

VICENTE VALENCIA, PLAINTIFF AND APPELLANT, VS. CORNELIO TANTOCO AND AMADO C. TAMAYO, DEFENDANTS AND APPELLANTS.

G.R. No. L-7267. August 31, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is an appeal from a decision by the Court of First Instance of Manila, then presided by Judge Conrado V. Sanchez, new an Associate Justice of the Court of Appeals, dismissing plaintiff's complaint as well as the counter-claim of the defendants.

The appeal is predicated on the grounds that the lower court erred:

"I. In finding that the defendant Drr Cornelio S. Tantoco was not a party to the contract of lease of the fishpond in question, and consequently erred in exempting him from any and all liabilities arising out of the lease agreement;

II. In finding the P200,000 Japanese war notes' as full payment and satisfaction of rentals from November 15, 1944 to November 15, 1945, and in not finding the same as deposit to guarantee and secure the payment of the corresponding , monthly rentals at the rate of P16,666.66 1/3 which deposit is amply supported by the surrounding circumstances and the abnormal and chaotic conditions prevailing at the time;

III. In not finding document Exhibit J, dated October 17, 1944 as a mere 'receipt and provisional contract of lease' subject to such clear and manifest intention of the parties thereto to execute at a later date (October 19, 1944) a final contract of lease containing the true, real and agreed terms and conditions as contained on document Exhibit K;

IV. In not finding that the true, real and agreed terms and conditions of the lease agreement are those appearing on document Exhibit K, which defendants deliberately and intentionally failed to execute;

V. In not condemning the defendants to pay, jointly and severally, the plaintiff the corresponding rentals at the rate of P16,666.16 1/3 Philippine currency a month, commencing February 15, 1945 to November 15, 1945, inclusive, and in holding that plaintiff's intention was to enrich himself at the expense of (or to the injury of) another;

VI. In finding that the plaintiff is seized with that atavistic propensity to jump from one theory to another in the hope of obtaining beneficial results, and in considering independent cases of the plaintiff in other courts as basis for such findings (Exhibits 7 and 8-Tamayo), thereby creating in the mind of the court prejudice and contempt against the plaintiff by dismissing in toto plaintiff's claims in the case at bar;

VII. In finding that the plaintiff is not entitled to be indemnified in the sum of P6,000 Philippine currency, representing the value of 3,700 bangus try which defendant failed to deliver to the plaintiff at the expiration of the lease, pursuant to the agreement.

VIII. In finding that the damages on the fishpond represented by photographs A-3, A-4 and A-5 refer to tot l-B-3 which does not belong to plaintiff and in further finding that these photographs were taken by photographer Pablo Calayag not in November 1945; shortly after the expiration of the lease, but in June or July of 1946; and consequently erred in denying plaintiff's claim for damages for P50,000;

IX. In finding that the plaintiff failed to prove that repairs were made on the fishpond before and after the lease, and in holding the lack of authenticity and genuineness of the various receipts evidencing payments for such repairs among them Exhibits G, G-1, G-2, G-8, G-4 and G-5; H, H-1, H-2, H-3 and M-1 and consequently in denying the plaintiffs claims for actual damages in the sum of M.4,100;

X, In finding that the fishpond was delivered tot and accepted by Ciriaco Calayag in good conditions and in further holding that Ciriaco Galayag was an encargado of the plaintiff duly authorized to accept the same for the defendants;

XI. In denying plaintiff's motion for a new trial dated September 3, 1953, the A admission of such newly discovered evidence being of such material and transcendental importance that would enable the trial court to have a more full, detailed and complete facts of the case at bar that would have helped the said trial cembrfc to arrive at a just, fair and impartial judgment en the issues involved."

The issues involved in the appeal, as clearly pointed out by the appellant on page 18 of Ms brief, are reduced to the following propositions:

- Whether or not Dr. Cornelio S. Tantoco was a party to the contract of lease of the fishpond in question;
- Whether or not the P200,000 in Japanese war notes was a mere deposit to guarantee or secure the payment of the monthly rentals at the rate of P16,666.66 1/3 from November 15, 1944 to November 15, 1945; or in full payment and satisfaction of a year rentals of the said fishpond;
- Whether or not Exhibit J, is the final contract of lease between the parties; or that the true, real and agreed terms and conditions of the lease agreement are those embodied on Exh. K which the defendants deliberately and intentionally failed to execute;
- Whether or not Ciriaco Calayag was the encargado of Dr. Vicente Valencia, with authority to accept the return and delivery of the fishpond in question on November 15, 1945;
- Whether or not the fishpond was actually delivered in good conditions by the defendants on November 15, 1945, or was it left and abandoned by the defendants as a retaliatory act for filing the plaintiff's complaint on July 26, 1945;
- Whether or not the plaintiff is entitled to the damages claimed, and the defendants are jointly and severally liable for said damages.

