction. Moreover, adequate remedy was provided for failure to pay on or after the expiration of the mortgage: increased rate of interest, foreclosure of the mortgage, and attorney's fees.

It is therefore to be concluded that the defendant's offer to pay Vidal in October, 1943, was in accordance with the parties contract and terminated the debtor's obligation to pay interest. The technical defects of the consignment had to do with the discharge of the mortgage, which is conceded on all sides to be still in force because of the defects. But the matter of the suspension of the running of interest on the loan stands on a different footing and is governed by different principles. These principles regard reality rather than technicality, substance rather than

form. Good faith of the offer or and ability to make good the offer should in simple justice excuse the debtor from paying interest after the offer was rejected. A debtor can not be considered delinquent who offered checks backed by sufficient deposit or ready to pay cash if the creditor chose that means of payment. Technical defects of the offer cannot be adduced to destroy its effects when the objection to accept the payment was based on entirely different grounds. If the creditor had told the debtor that he wanted cash or an ordinary check, which Vidal now seems to think Paz Tuason should have tendered, certainly Vidal's wishes would have been fulfilled, gladly.

The plain truth was that the mortgagee bent all his efforts to put off the payment, and thanks to the defects which he now, with obvious inconsistency, points out, the mortgage has not perished with the checks.

Falling within the reasons for the stoppage of interest are attorney's fees. In fact there is less merit in the claim for attorney's fees than in the claim for interest for the creditor it was who by his refusal brought upon himself this litigation, refusal which, as just shown, resulted greatly to his benefit.

Vidal, however, is entitled to the penalty, a point which the debtor seems to grant. The suspension of the running of the interest is premised on the thesis that the debt was considered paid as of the date the offer to pay the principal was made. It is precisely the mortgagor's contention that she was to pay said penalty if and when she paid the mortgage before the expiration of the four-year period provided in the mortgage contract. This penalty was designed to take the place of the interest which the creditor would be entitled to collect if the duration of the mortgage had not been cut short and from which interest the debtor has been relieved. "In obligations with a penalty clause the penalty shall substitute indemnity for damages and the payment of interest * * *." (Art. 1152, Civil Code of Spain.)

To summarize, the following are our findings and decision:

The contract of sale Exhibit A was valid and enforceable, but the loss of the checks for P143,150 and P12,932.61 and invalidation of the corresponding deposit is to be borne by the buyer, Gregorio Araneta, Inc. The value of these checks as well as the several payments made by Paz Tuason to Gregorio Araneta, Inc. shall be deducted from the sum of P190,000 which the buyer advanced to the seller on the execution of Exhibit 1.

The buyer shall be entitled to the rents on the land which was the subject of the sale, rents which may have been collected by Paz Tuason after the date of the sale.

Paz Tuason shall pay Jose Vidal the amount of the mortgage and. the stipulated interest up to October 20, 1943, plus the penalty of P30,000, provided that the loans obtained during the Japanese occupation shall be reduced according to the Ballantyne scale of payment, and provided that the date basis of the computation as to the penalty is the date of the filing of the suit against Vidal.

Paz Tuason shall pay the amount that shall have been found due under the contracts of mortgage within 90 days from the time the court's judgment upon the liquidation shall have become final, otherwise the property mortgaged shall be ordered sold as provided by law.

Vidal's mortgage is superior to the purchaser's right under Exhibit A, which is hereby declared subject to said mortgage. Should Gregorio Araneta, Inc. be forced to pay the mortgage, it will be subrogated to the right of the mortgagee.

This case will be remanded to the court of origin with instruction to hold a rehearing for the purpose of liquidation as herein provided. The court also shall hear and decide all other controversies relative to the liquidation which may have been overlooked in this decision, in a manner not inconsistent with the above findings and judgment.

The mortgagor is not entitled to suspension of payment under the debt moratorium law or orders. Among other

reasons: the bulk of the debt was a pre-war obligation and the moratorium as to such obligations has been abrogated unless the debtor has suffered war damages and has filed claim for them; there is no allegation or proof that she has. In the second place, the debtor herself caused her creditor to be brought into this case which resulted in the filing of the cross-claim to foreclose the mortgage. In the third place, prompt settlement of the mortgage is necessary to the settlement of the dispute and liquidation between Gregorio Araneta, Inc. and Paz Tuason. If for no other reason, Paz Tuason would do well to forego the benefits of the moratorium law.

There shall be no special judgment as to costs of either instance.

Paras, C. J., Pablo, Bengzon, Padilla, Bautista Angelo, and Labrador, JJ., concur.

[1] Art. 1459. The following persons cannot take by purchase, even at a public or judicial auction, either in person or through the mediation of another:

2. An agent, any property of which the management or sale may have been intrusted to him;

RESOLUTION

December 22, 1952

TUASON, J.:

The motions for reconsideration of the plaintiff, Gregorio Araneta, Inc., and the defendant, Paz Tuason de Paterno, are in large part devoted to the question, extensively discussed in the decision, of the validity of the contract of sale Exhibit A. The arguments are not new and at least were given due consideration in the deliberation and study of the case. We find no reason for disturbing our decision on this phase of the case.

