

CEBU PORTLAND CEMENT COMPANY, PLAINTIFF AND APPELLEE, VS. TERESO DUMON, DEFENDANT AND APPELLANT.

G.R. No. L-26738. November 29, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Direct appeal taken to this Court by the defendant from the decision, dated November 6, 1965, rendered by the Court of First Instance of Manila against him in its Civil Case No. 50484 (Cebu Portland Cement Company, plaintiff, vs. Tereso Dumon, defendant), and from the subsequent order, dated August 9, 1966, denying his motion for reconsideration.

The background facts may be gleaned from the pertinent portions of the decision appealed from, as follows:

"This is an action for a sum of money filed by the Cebu Portland Cement Company (CEPOC), plaintiff, against Tereso Dumon, defendant, praying:

"Wherefore, it is respectfully prayed that judgment be rendered ordering the defendant:

'1. To pay plaintiff the sum of P274,725.00 with legal interest thereon from March 8, 1962 when the first demand of payment was made until said amount is fully paid;

'2. To pay the plaintiff the sum of equivalent to 25% of the amount due and demandable as liquidated damages and P5,000.00 as attorney's fees and necessary expenses of litigation;

'3. To pay the cost of this suit; and

'4. Such other relief as this Honorable Court may deem just and equitable in the premises.'

"The case was submitted for decision on the following Stipulation of Facts:

Come now the parties, by their undersigned counsel, and unto this Honorable Court respectfully submit this Stipulation of Facts:

'1. They stipulate that the plaintiff is a government-owned and controlled corporation engaged in the manufacture of cement, while the defendant is a businessman of good standing in the country as well as member of the House of Representatives, Congress of the Philippines, since 1962.

'2. They stipulate that the plaintiff has the power to purchase and acquire gypsum claims for the mining of gypsum necessary for the manufacture of cement and, for the purpose, to conduct exploration and mining operations on said claims.

'3. They stipulate that the defendant owns the claims over certain gypsum deposits in the Bicol region, and on November 23, 1960, he offered to plaintiff the sale of said claims because of his knowledge of plaintiff's "facilities, equipment, technical know-how and finances" to undertake exploration and mining operations; copy of the letter containing his offer being hereto attached as Annex "A" and made an integral part hereof; that to said offer plaintiff made a reply attached hereto as Annex "A-1" on November 28, 1960 inquiring about the

extent of the gypsum deposits in defendant's claims and in answer to said inquiry defendant made his written report dated December 5, 1960 attached hereto as Annex "A-2"; that thereafter the plaintiff proposed to conduct exploration work on the defendant's gypsum claims with defendant sharing one half of the exploration expenses, the said proposal being contained in the letter of the plaintiff, Annex "A-3", but the defendant rejected the same by his letter dated September 18, 1961 attached hereto as Annex "A-4"; that on October 18, 1961, defendant accepted the plaintiff's proposal to purchase the gypsum deposits after its exploration work yields good results, provided the plaintiff gave him 150,000 bags of cement as consideration for the option in addition to the exploration work, as shown by his letter attached hereto as Annex "A-5"; that plaintiff then agreed to conduct exploration work on the claims and to pay the defendant 100,000 bags of cement as consideration for the option to purchase the said claims, as shown in plaintiff's letter dated October 19, 1961 attached hereto as Annex "A-6"; that to said counteroffer, defendant agreed in his letter dated October 20, 1961 attached hereto as Annex "A-7"; that thereafter the agreement was approved by the plaintiff's auditor, its Board of Directors, the Office of the Economic Coordination, the government corporate counsel and, finally, by the General Auditing Office, as shown by the written indorsements attached hereto as Annexes "A-8" to "A-11" inclusive; and that on November 8, 1961, the plaintiff prepared the document embodying the agreement of "option to purchase", attached to this stipulation as Annex "B".

'4. That the only consideration received by defendant from plaintiff for the option granted by him is the 99,900 bags of cement sued for in the complaint in this case.

'5. That while the parties agreed that the plaintiff could elect not to purchase the defendant's gypsum claims, it was likewise agreed that such desistance could be exercised by plaintiff only after it had conducted the stipulated exploration work on said claims which was part of the consideration for the option.