We have read the decision appealed from and the evidence presented by both parties and We find that none of the errors assigned by the appellant has been committed by the lower court. And the issues now raised were fully, clearly and exhaustively discussed and disposed of in the decision which we could hardly improve, for which

reason we adopt it as our own. It says

"Plaintiff, Vicente Valencia, seeks to recover from defendants Cornelio Tantoco and Amado C. Tamayo (1) rentals at the rate of P16,666.66 per month from February 15, 1945 to November 15, 1945, on a fishpond located in Marulao, Hagonoy, Bulacan; (2) P6,000 damages arising out of defendants' failure to replace about 3,700 bangus seedlings left with the fishpond at the time defendants took possession thereof; and (3) P64,000 damages suffered by plaintiff by reason of defendants' abandonment of said fishpond in an unserviceable condition upon the expiration of the one year lease, from November 15, 1944 to November 15, 1945.

Defendant Cornelio Tantoco disclaims liability under the lease agreement sued upon, alleges that he is neither party nor privy to that contract, and sets up a counterclaim for damages planted upon the averment that plaintiff included said defendant in the complaint maliciously and knowing that no cause of action exists against the latter.

Defendant Amado C. Tamayo alleges full payment of the rentals claimed, the delivery of an equivalent amount of fish seedlings upon termination of the lease, and the return of the fishpond in the same condition as when received, repairs and improvements having been introduced during his possession. He also filed a counterclaim for damages.

Early in October, 1944, defendant Tamayo presented to plaintiff a letter Exhibit I whereunder defendant Tantoco desired to acquire by lease of two of plaintiff's fishponds; a similar one in Paombong, Bulacan, then under lease to Angel Tantoco, brother of defendant Tantoco, and the other a big one described in the blue print Exhibit D located in Marulao, Hagonoy, Bulacan, tr. p. 133. Exhibit I textually reads as follows:

'DR. VICENTE VALENCIA,

Ang inyo pong encargado na ang pangalan ay Am bo ay naibalita sa aking kapatid na si Angel na kayo daw ay may gustong pabuisan ang inyong dalawang palaisdaan na kung ano ang pasok ay siyang labas. Ang inyong palaisdaan na ka hanga ni Angel ay nasa aming posesion ngayon sapagkat na buisan sa amin nila Angel ng naka buis sa inyo dahil dito ay malaki ang aming pagkakagusto na sa amin na ninyo sana pa buisan ang inyong dalawang palaisdaan.

Ang may dala nitong sulat na ito ay si Mr. Aqaado Tamayo ang siya na namin pinakakatawan at binigyan namin ng poder na makipagusap sa ano mang halaga at condickmes na inyong pagkakasunduan tungkol sa inyong palaisdaan. Hanggang dito na lamang at magutos ng kaya.

(Sgd.) CORNELIO S. TANTOCO'

It was then contemplated that if the two fishponds could be had on a one-year lease (kung ano ang pasok ay siyang labas) for P200,000, defendant Tamayo and Tantoco would be in partnership in that lease. But plaintiff demanded P200,000 for the lease of one fishpond alone—the big fishpond at Harulao. Tamayo conveyed to Tantoco plaintiff's terms. Tantoco refused to take the lease under that condition. Tamayo thereupon decided to lease by himself the Marulao fishpond of about 76 hectares. In so doing, Tamayo had in mind the prospect of disposing of his Japanese money and giving jobs to his employees.

So it was, that on October 11, 1944 defendant Tamayo returned to see plaintiff and told the latter that he (Tamayo) would lease the big fishpond. Valencia and Tamayo went to see Valencia's attorney, Francisco Delgado at the latter's office. He was not there. They however met Atty. Santiago Macapagal, Delgado's assistant, who, on that day, October 11, 1944, drew up the receipt for P20,000 advance payment made by Tamayo on account of the total rentals of P200,000 for the lease of Marulao fishpond for a one-year period from November 15, 1944 to November 14, 1945. Exhibit 2 reads:

"Tinangap ko kay G. Amado C. Tamayo, Filipino, nasa karampatang gulang, may asawa at naninirahan sa Malolos, Bulacan, Filipinas, ang halagang veinte mil pesos (P20,000) bilang paunang bayad ng kabuuang

buwis na halagang P200,000 ng aking pinabubuwisan sa kanilang palaisdaan ko na nasa Barrio ng Sta. Elena, Marulao, Hagonoy, Bulacan, na may laking 76 hectares humigit kumulang, nguni't sa buisan ng nasabing palaisdaan ay hindi kasali ang bansutan at katabing binhian.

