

**PHILIPPINE AMUSEMENT ENTERPRISES, INC.,
PLAINTIFF-APPELLANT, VS. SOLEDAD NATIVIDAD AND MARIANO
NATIVIDAD, DEFENDANTS-APPELLEES.**

G.R. No. L-21876. September 29, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the decision of the Court of First Instance of Davao dated May 31, 1962, rescinding, in favor of the defendants, the lease agreement entered into by the plaintiff Philippine Enterprises, Inc. and the defendant Soledad Natividad relative to an automatic phonograph, ordering the latter to restore the phonograph to the former, denying the plaintiff's claim for liquidated and exemplary damages, attorney's fees and costs of suit, and dismissing the defendants' counterclaim. The plaintiff took the appeal to the Court of Appeals which, however, certified it to this Court because the questions in-volved are of law.

On January 6, 1961 the plaintiff, a domestic corpo-ration with main office in Quezon City and a branch office in Davao City, entered into a contract with the defendant Soledad Natividad, owner of the Irene's Refreshment Parlor in Davao City, whereby the former leased to the latter an automatic phonograph (Seeburg Selectomatic 100-R), more popularly known as "jukebox". The pertinent provisions of the contract are as follows:

"2. The OPERATOR[1] agrees to supply and re-place parts that may have been damaged as a re-sult of ordinary wear and tear without any cost to the PROPRIETOR;[2]

* * *

"5. The PROPRIETOR shall pay to the OPERATOR, by way of rental for the use of the aforesaid auto-matic phonograph, an amount equal to 75% of the Gross Receipts for the period of one week, but in no case shall the amount be less than P50.00 a week;

* * *

"9. The PROPRIETOR agrees that during the term of this agreement, the OPERATOR shall have the exclusive right to maintain an automatic phonograph in the premises, and the PROPRIETOR shall not permit anyone to install or maintain any phonograph or any other devices for the reproduction or the trans-mission of music in any part of the premises;

* * *

"11. It is mutually agreed that the duration of this agreement shall be for the period of three (3) years from the date hereof and shall renew itself au-tomatically for a like period under the same terms and conditions, unless either of the parties hereto gives to the other written notice of his intention to cancel this agreement by registered mail within thirty (30) days before the expiration of this ag-reement or any renewal thereof.

"12. In the event that the PROPRIETOR shall fail to comply with any of the terms and conditions of this contract, the OPERATOR, at any time during the existence of the agreement, shall be entitled as a matter of

right to immediately reposses, and the PROPRIETOR binds himself to voluntarily surrender the said phonograph; and hereby expressly grants permission to representatives of the OPERATOR any time for such purposes thereby waiving any action for trespass or damages.

* * *

"15. In the event of a breach of this agreement by the PROPRIETOR, the parties hereto agree that the OPERATOR shall be entitled to recover as liquidated damages and not as a penalty or forfeiture, a sum equal to P50.00 per week for each week remaining of the unexpired term of this agreement; AND IN THE EVENT OF JUDICIAL PROCEEDINGS TO ENFORCE ANY OF THE PROVISIONS OF THIS CONTRACT, the OPERATOR shall be entitled to attorney's fees of not less than P200.00, costs of the action, premiums for bonds, and other expenses and damages which OPERATOR may suffer or incur by reason thereof, as well as to the immediate issuance of preliminary writ of mandatory injunction."

On July 17, 1961 Mariano Natividad, husband of the defendant Soledad Natividad, wrote the following letter to the plaintiff's branch office in Davao City:

"For two (2) weeks ago, I had advice your representative here in Davao to get back your jukebox, but until today said representative did not mind us.

"So upon receipt of this letter, you are hereby again advised to get the said Jukebox and failure on your part to get it, we shall not be responsible any-more for the said Jukebox."

On July 27, 1961 Mariano Natividad wrote another letter to the plaintiff, this time addressed to its main office in Quezon City, informing it of his letter of July 17 and of the reasons for requesting the return of the jukebox to the company. This letter reads as follows:

"Please may you hear our revelations or relations prior to the advise we had made to your company regarding our slight difference from your agent, stationed here in Davao City.

"1. We requested your agent that the said Jukebox should be inspected once in a while there are times when them said Jukebox stock up and the coins which will be dropped will just be confiscated due to the selected record which will not give our selected music.