'6. That on November 8, 1961, the defendant assigned to the plaintiff all his rights, titles and interests in the gypsum claims in order that plaintiff could conduct the stipulated exploration work and with the plaintiff's assurance that it would really purchase the claims, and the plaintiff bound itself to perform all the terms and conditions of the mining lease of the defendant over said claims, including the obligation to conduct the necessary exploration and mining operation on the same, as shown by the deed of assignment, Exhibit "B-1".

'7. That the plaintiff did not conduct any exploration work on the gypsum claims and has not up to the present conducted such exploration.

'8. That on March 8, 1962, the plaintiff's new board of directors under the chairmanship of one, Mr. Fulvio Pelaez, decided not to purchase the gypsum claims, before and without undertaking the stipulated exploration work on the same; thereafter plaintiff demanded from defendant the payment of 100,000 bags of cement at P2.75 per bag or a total amount of P275,000.00, as shown by its letter attached hereto as Exhibit "C", to which demand defendant objected as shown by his letter, attached hereto as Exhibit "C-1".

'9. That the parties reserve the right to file their respective memoranda in support of their respective sides within thirty (30) days from date hereof, after which the case will be deemed submitted for decision.

'Respectfully submitted.

'Manila, December 23, 1964.'[1]

Without benefit of memorandum from either party, none of them having filed any, contrary to what is adverted to in their above-quoted agreement, the court below rendered judgment with the following rationale and dispositive portions:

"The only question at issue in this case is whether or not the plaintiff is entitled to recover the value of 99,900 bags of cement at the rate of P2.75 per bag or the total amount of P274,725.00 from the defendant. Resolution of this question will depend upon the terms and conditions of the option to purchase (Annex B to the stipulation), paragraph 2 of which provides:

'That in case the CEPOC, after the exploration, decides not to continue the negotiation to purchase the property, the SELLER shall refund the amount of equivalent to the cost of the 100,000 bags of cement shall be considered as part of the consideration;'

"It is clearly stated in the stipulation that no exploration has been made by the plaintiff up to the present (par. 7). The explanations given by the board of directors of CEPOC at its meetings on March 8, 1962, were the following: '1. That the present precarious cash position of the Company renders it incapable of undertaking any new project; and 2. That the impending sale of our Naga Cement Plant may eventually result in the dissolution of this Company.' (Annex C, stipulation).

"The Court is surprised that 99,900 bags of cement valued at P274,725.00 were given by the plaintiff to defendant in consideration of the option, which under ordinary conditions should be only a nominal amount but which in this case is more than one-half of the offered price of P500,000.00 (Annex A to the stipulation), indicating gross irregularity in the contract.

"Considering that pursuant to the option to purchase (Annex B to the stipulation) a deed of assignment of the mining leasehold rights on parcels of mineral land with written mining lease contracts was made by the defendant in favor of the plaintiff as required in said option to purchase, and taking into consideration that the plaintiff has decided not to continue the negotiations for the purchase of the gypsum claims of the defendant in a communication addressed to the defendant due to the reasons stated therein (Annex C to the stipulation), it is but proper that the deed of assignment be cancelled if it has not yet been done. Justice and equity also demand that the amount of P274,725.00, value of the 99,900 bags of cement delivered by the plaintiff to the defendant, be returned to the plaintiff. However, taking into account that the defendant has suffered damage and prejudice and unrealized profit because plaintiff did not make the required exploration and proceed with the purchase, the court feels that said defendant is entitled to a reduction of 5% or P13,736.25 from the amount of P274,725.00.

"Wherefore, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the defendant to pay the plaintiff the sum of P260,988.75 (P274,725.00 minus P13,736.25) with legal interest from the date this judgment becomes final until fully paid.

"The plaintiff is ordered to cancel the deed of assignment and release the leasehold rights of the defendant on parcels of mineral land belonging to the defendant.

"Without attorney's fees and without special pronouncement as to costs."