Ang pagbuwis ay magkakabisa mula sa ika 15 ng Noviembre 1944, at matatapos sa ika 15 ng Noviembre ng 1945 (isang taon lamang).

Ang kabuuan ng buwis aydos dentos mil pesos (P200,000) at ang pagbabayad ay gaya ag sumusunod:

Veinte mil pesos (P20,000) sa fechang ito; at ang matitirang ciento ochenta mil pesos (P180,000) ay babayaran sa akin sa araw ng Jueves, ika 19 ng Octubre ng 1944.

Sakaling bindi mabayaran «mg nasabing halagang W.80,000 sa nabanguit na araw, mawawalan na ng bisa ang kasunduan sa buwisan, at ang halagang P20,000 na naibayad na ay magiging kay Dr. Vicente Valencia na bilang kabayaran ng kanyang danos y perjuicios.

Sa katunayan ng nasasabi ng itaas, kami ay ltunagda sa kasulatang ito dito sa Maynila ngayong ika 11 ng Octubre ng taong 1944.

(Sgd.) VICENTE VALENCIA

Nagpapabuwis

Along tinatangap ang sinasabi sa itaas:

(Sgd.) AMADO C. TAMAYO

Res. Cert. A-0118280

Manila Jan. 22/44

In the presence of:

(Sgd.) S. MACAPAGAL

(Sgd.) CATALINO DE LA CRUZ"

On October 17, 1944,, defendant Tamayo went back to plaintiff and delivered to the latter the amount of P180,000, consisting of P150,000 in certified check which Tamayo procured from the Province of Bulacan and P25.000 in cash. Plaintiff and defendant Tamayo once again proceeded to the office of Atty. Francisco Delgado for the preparation of the necessary document. There they met Atty. Alejandro de Santos, a lawyer-assistant. The amount oi W.80,000 having been turned over by Tamayo to Valencia, Atty. De Santos prepared the receipt and provisional contract of lease in the form of a public document Exhibit J (or 3) ratified before him as Notary, which is as follows:

RECEIPT AND PROVISIONAL CONTRACT OF LEASE KNOW ALL MEN BY THESE PRESENTS:

That I, VICENTE VALENCIA, Filipino, legal age, married, residing at 107 Solis, Manila, having received the further sum of ONE hundred and eighty thousand pesos (P180,000) Phil, currency, from Amado C.. Tamayo, Filipino, of legal age, married and residing at Malolos, Bulacan, this 17th day of October, 1944, in the City of Manila, which amount completed the agreed rental of Two hundred1 thousand pesos (P200,000) of fishpond situated at barrio Sta. Elena, Marulao, Hagonoy, Bulacan, having an area of SWENTY SIX HECTARES (76 hectares) More or less, does hereby cede, transfix and convey unto said Amado C. Tamayo, his heirs and assigns, by way of lease for a full period of one (1) yeae beginning from November 16, 1044 and ending on

November 15, 1945; the said fishpond, excluding only the 'Bansutan' and the "BINGHIAN".

Amado C. Tamayo for his part does hereby declare that he accepts the lease under the precise terms stateji above and in the receipt issued by Vicente Valencia on October 11, 1944. He farther manifests that he has inspected the property and that he obligates himself to return the possession of the same te Vkeste Valencia after the lapse of the period of one year, and in the same condition thereof, minus only the ordinary wear and tear.

In witness whereof, the parties hereto have hereunto set their hands on these presents this 17th day of October, 1944 in the City of Manila.

(Sgd.) Vicente Valencia.

Lessor

(Sgd.) Amado C. Tamayo

Lessee

In the presence of

(Sgd.) JOSE L. ABELARDO

(Sgd.) ALEJANDRO DE SANTOS"

(Acknowledgment clause omitted)

The foregoing document having been signed, Dr. Vicente Valencia delivered to Amado C. Tamayo a letter in the former's handwriting addressed to Giriaco Calayag, caretaker of the fishpond instructing the latter to deliver the said fishpond to Tamayo. Calayag turned over the fishpond to the representatives of defendant Tamayo on the 15th of November, 1944. A survey then made by Tamayo showed that certain repairs had to be done to put the fishpond in good condition. Repairs were made. Fish seedlings were put in. Tamayo harvested fish twice, the first on May 2, 1945 and the second on October 25, 1945.