The plaintiff-appellant's alternative proposition—to wit: "Should this Honorable Court declare that the purchase price was not paid and that plaintiff has to bear the loss due to the invalidation of the occupation currency, its loss should be limited to: (a) the purchase price of P139,083.32 less P47,825.70 which plaintiff paid and the defendant actually collected during the occupation, or the sum of P92,233.32, or at most, (b) the purchase price of the lot in the sum of P139,083.32,"—as well as the alleged over-payment by the defendant-appellee, may be taken up in the liquidation under the reservation in the judgment that "the court (below) shall hold a rehearing for the purpose of liquidation as herein provided" and "shall also, hear and decide all other controversies relative to the liquidation which may have been overlooked in this decision, in the manner not inconsistent with the above findings and judgment."

These payments and disbursements are matters of accounting which, not having been put directly in issue or given due attention at the trial and in the appealed decision, can better be threshed out in the proposed rehearing where each party will have an opportunity to put forward his views and reasons, with supporting evidence if necessary, on how the various items in question should be regarded and credited, in the light of our decision.

As to Jose Vidal's motion: There is nothing to add to or detract from what has been said in the decision relative to the interest on the loans and attorney's fees. There are no substantial features of the case that have not been weighed carefully in arriving at our conclusions. It is our considered opinion that the decision is in accord with law, reason and equity.

The vehement protest that this court should not modify the conclusion of the lower court on interest and attorney's fees is actually and entirely contrary to the cross-claimant's own suggestion in his brief. From page 20 of his brief,

we copy these passages:

"We submit that this Honorable Court is in a position now to render judgment in the foreclosure of mortgage suit as no further issue of fact need be acted upon by the trial court. Defendant Paz Tuason has admitted the amount of capital due. That is a fact. She only requests that interest be granted up to October 20, 1943, and that the moratorium law be applied. Whether this is possible or not is a legal question, which can be decided by this court. Unnecessary loss of time and expenses to the parties herein will be avoided by this Honorable Court by rendering judgment in the foreclosure of mortgage suit as follows:

* * * * *

In reality, the judgment did not adjudicate the fore-closure of the mortgage nor did it fix the amount due on the mortgage. The pronouncement that the mortgage was in full force and effect was a conclusion which the mortgagor did not and does not now question. There was therefore virtually no decision that could be executed.

Vidal himself moved in the Court of First Instance for amendment of the decision alleging, correctly, that "the court failed to act on the cross-claim of Jose Vidal dated April 22, 1947, where he demanded foreclosure of the mortgage * * *." That motion like Paz Tuason's motion to complete the judgment, was summarily denied.

In strict accordance with the procedure, the case should have been remanded to the court of origin for further proceedings in the form stated by Paz Tuason's counsel. Both the mortgagor and the mortgagee agree on this. We did not follow the above course believing it best, in the interest of the parties themselves and following Vidal's attorney's own suggestion, to decide the controversies between Vidal and Paz Tuason upon the records and the briefs already submitted.

The three motions for reconsideration are denied.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

RESOLUTION

January 26, 1953

TUASON, J.:

In the second motion for reconsideration by defendant-appellee, it is urged that the sale be resolved for failure of plaintiff-appellant to pay the entire purchase price of the property sold.

Rescission of the contract, it is true, was alternative prayer in the cross-complaint, but the trial court declared the sale void in accordance with the main contention of the defendant, and passed no judgment on the matter of rescission. For this reason, and because rescission was not pressed on appeal, we deemed unnecessary, if not uncalled for, any pronouncement touching this point.

In the second place, the nonpayment of a portion, albeit big portion, of the price was not, in our opinion, such failure as would justify rescission under Articles 1124 and 1505 et seq. of the Civil Code of Spain, which was still in force when this case was tried. "The general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties." (Song Fo & Co. vs. Hawaiian-Philippine Co., 47 Phil., 821, 827.)

In the present case, the vendee did not fail or refuse to pay by plan or design, granting there was failure or refusal to pay. As a matter of fact, the portion of the purchase price which is said not to have been satisfied until now was

actually received by checks by the vendor and deposited by her with the court in the suit against Vidal, in accordance with the understanding if not express agreement between vendor and vendee. The question of who should bear the loss of this amount, the checks having been destroyed and the funds against which they were drawn having become of no value, was one of the most bitterly debated issues, and in adjudging the vendee to be the party to shoulder the said loss and ordering the said vendee to pay the amount to the vendor, this Court's judgment was not, and was not intended to be, in the nature of an extension of time of payment. In contemplation of the Civil Code there was no default, except possibly in connection with the alleged overcharges by the vendee arising from honest mistakes of accounting, mistakes which, by our decision, are to be corrected in a new trial thereby ordered.

The second motion for reconsideration is therefore, denied.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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