On December 17, 1965, the defendant filed a Motion for Reconsideration and/or New Trial, assailing the above-quoted judgment as contrary to law, the evidence and the contractual stipulations of the parties. This was followed by a Supplemental Motion for Reconsideration and/or New Trial, dated March 10, 1966, reiterating his aforementioned previous motion, with the additional prayer – for the reasons therein stated that new trial be granted for the purpose of adducing the testimony (the substance of which is set forth in a sworn statement attached to the supplemental motion) of one Nestor G. Legaspi, a former member of the Board of Directors of CEPOC and former Chairman of the said company's Committee on New Ventures, as new and additional evidence for the defendant. In a Manifestation filed on April 27, 1966, counsel for the plaintiff declared that as defendant prays for new trial for the purpose of adducing the testimony of Nestor G. Legaspi, as per his attached sworn affidavit, as new and additional evidence, "plaintiff interposes no objection to the admission thereof for whatever it may be worth" and "submits that even if the sworn statement of Nestor G. Legaspi were so considered as new and material evidence for the defendant, the same would not alter or materially change the decision already rendered", in answer to which manifestation the defendant, having been required by the trial court to do so, also filed a written Manifestation stating "that if the sworn affidavit of Nestor G. Legaspi, attached to the

motion for reconsideration and/or new trial, is admitted by the Honorable Court, without objection of the plaintiff, in lieu of his (Legaspi's) testimony in open court, then defendant will not anymore ask for a new trial in order that Mr. Legaspi may testify and defendant therefore submits the said affidavit in support of the motion for reconsideration"; and upon the foregoing manifestations of the parties, the court below entered an order, dated June 29, 1966, admitting the sworn statement of Nestor G. Legaspi referred to "as new and additional evidence" for the defendant. With the prayer of defendant for new trial thus resolved, the trial court thereafter denied the pending motion for reconsideration of the decision in an order it issued on August 9, 1966. Hence, the present appeal by the defendant (now appellant) with the following assignment of errors:

"I. The lower court erred in ordering defendant to return to plaintiff the cost of the cement paid – the obligation to refund being conditional and the non-performance or non-fulfillment of said condition being found – and thus it erred in failing to apply the provision of Article 1370 of the Civil Code that 'If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control', and of Article 1181 that 'In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition'.

"II. The lower court erred in ordering defendant to refund the cost of the cement paid without the plaintiff undertaking exploration work – for then the contract of option to purchase would have no consideration and/or cause of the contract – and therefore in contravention of the provisions, among others, of Article 1350, Article 1352 in relation to Article 1373, Article 1354, Articles 1355 and 1470, all of the Civil Code.

"III. The lower court erred in rendering judgment in favor of plaintiff ordering defendant to pay in cash the value of the cement paid – when an alternative obligation was given to defendant and the terms of their contract and/or the law is again clear and free of doubt – and so erred in failing to apply Article 1370 first paragraph (supra) and Article 1200 of the Civil Code which provides that 'The right of choice belongs to the debtor' in alternative obligations.

"IV. The lower court erred in not finding that the grounds invoked by plaintiff in breaching its obligation to conduct exploration work are not valid and lawful.

"V. The lower court erred in applying its concepts of 'justice and equity' when there are laws applicable and specially when the law is not in consonance with the judge's conception of justice and equity.

"VI. The lower court erred in rendering judgment that did not conform to both the pleadings and the proof and was not in accord with the theory of the action upon which the pleadings were framed and the case was tried.

"VII. The lower court erred in rescinding a contract for adequacy rather than inadequacy of consideration and in misunderstanding the 'considerations' involved in option to mining concessions.

"VIII. The lower court erred in holding defendant liable for interest and attorneys fees and also erred in ignoring or denying his counter-claims against plaintiff for the balance of the cement consideration for the option and for attorney's fees."[2]

The contract of "Option to Purchase" in question reads as follows:

"WHEREAS, the CEPOC is engaged in the manufacture and trade of APO Portland Cement;

"WHEREAS, the SELLER has proposed to sell his gypsum claims located in Sitios Imacote, Cagmanaba and Sitios Tapil and Dawagan, Nagas, Oas, Albay, and the CEPOC has agreed to consider the same subject to the terms and conditions herein provided:

"NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, promises and forbearances to be kept and performed, the parties have agreed as follows:

"1. That the CEPOC shall deliver to the SELLER ONE HUNDRED THOUSAND (100,000) bags of APO cement, subject to availability of stock, at Tinaan, Naga, Cebu at P2.75 per bag and in consideration thereof, the CEPOC is given the option for a period of six (6) months extendible for another period of six (6) months at the option of CEPOC, to purchase the mineral claims (gypsum) of the SELLER located at Sitios Imacote, Cagmanaba and Sitios Tapil and Dagawan, Oas, Albay;

"2. That in case the CEPOC, after the exploration, decides not to continue the negotiation to purchase the property, the SELLER shall refund the amount equivalent to the cost of the 100,000 bags of cement computed at the current price. In case the CEPOC decides to continue the purchase the 100,000 bags of cement shall be considered as part of the condition;

"3. That in the event the CEPOC decides not to purchase SELLER'S gypsum claims and SELLER decides to undertake the mining operations, the SELLER shall supply the CEPOC on the first priority basis, gypsum equivalent to the amount of the cement, the prices of both to be computed at the current prices at the time of the signing of this contract;

"4. That to guarantee the faithful performance of the terms and conditions specified under this agreement and/or to guarantee the payment of the 100,000 bags of cement, the SELLER shall cause to be conveyed and/or transferred by way of first mortgage, or other forms of conveyance and/or transfer, in favor of the CEPOC all his mineral claims at Sitios Imacote, Cagmanaba and Sitios Tapil and Dawagan, Naga, Oas, Albay;

"5. That the SELLER shall surrender to the CEPOC the following documents:

- a) Forty-four (44) Declaration of locations
- b) Five (5) Mining Lease Contracts in 2 sheets
- c) Eight (8) Application for Lease of Mining Claims
- d) Investigation Report of Bureau of Mines by Supervising Geologist Amable Cruz
- e) One (1) copy of quitclaim
- f) Deed of Absolute Sale
- g) One (1) Photostatic copy of its assay
- h) Two (2) Sketch Plans

"6. That should court action become necessary to enforce collection of the cost of 100,000 bags of cement, the SELLER shall be liable to pay the CEPOC liquidated damages in the amount of P5,000.00, 25% attorney's fees and costs of the suit."

Under the first assignment of error, appellant claims that by the terms of the contract above-quoted, which, according to him are clear and need no interpretation, his obligation thereunder to refund the amount equivalent to the cost of the 100,000 bags of Apo cement delivered to him by CEPOC, would arise only after the said company shall have conducted the stipulated exploration on his mining claims, and that, therefore, upon the fact found by the lower court and not controverted by appellee, "that no exploration has been made by the plaintiff (appellee) up to the present", it should have ruled that said appellee corporation cannot ask for refund. And under the second assignment of error, it is his contention that he could not be compelled to return the price of the 100,000 bags of cement he had received from appellee, because the same was paid to him in consideration of the six-months option he gave said appellee and not as part of the purchase price of his gypsum. In other words, the contention of appellant is that whereas the appellee paid him with 100,000 bags of cement for the option he gave the corporation, he in turn agreed to return either the cement or its price or the equivalent thereof in gypsum only if

the appellee would undertake in fact the exploration of the mine, and inasmuch as no such exploration has been done or even began by appellee, no obligation has arisen on his part to return or pay for the cement in any way.

We find this pose of appellant to be well taken. The words of the contract are clear. It is therein provided unequivocally that "Cepoc shall deliver . . . (the) cement, and in consideration thereof, the Cepoc is given the option . . . to purchase the mineral claims of" appellant. That appellant agreed to return said cement in the event that after undertaking the stipulated exploration work in appellant's mine Cepoc should decide not to proceed with the purchase contemplated in the option does not alter the character of the delivery of the cement to appellant as the consideration for no more than said option.