About April, 1945, that is, after liberation, plaintiff instructed his Attorney Santiago Macapagal to prepare a contract of lease covering the same fishpond for the same period as that in Exhibit J, but with different terms and conditions. Remarkable are some of the conditions of that proposed contract 6f lease Exhibit E. First, ;fche contract is no longer with Amado C. Tamayo alone but with both Tamayo and Tantoeo, defendants herein. Second, it requires that monthly rentals should be paid at the rate of P16,666.66 1/3 every month beginning with the month of November, 1944, and any and all payments of monthly rental must be of the actual currency as recognized by the constituted government in the Philippines.' Both Tamayo and Tantoco refused to sign this proposed contract Exhibit K.

Pursuant to an understanding had between plaintiff and defendant Tamayo on November 10, 1945, after the last fishes (simot) were taken, the fishpond was returned to Ciriaco Calayag, plaintiff's encargado. Calayag went around the fishpond, found it in good condition, and accepted the same from Tamayo.

1. First in point of inquiry is the question whether or not plaintiff lias a cause of action against defendant Cornelio Tantoco. Plaintiff's theory in all his pleadings—in his original, first amended, and second amended complaints consistently was that the two defendants leased the fishpond from him.

On the witness stand, however, plaintiff, testifying in his favor, presented for the court's consideration three theories contradictory to each other. First theory: Plaintiff testified that, in reference to the fishpond in question, the lease agreement was between him and Cornelio Tantoco alone, and that defendant Amado Tamayo was merely a 'go-between' for them. tr. p. 470. On this point, plaintiff's testimony is buttressed by documentary evidence of his own making, Exhibits B, B-2, B-3, B-U, B-5 and C. In fact, he said that Tamayo had written authority to sign for Tantoco, tr. p. 247. See also tr. pp. 131, 134, 144, 148, 161. Second theory:

The second theory saddled upon the court by plaintiff is that the contract of lease was between him on one hand and defendants Tantoco and Tamayo on the other, tr. pp. 142, 153, 158-159, 161, 166, 167, 172-174, 176, 177, 184. Plaintiff's third theory is that really the lease contract was with defendant Tamayo, and that defendant Tantoco only acted in representation of Tamayo.

'Q. Why was Atty. Macapagal able to put in Exhibit 2- Tamayo from whom you received the money, if you did not tell him from whom you received it?

A. I told him that I had received the P20,000 delivered personally by Dr. Tantoco in representation of Mr. Tamayo.' tr. 241.

It thus appears that plaintiff, in open court, has actually bandied his theory as to who was the lessee, from Tantoco, to Tamayo and Tantoco, and then to Tamayo and finally back to Tantoco alone. tr. p. 470.

The rigmarole into which the court's mind is ushered by such conflicting theories will prevent the court from giving its imprimatur to plaintiff's wobbly claim that Tantoco is a party to the contract. Registering indelibly in the mind of the court is that plaintiff, by his own words and his pleadings, failed to nail down the question of Tantoco's liability.

Examining the written evidence of record, it will appear that Exhibits 2 and 3 (J) totally repudiate plaintiff's claim that Tantoco is a party to the lease.

Exhibit 2, which is a receipt for the sum of P20,000 as advance payment of the rentals; shows that said amount was received from Amado C. Tamayo alone. Said receipt specifies certain conditions such as the period of the lease and the covenant that in the event of failure to pay the remaining rental of P180,000, the P20,000 received thereby would be forfeited by way of losses and damages. This Exhibit 2 bears the signature of Amado C. Tamayo personally written below the words 'aking tinatanggap ang sinasabi sa itaas'. In this document Exhibit 2 the name of Cornelio Tantoco is conspicuous by its absence. He was not named here as Tamayo's principal or lessee or co-lessee.

Exhibit 3 Tamayo or Exhibit J, which is the receipt and provisional contract of lease executed on the 17th of October, 1944, is as illuminating. This contract recites that plaintiff received from defendant Amado C. Tamayo the sum of P180,000 which completed the agreed rental of P200,000; that plaintiff has ceded, transferred and conveyed unto the said Amado C. Tamayo, his heirs and assigns, by way of lessee, the fishpond in question. Amado C. Tamayo for his part accepted the lease under the precise terms and conditions set forth therein and in the receipt of October 11, 1944, Exhibit 2. The document also stated that Amado C. Tamayo 'further manifests that he has inspected the property and that he obligates himself to return the possession of the same' to plaintiff. As in Exhibit 2, the only contracting parties who appear in and signed the document Exhibit 3 were Vicente Valencia 'lessor', and Amado C. Tamayo, 'lessee'. Once again, no mention was made of defendant Cornelio Tantoco in Exhibit 3. When asked why he did not tell the notary to place the name of Tantoco in that document Exhibit 3, plaintiff simply stated that Tamayo had written authority to sign for Tantoco. tr. p. 247, and yet, Tamayo signed the document *irt propria persona*.

