

SUN BROTHERS APPLIANCES, INC., PLAINTIFF AND APPELLEE COMMA VS. DAMASO P PERIOD PEREZ, DEFENDANT AND APPELLANT.

G. R. No. L-17527. April 30, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an action brought by the plaintiff to recover from defendant the sum of P1,404.00, the price of one Admiral Air Conditioner, Slim Style, Model 100-23-1 H.P., Serial No. 2978828, delivered to the defendant by the plaintiff under a conditional sale agreement entered into by and between them on December 6, 1958, in the City of Manila, plus stipulated interest of 12% from January 6, 1959 until the same is fully paid, together with P200 as attorney's fees, and costs. Defendant answered that the air-conditioner in question was delivered to him and installed in the office of the defendant located at Gardiner street, Lucena, Quezon on December 14, 1959 but that said air-conditioner was totally destroyed by fire which occurred in the morning of December 28, 1958 at 2 o'clock. Defendant further claimed that the machine was destroyed by force majeure, not by the defendant's fault and/or negligence and, therefore, he is not liable under the conditional sale, Annex "A", which the parties, plaintiff and defendant, had executed.

At the trial of the case the parties entered into a stipulation of facts, the most important provisions of which are as follows:

- That defendant admits that on December 6, 1958, he entered into a Conditional Sale Agreement with plaintiff, copy of which contract is attached to the complaint as Annex "A";
- That pursuant to the terms and conditions provided in the said Conditional Sale Agreement, the plaintiff delivered to the defendant (1) Admiral Air Conditioner Slim Style, Model 100-23-1, HP, Serial No. 2978828 with the contract price of P1,678.00 and that said Air Conditioner was received by the defendant;
- That defendant made a down payment of P274.00 on December 6, 1958, pursuant to the terms and conditions of the Conditional "Sale Agreement; and Air Conditioner was installed by the plaintiff, thru its representative, at Lucena, Quezon;
- That said Air Conditioner was burned on December 27, 1958, on or about 2:00 o'clock in the morning, however, defendant will present evidence to show that the Air Conditioner subject of the complaint herein was burned where it was installed by the plaintiff;
- That defendant, after making down payment of P274.00 to the plaintiff, did not pay any of the monthly installments of P78.00 thereafter, leaving a balance of P1,404.00 in favor of the plaintiff;
- That after defendant presents evidence to prove that the Air Conditioner was burned where it was installed by the plaintiff, to the satisfaction of this Honorable Court; the parties agree to leave to this Honorable Court the resolution of the issue whether loss by fire extinguishes the obligation of the defendant to pay to the plaintiff the subsequent installments of the initial payment;"

The Court of First Instance before which the action was brought rendered judgment condemning the defendant to pay the plaintiff the amount demanded in the complaint, including interest and attorney's fees. The defendant has appealed the case directly to Us as involving only a question of law.

The conditional sale executed by the plaintiff and defendant contained the following stipulation:

"2. Title to said property shall vest in the Buyer only upon full payment of the entire account, as herein provided, and only upon complete performance of all the other conditions herein specified;

"3. The Buyer shall kteep said property in good condition and properly protected against the elements, at his/its address above-stated, and undertakes that if said property or any part thereof be lost, damaged, or destroyed for any cause, he shall suffer such loss, or repair such damage, it being distinctly understood and agreed that said property remains at Buyer's risk after delivery;"

The court below declared that, as the buyer would be liable in ease of loss for any Cause, such buyer assumed liability even in case of loss by fortuitous event; so it rendered judgment declaring defendant liable for the sum demanded together with interest and attorney's fees.

In this Court on appeal defendant-appellant argues that inasmuch as the title to the property sold shall vest in the buyer only upon full payment of the price, the loss of the air conditioner should be for the exclusive account of the vendor; that the phrase "for any cause" used in paragraph 2 of the agreement may not be interpreted to include a fortuitous event absolutely beyond the control of the appellant; and that although Article 1174 of the new Civil Code recognizes the exception on fortuitous event when the parties to a contract expressly so stipulate, the phrase "for any cause" used in the contract did not indicate any intention of the parties that the loss of the unit due to fortuitous event is to be included within the responsibility of the vendor,

In answer to the arguments, above set forth the appellee argues that the stipulation in the contract of sale whereby the buyer shall be liable for any loss, damage or destruction for any cause, is not contrary to law, morals or public policy and is specifically authorised to be stipulated upon between the parties by Article 1174 of the Civil Code; that the risk of loss was expressly stipulated to be undertaken by the buyer, even if the title to the property sold remained, also by stipulation, in the vendor; that the term "any cause" used in the agreement includes a fortuitous event, and an express stipulation making the vendee responsible in such case is valid.

We believe that the agreement making the buyer responsible for any loss whatever, fortuitous or otherwise, whatsoever even if the title to the property remains in the vendor, is neither contrary to law, nor to morals or public policy. We have held such stipulation to be legal in the case of *government vs. Amechazurra*, 10 Phil. 637 (Tolentino, Commentaries on the Civil Code, Vol. IV, p. 120), and declare it to be based on a sound public policy in conditional sales according to American decisions.

"The weight of authority supports the rule that where, goods are sold and delivered to the vendee under an agreement that the title is to remain in the vendor until payment, the loss or destruction of the property while in the possession of the vendee before payment, without his fault, does not relieve him from the obligation to pay the price, and he, therefore, suffers the loss. In accord with this rule are the provisions of the Uniform Sales Act and the Uniform Conditional Sales Act. There are several bases for this rule. First is the absolute and unconditional nature of the vendee's promise to pay for the goods. The promise, is nowise dependent upon the transfer of the absolute title. Second is the fact that the vendor has fully performed his contract and has nothing further to do except receive payment, and the vendee received what he bargained for when he obtained the right of possession and use of the goods and the right to acquire title upon making full payment of the price. A third basis advanced for the rule is the policy of providing, an incentive to care properly for the goods, they being exclusively under the control and dominion at the vendee." (47 Am. Jur., pp. 81-82)

We, therefore, agree with the trial court that the loss by fire or fortuitous event was expressly agreed in the contract to be borne by the buyer and this express agreement is not contrary to law but sanctioned by it as well as by the demands of sound public policy. The judgment of the court below is affirmed, with costs against defendant-appellant.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes. Dizon, Regala and Makalintal, JJ., concur.

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