"2. About a year ago, we asked your agent here in Davao City if we could buy your Jukebox. He replied, 'yes' and he will inform the Manila office. From that time, we made always an inquiry if said matter was already referred to. But we were surprised why until last May we did not hear any word from your agent. So we decided to order one from the United States.

"3. On July 3rd, we advised personally your agent that the said Jukebox should be taken from our establishment. He answered us that he will report the matter to your Central Office. From July 3rd until July 16th, we had not met your agent. On the following day, July 17th, we met your agent because he accounted the income of the said Jukebox and we again told him that the Jukebox should be taken. He replied that he could not act because there is no letter from us for the Manila office advising the return of the said Jukebox. So we made a discussion why he did not tell us if our letter was necessary; so we wrote a letter on July 17th. At that time when he received our letter, he requested for an extension of one (1) week for he would forward our letter to Manila. But according to my wife, your agent told her that he forwarded our letter last July 22nd. On July 24th, we finally decided to return the said Jukebox and even have ready laborers to help us load the Jukebox on your pick-up. Your agent, Mr. Gonzales, remarked angrily that he would not accept the said Jukebox but will just deposit it in our establishment until the Manila office will act on it. According to him, your agent, Mr. Gonzales, we could not remove the said Jukebox from the place because there was a contract. Later on, Mr. Gonzales calmly requested us again to have an additional extension of one (1) more week. In this situation we were very embarrassed because there were many customers and other persons present during our

discussions. Right on that day, we transferred your Jukebox inside our airconditioned room without any business because Mr. Gonzales told us that the said Jukebox should be deposited only in our establishment. Your agent Mr. Gonzales, is a good agent on the other world but not in this world where we are living. Begin-ning July 24th until the time you will get the Jukebox, we are going to collect a monthly rental of Fifty Pesos (P50.00) for the space occupying the Jukebox."

In its reply of August 4, 1961 the plaintiff stated that -

"the stocking up of coins is quite normal in any coin-operated phonograph, as well as failure to get the desired selection. It has been the po-licy of our company, however, to give top priori-ty to the complaints of our customers. It is not clear from your letter whether our Branch Manage for Davao City has been remiss in his duties. We are willing to give the benefit of the doubt by concluding that he might have failed to respond to your calls in time and I assure you that im-mediate instructions will be issued from this office directing him to give personal attention to any service that you might wish in connection with the said Juice box."

It as well denied knowledge of the defendants' desire to buy a jukebox and deplored the fact that the defendants ordered one from the United States without first sending the request to buy directly to it since the plaintiff was anyway willing to sell a jukebox to any interested person. Calling atten-tion to paragraph 9 of the lease contract which gave it the exclusive right to maintain an automatic phonograph in the defendants, premises, the plaintiff asked the defendants to re-install its jukebox and remove the other one which the defendants had installed in their premises.

On August 4 and October 16, 1961, the plaintiff, through counsel, wrote the defendant spouses, demanding anew compliance with the lease contract and the payment of damages, and warning them that it would file the corresponding action in court if they did not comply with its demand. As the defendants re-fused the demand, the plaintiff brought action in the Court of First Instance of Davao on November 21, 1961, praying for the return to it of the automatic phonograph, subject of the contract of lease, and the payment of P5,850 as liquidated damages, P5,000 as exemplary damages, P500 as attorney's fees and P500 as expenses of litigation.

Upon the parties' stipulation of facts, their pleadings and the documentary evidence submitted by them as annexes to the stipulation of facts and pleadings, the lower court ren-dered the decision hereinbefore adverted to.

The plaintiff imputes four errors to the lower court, the vital one being the court's holding that the facts fully warrant a rescission of the contract of lease in favor of the defendants by reason of the plaintiff's failure to perform its obligation to render the automatic phonograph suitable for the purpose for which it was intended.

It is our view that the decision of the lower court should be reversed on three grounds.

First. The power to rescind obligations is implied in reciprocal ones in case one of the obligors should not comply with what is incumbent upon him. So the Civil Code provides.[3] But it is equally settled that, in the absence of a stipulation to the contrary, this power must be invoked judicially; it cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation.[4] Hence, as there is nothing in the contract of lease empowering the defendants to rescind it without resort to the courts, the defendants' action in unilaterally terminating the contract is unjustified. As this Court said in *Escueta v. Pando*: [5]

"The defendant could not, by himself alone and without judicial intervention, resolve or annul the agreement. Under article 1124 [now art. 1191] of the Civil Code, the right to resolve reciprocal obligations, in case one of the obligors shall fail to comply with that which is incumbent upon him, is deemed to be implied. But that right must be invoked judicially; for the same article also provides: "The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation."