Plaintiff and his son Mario Valencia in an effort to pin down defendant Tantoco, would further palm off to the court the claim that it was said Tantoco who allegedly gave his son P25,000 on the afternoon of the 11th of October, 1944. This obviously is not true. For, paragraph III of the original complaint, paragraph III of the first amended complaint and paragraph III of the second amended complaint, in unison, state that the sum of P180,000—of which this P25,000 forms part—was delivered to plaintiff on October 17, 1944. Another proof that plaintiff's claim does not bear the usual earmarks of truth is the fact that although plaintiff and his own son Mario averred that a receipt was issued by the latter to Tantoco for the said sum of P25,000 the notices to produce

Exhibits 4, 4-A, 4-B, and 4-C, issued by plaintiff's attorneys for the production of documents failed to mention that alleged receipt of KJ5,000 issued on October 11, 1944. Finally, plaintiff himself had to admit that there was no agreement as to the delivery of P25,000 on that same day, October 11, 1944. tr. pp. 263, 266.

Exhibits 2 and 3 uniformly speak of the contract of lease between plaintiff and Tamayo alone. This and the morass of contradiction into which plaintiff has involved himself and the complete unpredictability of plaintiff's theory, certainly will not permit this court to read into Exhibits 2 and 3 the name of Cornelio Tantoco as a party lessee.

Both Attorneys Santiago Macapagal who prepared Exhibit 2 and Alejandro de Santos who wrote Exhibit 3 are practicing attorneys in the City of Manila. They are both alive. That plaintiff should prefer that this case be in umbilical dependence upon his sole testimony without the support of these two distinguished gentlemen, is proof enough that, if presented, the said attorneys would belie plaintiff's claim.

Needless to state, the proposed contract of lease Exhibit K is not binding upon Tantoco: First, because it has not been signed by him; and Second, because whatever Tamayo had stated at the back thereto, Exhibits K and K-l, is not binding on Tantoco. At all events, the notations, Exhibits K and K-l, made by Tamayo do not afford as much as cold comfort to plaintiff's claim for Tamayo merely said there that he wanted to consult Tantoco and the parties interested in the partnership. This plainly implies that defendant Tantoco is not interested in the partnership and confirms what Tamayo stated in court to the effect that he had to consult Dr. Tantoco—his consultant in fishpond deals—by reason of his (Tantoco's) experience in fishery business, tr. pp. 401, 402.

Upon all the foregoing, the court is fully convinced that plaintiff has no cause of action against defendant Cornelio Tantoco.

2. Is plaintiff entitled to recover that rentals sought in his complaint.

The quintessence of plaintiff's testimony is that the total sum of P200,000, consisting of P20,000 received by him under the terms of the receipt Exhibit 2 and P180,000 thereafter paid to him as shown in Exhibit J (or 3), was merely a deposit as security that he would receive the corresponding monthly rentals on the fishpond in question.

A cursory examination of the receipt Exhibit 2 dated October 11, 1944 will readily show that the sum of P20,000 received there under was an advance payment on account of rentals in the total amount of P200,000 for the lease of the fishpond from November 15, 1944 to November 15, 1945. The following lifted from Exhibit 2 amply proves this fact: 'Tinanggap ko kay J. Amado C. Tamayo * * * ang halagang veinte mil pesos (P20,000) bilang paunang bayad ng kabuuang buwis na halagang P200,000 ng taking pinabubuwisang sa kanilang palaisdaan ko na nasa barrio Sta. Elena, Marulao, Hagunoy, Bulacan.' Said Exhibit 2 likewise provides that the lease is for one year, so that the amount of P200,000 was the total rental (kabuuang buwis) for the one-year period. In like manner, the third paragraph of Exhibit 2 recites that the total rental of P200,000 (kabuuan ng buwis) was to be paid as follow: (at ang pagbabayad ay gay a ng sumusunod): P20,000 on that date, and the remaining P180,000 was to be paid (ay babayaran) on October 19, 1944. Finally, the last paragraph of Exhibit 2 states that in the event of the failure of Tamayo to pay the said amount of P180,000 (sakaling hindi mabayaran ang nasabing halagang P180,000) on the date aforementioned, the contract would be null and void and the sum of P20,000 paid (na naibayad na) would be forfeited to plaintiff as losses and damages.