His Honor, the trial judge, expressed surprise that "99,900 bags of cement valued at P274,725.00 were given by the plaintiff to defendant in consideration of the option, which under ordinary conditions should be only a nominal amount but which in this case is more than one-half of the offered price of P500,000 (Annex A to the stipulation)" and dubbed the contract as tainted with a "gross irregularity." We do not agree. To start with, if indeed the delivery by Cepoc of 99,900 bags of cement to appellant "in consideration of the option" he gave to the corporation to purchase his gypsum rights appeared to His Honor as a "surprising . . . irregularity", what should have been done was to ask the parties to explain it, and not to presume that something was wrong with it without more basis than His Honor's personal appraisal of the situation, arrived at without the benefit of any evidence presented by the parties on that point. We think it is not inconceivable that the parties might have had their own just reasons for their covenant.

What is worse, appellee never complained about any irregularity or unfairness in the terms of the agreement. The cause of action alleged in its complaint is simply that Cepoc had "decided not to exercise the option to purchase the aforesaid gypsum claims and instead (had) chose(n) to demand payment from the defendant of the purchase price of the aforesaid quantity of cement". This, after alleging in Paragraph 4 of the same complaint that "for and in consideration of the aforesaid 100,000 bags of APO cement, plaintiff (Cepoc) was given the option to purchase defendants gypsum claims." Clearly, the trial court's solicitous concern about the propriety of the terms agreed by the parties is plainly officious and uncalled for. There is neither allegation nor evidence made or presented by appellee indicating that it had been deceived or otherwise taken advantage of by appellant. His Honor's dictum that "justice and equity also demand that the amount of P274,725.00, value of the 99,900 bags of cement delivered by the plaintiff to the defendant, be returned to the plaintiff" relates to no issue joined by the parties. In the premises, it is the ruling of the trial court, rather than the contract in question, that "is not merely irregular, but extrajudicial and invalid, for 'it adjudicates matters beyond the issues and upon which the parties were not heard'. . ." (Salvante vs. Cruz, 88 Phil. 236, at p. 244). "It is a well-known principle in procedure that courts have no jurisdiction or power to decide a question not in issue" (Lim Toco vs. Go Fay, 80 Phil. 166).

If the express terms of the contract in question are not clear enough as to the point in dispute, an examination of the circumstances which brought it into being should dispel any misgiving as to the intent of the parties regarding what the delivery of the 100,000 bags of cement to appellant was for and as to when the obligation to return the same would arise. These may be readily gathered from the annexes which form part of the stipulation of the parties and from the affidavit of Nestor G. Legazpi, the member of the board of directors of appellee corporation who was the Chairman of the Committee on New Projects and who appeared to be the official acting on behalf of the corporation in the transaction with appellant here in dispute. This affidavit was submitted together with appellant's motion for new trial, and although this motion was denied by the trial court, the affidavit was admitted as part of the evidence, without objection on the part of appellee, in lieu of the new trial, albeit His Honor found nothing in it that could, in his opinion, alter the result. Said affidavit reads thus:

"I, NESTOR G. LEGASPI, of legal age, lawyer and businessman, and residing at Cebu City, after having been

duly sworn, depose and state:

THAT I was a member of the Board of Directors of the Cebu Portland Cement Company (CEPOC) in the years 1960 and 1961, and also the Chairman of the said company's COMMITTEE ON NEW VENTURES until January, 1962.

THAT the Committee on New Ventures of the CEPOC was created in order to study and plan new ventures in which the CEPOC could invest in view of the sale or disposition of its cement factories and other assets in Bacnotan, Cebu, Romblon and other places, from which it had collectible accounts of almost P15-million for investment in new business.

THAT one of the business in which the CEPOC intended to engage then was the mining of gypsum, in view of the prevailing shortage of this mineral in the Philippines.

THAT in line with the above program, the Committee conducted a search for mineral deposits of commercial value and quantity in the country, with the help of research and prospecting facilities of the Bureau of Mines and CEPOC technical men.

THAT in our said search for gypsum, we came upon the gypsum deposits in Bicol region the claims over which are owned by Mr. Tereso Dumon, a businessman then who was later to become a Member of the Congress of the Philippines in 1962.

THAT long before November 11, 1960, we already knew that the gypsum deposits covered by Mr. Dumon's claims were the only known deposits of commercial quantity in the country, and they had been the subject of exploration work during the last war by the Japanese who had dug tunnels in the mines. The Bureau of Mines affirmed our findings.