Second. Rescission will be ordered only where the breach complained of is substantial as to defeat the object of

the parties in entering into the agreement. It will not be granted where the breach is slight or casual.[6] The defendants asked the plaintiff to retrieve its phonograph, claiming that there were times when the coins dropped into the slot would get stuck, resulting in its failure to play the desired music. But apart from this bare statement, there is nothing in the evidence which shows the frequency with which the jukebox failed to function properly. The expression "there are times" connotes occasional failure of the phonograph to operate, not frequent enough to render it unsuitable and unserviceable. As a matter of fact, there is not even a claim that, as a result of unsatisfactory performance thereof, the income therefrom dropped to such a level that the defendants could not even pay the plaintiff its guaranteed share of P50 a week. On the contrary, the evidence (Stipulation of Facts, Annexes J, K, L, M, N, and O) shows that, during the period complained of, the operation of the jukebox was quite profitable to both parties.[7]

Third. We believe that the defendants actually bought a jukebox only in 1961 after they had signed the lease contract question, although they might have expressed a desire to buy one the year before, for otherwise they would not have entered into a three-year lease. But certainly their decision to buy a jukebox and operate it themselves was made long before they ever complained in July, 1961 of any defect in the rented juke-box. To be sure, it is not shown when the rented phonograph supposedly developed trouble; presumably it was early in July, 1961, since the defendants' first letter of complaint was written on July 17. But if, as defendants admit, they began operating their own jukebox "sometime in July, 1961" (presumably on July 24, 1961 when they removed the rented jukebox from where it was installed), then the defendants' pretense that they decided to buy their own jukebox only after the rented one had failed to function properly becomes highly improbable. The jukebox which they ordered from the United States could not have arrived in so short a time as to enable them to operate it on July 24.

We are rather inclined to believe that the decision to buy a jukebox was made because the defendants found it more profitable to operate one themselves. Their letter of July 17, 1961, in which they demanded the removal of the rented jukebox from their premises, with the warning that they would not be "responsible anymore" for it, and their other letter of July 27 of like tenor, betray the haste with which they wanted to get out of their contractual obligations to the plaintiff. We note that they did not even ask the plaintiff to service the rented juke-box; they asked the plaintiff to remove the jukebox or they would charge rental for the use of the space occupied by it. The conviction cannot be avoided that the jukebox which the defendants had ordered from the United States had arrived and the latter thereafter conjured up a reason for operating it without being charged with violation of the lease contract. The defendants' pretenses cannot excuse their culpable violation of the lease contract; their conduct fully justifies the award of liquidated damages to the plaintiff.

ACCORDINGLY, the judgment a quo is reversed, and the contract of lease between the plaintiff and the defendant Soledad Natividad is hereby rescinded in favor of the plaintiff. The defendants are ordered to return to the plaintiff the automatic phonograph subject of the contract, and to pay the plaintiff liquidated damages in the total amount of P5,850, plus 6 per cent interest from the date of the filing of the complaint until the amount shall have been fully paid, and attorney's fees in the amount of P200. Costs against the defendants.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Bengzon, J., did not take part.

[1] Philippine Amusement Enterprises, Inc.

[2] Soledad Natividad.

[3] Civ. Code art. 1191; *Abaya v. Standard-Vacuum Oil Co.*, G.R.L-9511, Aug. 30, 1957; *Hodges v. Granada*, 59

Phil. 429 (1934).

[4] Judicial permission to rescind an obligation is not necessary if there is a special provision in the contract granting the power of cancellation to a party. E.g., *Froilan v. Pan Oriental Shipping Co.*, G.R.L-118971, Oct. 31 1964; *De la Rama Steamship Co. v. Tan*, G.R.L-8784, May 21, 1956, citing *Hanlon v. Hausermann*, 40 Phil. 796 (1920); *Taylor v. Uy Tieng Piao*, 43 Phil. 870 (1922).

[5] 76 Phil. 256 (1946).

[6] See, e.g., *Song Fo & Co. v. Hawaiian-Philippine Co.*, 47 Phil. 821 (1925).

[7] See record on Appeal pp. 22, 57-61.

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