As will be seen, the word 'deposit' or any other term of similar import is totally absent from Exhibit 2. The words utilized to express payment of rentals are clear, the language plain and simple, and intention unmistakable. Plaintiff, a doctor of Medicine, is an intelligent businessman. Exhibit 2 was prepared by an attorney of his own choice, Santiago Macapagal. The document was prepared by Atty. Macapagal after he had interviewed plaintiff

and Tamayo, tr. pp. 237-238. It was read by Macapagal in plaintiff's presence, tr. p. 242. Therefore, Exhibit 2 must be deemed to represent the true intention of the parties.

But if the foregoing were not yet sufficient, there is Exhibit J (Exhibit 3) i the receipt and provisional contract of lease, a public document executed on the 17th day of October, 1944. The document written in English which is understood by plaintiff recites that 'I, Vicente Valencia * * * having received the further sum of one hundred eighty thousand pesos (P180,000) Philippine currency from Amado C. Tamayo * * * this 17th day of October, 1944 * * * which amount completed the agreed rental of P200.000 * * * does hereby cede, transfer and convey unto said Amado C. Tamayo his heirs and assigns, by way of lease, for a full period of one (1) year * * * the said fishpond * * * tr. p. 253. This document was prepared by Atty. Alejandro de Santos of the law firm oJt Francisco Delgado, counsel for plaintiff. Before Atty. De Santos prepared Exhibit J (Exhibit 3), so plaintiff himself admits, plaintiff and defendant Tamayo talked to Santos; they informed Santos about th contents of Exhibit 2 Tamayo, and of the terms and conditions of the present contract Exhibit J (Exhibit 3); and Santos understood the terms of the contract before the latter prepared Exhibit J (Exhibit 3) tr. pp. 251, 252, 270.

So clear indeed are the documents Exhibits 2 and 3 (J) that one unschooled in the ways of the law or another possessed of naivete will readily see that the sum of P200,000 is in full payment of rentals—not deposit.

It has been held that a recital in a public document celebrated with all the legal formalities under the safeguard of a notarial certificate is 'evidence against the parties' and 'a high degree of proof is necessary to overcome the legal presumption that such recital is true.' (Naval vs. Enriquez, 3 Phil., 669, 670-671; Asido vs. Guzman, 37 Phil., 652, 654-655.) Certainly the biased, interested testimony of plaintiff will not overcome the evidentiary force of Exhibit J (or 3), a public document. *El Hogar Filipino vs. Olviga*, 60 Phil., 17, 21.

The court is not unmindful of the proposed contract Exhibit K drawn at plaintiff's behest by Atty. Santiago Macapagal who prepared Exhibit 2. At best it is self-serving. Defendants refused to sign it. That this proposal was an after thought is not difficult to realize. Mickey mouse money was already outlawed; plaintiff wanted to make sure that he get hold of Dr. Cornelio Tantoco and clamp not only upon Tamayo but also upon said Tantoco the payment of P110,000 in genuine Philippine currency by way of rentals from liberation up to the end of the lease. Is it any wonder then that plaintiff should have eschewed Exhibits 2 and 3?

From another point of view, plaintiff's claim that he is entitled to collect rentals, month. by month, at the rate of P16,666.66 1/3 in genuine money is at war with the facts. Lease of fisheries under the common practice is 'kung ano ang pasok ay siyang labas' that is, if the lease commences on November 30, it will end on November 30 of the succeeding year, a one-year period. There is never a contract of lease of fishponds on a month to month basis. Exhibits I; tr. pp. 403-404. That is why the lawyers who prepared Exhibits 2 and 3 (or J) did not provide for the payments of rentals on monthly installments.

Plaintiff received the P200,000 in Japanese currency which was good at the time; and now he wants an additional P110,000 in actual currency. 'No man may wrongfully (tertiously) enrich himself at the expense of (to the injury of) another. (E aun dixeron, que ningunono deue enriquesszer tertizeramente con dano de otro). (Regla 17, Title 34, Setena Partida, sentencias Tribunal de España May 1, 1875, December 16, 1880, May 24, 1882; April 24, 1896' *Cuyugan vs. Santos*, 34 Phil., 100, 116.

It would appear appropriate at this point to state that plaintiff gave cause for belief that he (plaintiff) is seized with that atavistic propensity to jump from one theory to another in the hope of obtaining beneficial results. In the suit covering a portion of the big fishpond in question, lot I-B-3 of the plan Exhibit D, he sustained the theory that he was a vendee in pacto de retro thereof. He lost in the Supreme Court. See Exhibit 7-Tamayo. Thereafter, he started land registration proceedings covering the same land, lot I-B-3, and adopted an entirely different theory, to

wit: that he was the exclusive owner of the property having inherited the same from his grandfather Pedro Crisostomo. And, he likewise lost in the Court of First Instance of Bulacan. Exhibit 8-Tamayo. This seemingly spineless pattern of behavior is once again apparent. in the present case.