"Being certain of the vast potential of the Dumon gypsum deposits, and anxious to acquire the same, we sounded out Mr. Dumon on the feasibility of his disposing of his mining claims in favor of CEPOC. At first, he was hesitant because he then had a contract with one Dr. Acebedo under which the claims were committed to the latter, and in fact a certain firm had expressed a desire to mine the gypsum deposits and to put up a factory in the Philippines for the mining of gypsum and the manufacture of gypsum boards, walling and roofing materials. Mr. Dumon assured us that as soon as Dr. Acebedo would release him from his contract, or fails to comply with the same, he would give CEPOC preference over the German offer. We then suggested to Mr. Dumon that he submit a proposal to our company for our acquisition of his gypsum claims and he offered the sale of his claims for a straight cash price of P500,000.00, as we did not, however, want to part with half a million pesos without first conducting exploration work, we asked Mr. Dumon to give us first an option to purchase instead of a definite contract of sale.

We succeeded in inducing Mr. Dumon to give us the option by assuring him that with our facilities, equipment, technical knowhow and finance, we were in a position to undertake the most extensive exploration and mining operations so that even if we did not purchase his claims after the exploration, he would still benefit from the exploration work conducted on his claims. To this, he agreed provided we gave him 150,000 bags of cement plus the exploration work.

In our negotiations, we assured Mr. Dumon that the CEPOC would undertake the exploration work on his claims, that we had the money to do it, and that we would not abandon the exploration work. We told him, however that in the remote event our exploration work did not justify our estimates of the deposits' potential, we would reserve our right to desist from making the purchase, and in this event he would pay for the 100,000 bags of cement we paid as consideration for the option to purchase. Mr. Dumon backed at this reservation we wanted, saying that if we failed to conduct any exploration work and still require the payment of the 100,000 bags of cement he would not be getting any benefit from the transaction, in which case he would be better off with Acebedo or the German offer. To prevent his backing out of the contract at a stage when we had already

almost closed the transaction, we assured Mr. Dumon that the exploration work would be a condition precedent to our desisting from the purchase and requiring him to pay for the 100,000 bags of cement either in cash or in gypsum should he take over the mining operations after we have conducted the exploration on his claims. With this agreement, we formalized the contract between the company and Mr. Dumon.

"THAT the CEPOC was completely prepared to undertake the work exploration on Mr. Dumon's mines; in fact, we had already made representations with the Bureau of Mines to conduct the most extensive exploration including Test Pitting and Diamond Drilling, when the administration of President Macapagal took over the reins of government in 1962 and replaced most of the members of the Board of Directors, including myself. Subsequently, I learned that the new general manager, Mr. Fulvio Pelaez, had cancelled the exploration work and desisted from the purchase of Mr. Dumon's claims, due to 'precarious cash position of the Company', which excuse is quite unfounded considering that the CEPOC had about P15-million coming from the sale of its cement and marble plants.

"IN WITNESS WHEREOF, I have signed this sworn statement this 10th day of March, 1966, at the City of Manila, Philippines.

(Sgd.) Nestor G. Legaspi
t/ NESTOR G. LEGASPI"

It is quite clear to us that the recitals in the above affidavit are fully supported by the tenor of the following communications between the parties:

Annex "A-3"

CEBU PORTLAND CEMENT COMPANY

September 15, 1961

Mr. Tereso Dumon
Manila Hotel Annex
Manila

S i r :

In connection with your offer to sell to this Company your gypsum claims in Oas, Albay, we wish to inform you that the Committee has decided to require you to share one-half of whatever expenses to be incurred in connection with the exploration work on your property.

If this meets with your approval, please notify us immediately.

Very truly yours,

(Sgd.) NESTOR G. LEGASPI

Chairman

Executive Committee

on New Projects

(CEPOC)

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Annex "A-4"

September 18, 1961

Cebu Portland Cement Company
Manila

Attention: Mr. Nestor G. Legaspi
Chairman
Executive Committee
on New Projects

S i r :

With reference to your letter of the 6th instant, I regret to inform you that I cannot accede to your proposition, because the price quoted in my basic communication is as is. If I share 50%, the amount needed to cover the other half would be insignificant such that I would prefer to do it alone and offer it to you in accordance with the quantity of the minerals blocked at its prevailing price, which would mean several millions.