The court, therefore, is constrained to state that it is not merely a matter of choice but of stern necessity that this court must withhold its stamp of approval on plaintiff's claim that the P200,000 received by him under Exhibits 2 and 3 (J) was in the form of deposit. The court finds, by overwhelming proof, that said sum of P200,000 was paid by way of rentals in advance for the one-year lease of the fishpond in question.

3. Plaintiff claims damages for defendants' failure to replace the bangus fry from which according to plaintiff he could have harvested fish at about P6,000.

Plaintiff's theory is that when defendant took possession of the fishpond there were about 3,700 bangus seedlings, tr. pp. 181-182.. On this point there is no evidence but his sole uncorroborated testimony.

Oddly enough, the last time that plaintiff saw the fishpond before the liberation, was in August, 1944, that is, three months before defendant Tamayo took possession thereof, tr. pp. 211, 294. During the whole thne that defendant Tamayo was in possession, plaintiff never saw the fishpond personally, tr. 167. As a mater of fact, the fishpond was returned not to plaintiff but to Ciriaco Calayag,. the latter's encargado.

Damages must be proven even when not denied. Section 8, Rule

9. How could plaintiff know the amount of bangus seedlings which was in the fishpond when he was not present at the time of the delivery. How many of the fry would develop into marketable fish is not known. Neither is there competent proof of the prevailing price of hangus or bangus fry in Marulao, at the time of the surrender of the fishpond to plaintiff or at the time plaintiff could have harvested the fish following the return of the possession of the said fishpond. This court cannot predicate a finding of substantial damages upon conjecture or guess work. The amount claimed by plaintiff could be ascertained with reasonable accuracy. But he failed in this. Plaintiff could Tiave placed on the stand his overseer Ciriaco Calayag, a competent witness who was taking care of the fish fry (tr. p. 211), but did not. A, stricter proof is required of him. Therefore, plaintiff's claim for damages on this point must fail. *Song Fo & Co. vs. Hawaiian Philippine Co.*, 47 Phil., 821, 829; *Bian Hin & Co. vs. Tan Romping*, 48 Phil., 523, 527; *Hicks vs. Manila Hotel Co.*, 28 Phil.. 325, 339-340; *Choa Tek Hee vs. Phil. Publishing Co.*, 34 Phil., 447, 456, 459-460.

4. Plaintiff also claims damages suffered by the fishpond itself which allegedly was left unserviceable for the purpose. (Paragraph XIV, second amended complaint).

The utter lack of dependability in plaintiff's position is once more manifest in this cause of action." Plaintiff's theory in the first and second amended complaints is that the fishpond was abandoned by defendasts. But in Exhibits B-2, B-3, B-5 and C, which are documents prepared by plaintiff himself, plaintiff reneged on the theory that the fishpond was abandoned—he wrote therein that it was returned in a damaged condition.

Plaintiff admits that he did not know the condition of the fishpond when the same was left by the purchasers of the fish to whom he (plaintiff) sold the fish in said fishpond in September, 1944. re. pp. 235, 291. He did not know the condition of the fishpond on November 15, 1944, date of delivery, to Tamayo, because the last time he saw the said fishpond before liberation was in August, 1944. There is evidence to show that defendant Tamayo had to put the fishpond in shape before putting fish fry therein, tr. pp. 333-334, 365-366, 370, 397.

An examination of the receipts presented by plaintiff to prove that repairs were made on the fishpond before and after the lease, casts ;serious doubts as to their authenticity. Take for instance Exhibits H and H-l both

thumbmarked by Francisco Salamat, for the sums of P1,120 and P400 respectively. These two receipts bear the same date, July 22, 1944. Again Exhibit H-2 for P1,550 and Exhibit H-3 for P683 both thumbmarked by Jose de la Cruz and Francisco Salamat likewise bear one date, July 28, 1944. These last two receipts apparently were on sheets plucked from a composition book. Francisco Salamat, testifying in court, stated that after the foregoing receipts were thumbmarked by him, plaintiff Valencia just paid him the amounts therein, solely and exclusively upon his representation that he had done so much work. For, Valencia, never bothered to go to the fishpond, tr. p. 106. The court also examined the receipts Exhibits G, G-1, G-2, G-4 and G-5 dated respectively July 6, 1946, July 16, 1946, July 26, 1946, July 31, 1946 and August 31, 1946. That amounts in these receipts were paid without the intervention of Jose Salamat, alleged overseer of plaintiff, and without plaintiff knowing personally the amount of work done. Is it possible for plaintiff, a careful, intelligent man, to just give away money without tangible proof that work had been done? tr. pp. 57, 58 and 89. See also tr. pp. 297-298. The answer, most emphatically, is "No".

And then, the repairs extended from November, 1946 (Exhibit D) to December, 1946 (Exhibit D-1). Between November 1945 and December, 1946, so many things could have happened, such as storms or floods which could have destroyed or damaged the fishpond. .

Turning to another receipt for repairs Exhibit M-1 the court finds that in one single sheet three receipts widely varying in dates as follows, October 7, 1945, August 15, 1946 and August 11, 1945 were successively written. This is irregular, to say the least.

The damages claimed, according to plaintiff, appear in the photographs Exhibits A to A-5. But Exhibits A-3, A-4 and A-5 refer to lot I-B-3 which does not and did not belong to plaintiff, tr. pp. 281, 286. There is evidence to show that these photographs were taken by photographer Pablo Calayag in November, 1945, shortly after the expiration of the lease, but in June, or July, 1946. tr. pp. 322, 356. Referring now to the photograph Exhibit A-5, which purports to show the so-called 'balut' in lot I-B-3 (tr. p. 288), according to plaintiff's witness Francisco Salamat, there was no balut in August, 1944, as they cleaned the same. He added that balut would not grow in a year's time. tr. p. 122. If such is the case, why is it that there was balut in the fishpond according to Exhibit A—57. This balut occupied an area of about ten hectares according to plaintiff, tr. p. 187. It cannot be said that defendant Tamayo filled that extensive area only out of spite because plaintiff filed a suit against him. The fact is that that balut was there ever since before, tr. pp. 365, 371, 396.

Furthermore, Ciriaco Calayag, plaintiff's encargado, instruction of plaintiff and after going over and checking the fishpond in question, received the same in good order and condition, tr. pp. 340, 342. 350, 373-374.

Really, defendant Tamayo could not have harvested anything if the water gates and the pieces of wood for water gates were not in order and pilapiles were broken. Fish naturally would have escaped, tr. p. 335. It must be borne in mind that the last harvest made by defendant Tamayo was on October 25, 1945, and the fishpond was returned on November 10, 1945. Damages such as were described by plaintiff could not have occurred within so short an interval of time. tr. pp. 338, 395.

There is information to the effect that Ciriaco Calayag is still alive, tr. 347. Yet plaintiff did not present Calayag, his overseer, as a witness. No reason was advanced for non-presentation. The presumption is that if presented Ciriaco Calayag would not support plaintiff's claim. Section 69 (e), Rule 123.

The court accordingly is of the opinion and so holds that plaintiff is not entitled to recover damages arising out of the alleged damaged condition of the fishpond upon the termination of the lease. In view of all the foregoing, the court concludes that plaintiff is entitled to take nothing by his complaint.

No evidence was presented to support the counterclaims. Wherefore, this case, in all its parts, is hereby dismissed,

with costs against plaintiff."

As to the eleventh assignment of error to the effect that the court erred in denying plaintiff's motion for new trial, dated September 3, 1953, We likewise find that no such error was committed, for the evidence to be introduced by the appellant, if new trial had been granted, was not a newly discovered evidence but one which existed at the time of the trial, although, according to the appellant, he could not present it because during the trial of the case the residence of Ciriaco Calayag was not known. We also find that, had the court permitted the new trial, the testimony of Ciriaco Calayag would be to the effect that the defendants did not deliver to him, as encargado of the plaintiff, the fishpond in question in good condition; but this testimony, even admitted, would not be sufficient to alter the findings of the trial court regarding delivery of the fishpond in question to the defendant, which are fully supported by the evidence of record. There has been, therefore, no substantial prejudice to the appellant by the denial of his motion for new trial which may constitute reversible error.

Again, as to Annex B of the motion for new trial, consisting of a decision of the Court of Appeals reversing a decision of the Court of First Instance of Bulacan, which was invoked as a ground for new trial, We find said decision of the Court of Appeals not to have much bearing on the principal question involved in this case and therefore its rejection does not likewise constitute reversible error. Wherefore, finding no error in the decision appealed from, the same is hereby affirmed, without pronouncement with regard to costs.

Paras, C. J., Bengzon, Montemayor, Concepcion, and Felix, JJ., concur.

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