With this in view, I would expect that you could see the justification of my stand.

Truly yours,
(Sgd.) TERESO DUMON

- O -

"Annex "A-5"

October 18, 1961

The Cebu Portland Cement Co.
Manila

Gentlemen:

Attention: Atty. Nestor Legaspi
Committee Chairman

With reference to your desire to purchase my gypsum deposit in the Bicol Region after your exploration work yields good results, I wish to state that I would be willing to accept the proposition to wait for you for a period of six months provided you will give me 150,000 bags of cement for the option.

I wish to hear from you at your earliest convenience.

Yours truly,

(Sgd.) TERESO DUMON

- O -

Annex "A-6"

October 19, 1961

Mr. Tereso Dumon

L-20 Manila Hotel Annex
Manila

S i r :

I am in receipt of your letter concerning your proposition for payment of 150,000 bags of cement for the option for six months to purchase your gypsum claims at Cagmanaba and Nagas, Oas, Albay.

In reply thereto, would you be amenable to the following terms and conditions:

1. The consideration of the option shall be 100,000 bags instead of 150,000 bags.
2. That in case our Company, after the exploration, decides not to continue the negotiation to purchase property, you will refund the amount equivalent to the cost of 100,000 bags computed at the current price. In case we decide to continue the purchase, the 100,000 bags shall be considered as part of the consideration.
3. That the period of six months of the option shall be extended for another six months at the request of CEPOC.
4. In the event that CEPOC decides not to purchase your gypsum claims and you decide to undertake the mining operations yourself, you shall supply us on first priority basis, gypsum equivalent to the amount of the cement the prices of both to be computed at the current prices.
5. Submit all the pertinent papers on your Gypsum claims.

Please inform us of your decision on this matter to enable us to submit it to our Board of Directors and higher authorities for approval.

Very truly,

COMMITTEE ON NEW PROJECTS
(Sgd.) NESTOR G. LEGASPI
Chairman

- O -

Annex "A-7"

October 20, 1961

The Board of Directors
Cebu Portland Cement Co.
Manila

Attention: Atty. Nestor G. Legaspi
Chairman, Committee on
New Projects

S i r :

1. This is to acknowledge receipt of your letter of the 19th instant with the information that the consideration of the option of 100,000 bags instead of 150,000 bags is hereby accepted.
2. That in case your company, after the exploration, decides not to continue the negotiations to purchase the property, I will refund the amount equivalent to the cost of 100,000 bags computed at current price. In case you decide to continue the purchase, the 100,000 bags shall be considered as part of the consideration.
3. That the period of six (6); months of the option shall be extended for another six (6) months upon request of

the CEPOC.

4. In the event that CEPOC decides not to purchase my gypsum claims and that I decide to undertake the mining operation myself, I shall supply yourselves on first-priority basis, gypsum equivalent to the amount of the cement, the prices of both to be computed at current prices.

5. For your perusal, I am submitting to you the following papers:

(a)

Forty-four (44) Declaration of Locations

(b)

Five (5) Mining Lease Contracts in 3 sheets

(c)

Eight (8) Applications for Lease of Mining Claims

(d)

Investigation Report of the Bureau of Mines by Supervising Geologist Mr. Amable Cruz

(e)

One (1) copy of quitclaim

(f)

Deed of Absolute Sale

(g)

One (1) Photostatic copy of its assay

(h)

Two (2) Sketch Plans

Please allow me to expect your immediate action.

Truly yours,

(Sgd.) TERESO DUMON"

(Record on Appeal, pp. 23-29)

That the 100,000 bags of cement in question were delivered to appellant "in consideration of the option" and that the appellant would have to return the same only after the stipulated exploration has been undertaken by appellee are more than borne out by the aforequoted evidence. In other words, with the option to purchase having been actually given to and enjoyed by appellee, on the one hand, and with the delivery of the agreed number of bags of cement (minus 100) to appellant having been actually made by appellee, there can be no question as to the mutuality of the respective prestations and compliance therewith by both parties insofar as the option is concerned. The return of the cement in consideration of the exploration is a matter entirely independent of the option and the consideration therefor. From what appears from the evidence, it was the understanding of the parties that the obligation of Cepoc to make the exploration was definite and unconditional, whereas the return of the cement was conditioned upon the completion of the exploration. Whether this was a good bargain or not is not

within our province to decide. Long ago, in *Vales vs. Villa*, 35, Phil. 769, We already disclaimed the role of being the guardian of the interests of parties to a contract thus:

"All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relations with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves – upon their own abilities, talents, training, sense, acumen, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense or judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. The law furnishes no protection to the inferior simply because he is inferior, any more than it protects the strong because he is strong. The law furnishes protection to both alike – to one no more or less than to the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome illegally. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold of the situation and remedy it."

But even putting this doctrinal rule aside, and looking more closely at the terms in question, We are not convinced that they are altogether inequitably one-sided, much less unconscionably disadvantageous to Cepoc. From aught that can be gathered from the record, the price of P500,000 for which appellant had agreed to sell the unlimited amount of gypsum Cepoc would mine from his claims was relatively low. (See Annex A-4). Obviously, this price was fixed taking into account that appellant would not have to share in the cost of exploration, from which, if it were indeed to be done, he would benefit, whether the purchase of his gypsum went through or not. In other words, if the purchase were to materialize because the exploration had resulted favorably, he would get the P500,000 price without having to spend for exploration, whereas, if after the exploration, Cepoc should desist for reasons of its own, he would still have the benefit of the exploration left with him. On the part of Cepoc, by conducting the exploration, it was to have gypsum at a cheaper price even with the cost of exploration being borne by it, although in case the result of the exploration were to be negative, it would have to shoulder the expenses thereof, a venture the corporation must have thought worthwhile under the circumstances.

And so, appellant agreed that should the purchase be consummated, the price of the cement already delivered to him should be deducted from the agreed purchase price of P500,000, but if it did not go through, he would pay for said cement, either in cash or in gypsum, thus leaving Cepoc none the worse, except for what it would spend for the exploration. Central in all of these, of course, is the actual undertaking of the exploration.

Accordingly, it being uncontroverted that, as found by the trial court, Cepoc did not bother to fulfill its end of the bargain by entirely omitting to do any exploration work at all, not to speak of its failure to proceed with the stipulated purchase of appellant's gypsum, We cannot find any basis for acceding to its demand for the return of the cement or its price, the same having been paid, in accordance with the contract between the parties, in consideration of a totally different prestation, the option given to it by appellant to purchase his gypsum, and the prerequisite condition for such return, namely, the exploration of appellant's mining claims not having been done by appellee. In fact, the trial court found, in effect, that Cepoc had violated the contract in question, for it sentenced the corporation to pay for "the damage and prejudice and unrealized profit" it found appellant had

suffered "because plaintiff did not make the required exploration and proceed with the purchase." It fixed the amount of these damages at P13,736.25.

We view the matter differently. We are of the considered opinion that inasmuch as appellant, by this decision, will get the full consideration for the option, it is no longer necessary for him to be paid the damages adjudged by the trial court.

In view of the conclusions arrived at by the Court as above discussed, it is unnecessary to deal with the rest of the assignments of error in appellant's brief, except as to the reference made therein to the shortage of 100 bags in the delivery made by Cepoc, which We consider to be de minimis.

WHEREFORE, the judgment of the trial court is modified by reversing the portion thereof sentencing appellant to pay appellee P260,988.75, dismissing the complaint of plaintiff-appellee, and eliminating the award of P13,736.25 damages to defendant-appellant. No costs.

Makalintal, C.J., Antonio, Fernandez, and Aquino, JJ., concur.
Fernando, J., took no part.

[1] Aside from the contract itself of "Option to Purchase", to be quoted later, among the annexes referred to in the stipulation, the most relevant are Annexes A-3 to A-7 which will also be quoted elsewhere in this opinion.

[2] This case is deemed submitted for decision without appellee's brief, CEPOC having failed to file a brief within the period granted it for the purpose.

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