

## JOSE M. JAVIER AND ESTRELLA F. JAVIER, PETITIONERS, VS. COURT OF APPEALS AND LEONARDO TIRO, RESPONDENTS.

*G.R. NO. L-48194. March 15, 1990*

Ponente: REGALADO, J.

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### REGALADO, J.:

Petitioners pray for the reversal of the decision of respondent Court of Appeals in CA-G.R. No. 52296-R, dated March 6, 1978,[1] the dispositive portion whereof decrees:

"WHEREFORE, the judgment appealed from is hereby set aside and another one entered ordering the defendants-appellees, jointly and solidarily, to pay plaintiff-appellant the sum of P79,338.15 with legal interest thereon from the filing of the complaint, plus attorney's fees in the amount of P8,000.00. Costs against defendants-appellees."[2]

As found by respondent court or disclosed by the records,[3] this case was generated by the following antecedent facts:

Private respondent is a holder of an ordinary timber license issued by the Bureau of Forestry covering 2,535 hectares in the town of Medina, Misamis Oriental. On February 15, 1966 he executed a "Deed of Assignment"[4] in favor of herein petitioners the material parts of which read as follows:

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"I, LEONARDO A. TIRO, of legal age, married and a resident of Medina, Misamis Oriental, for and in consideration of the sum of ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00), Philippine Currency, do by these presents, ASSIGN, TRANSFER AND CONVEY, absolutely and forever unto JOSE M. JAVIER and ESTRELLA F. JAVIER, spouses, of legal age and a resident (sic) of 2897 F.B. Harrison, Pasay City, my shares of stocks in the TIMBERWEALTH CORPORATION in the total amount of P120,000.00, payment of which shall be made in the following manner:

1. -

Twenty thousand (P20,000.00) Pesos upon signing of this contract;

2. -

The balance of P100,000.00 shall be paid P10,000.00 every shipment of export logs actually produced from the forest concession of Timberwealth Corporation.

"That I hereby agree to sign and endorse the stock certificate in favor of Mr. & Mrs. Jose M. Javier, as soon as stock certificates are issued."

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At the time the said deed of assignment was executed, private respondent had a pending application, dated October 21, 1965, for an additional forest concession covering an area of 2,000 hectares southwest of and adjoining the area of the concession subject of the deed of assignment. Hence, on February 28, 1966, private

respondent and petitioners entered into another "Agreement"[5] with the following stipulations:

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"1. - That LEONARDO TIRO hereby agrees and binds himself to transfer, code and convey whatever rights he may acquire, absolutely and forever, to TIMBERWEALTH CORPORATION, a corporation duly organized and existing under the laws of the Philippines, over a forest concession which is now pending application and approval as additional area to his existing licensed area under O.T. License No. 391-103166, situated at Medina, Misamis Oriental;

"2. - That for and in consideration of the aforementioned transfer of rights over said additional area to TIMBERWEALTH CORPORATION, ESTRELLA F. JAVIER and JOSE M. JAVIER, both directors and stockholders of said corporation, do hereby undertake to pay LEONARDO TIRO, as soon as said additional area is approved and transferred to TIMBERWEALTH CORPORATION the sum of THIRTY THOUSAND PESOS (P30,000.00), which amount of money shall form part of their paid up capital stock in TIMBERWEALTH CORPORATION;

"3. - That this Agreement is subject to the approval of the members of the Board of Directors of the TIMBERWEALTH CORPORATION."

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On November 18, 1966, the Acting Director of Forestry wrote private respondent that his forest concession was renewed up to May 12, 1967 under O.T.L. No. 391-51267, but since the concession consisted of only 2,535 hectares, he was therein informed that:

"In pursuance of the Presidential directive of May 13, 1966, you are hereby given until May 12, 1967 to form an organization such as a cooperative, partnership or corporation with other adjoining licensees so as to have a total holding area of not less than 20,000 hectares of contiguous and compact territory and an aggregate allowable annual cut of net less than 25,000 cubic meters, otherwise, your license will not be further renewed."[6]

Consequently, petitioners, now acting as timber license holders by virtue of the deed of assignment executed by private respondent in their favor, entered into a Forest Consolidation Agreement[7] on April 10, 1967 with other ordinary timber license holders in Misamis Oriental, namely, Vicente L. de Lara, Jr., Salustiano R. Oca and Sanggaya Logging Company. Under this consolidation agreement, they all agreed to pool together and merge their respective forest concessions into a working unit, as envisioned by the aforementioned directives. This consolidation agreement was approved by the Director of Forestry on May 10, 1967.[8] The working unit was subsequently incorporated as the North Mindanao Timber Corporation, with the petitioners and the other signatories of the aforesaid Forest Consolidation Agreement as incorporators.[9]

On July 16, 1968, for failure of petitioners to pay the balance due under the two deeds of assignment, private respondent filed an action against petitioners, based on the said contracts, for the payment of the amount of P83,138.15 with interest at 6% per annum from April 10, 1967 until full payment, plus P12,000.00 for attorney's fees and costs.

On September 23, 1968, petitioners filed their answer admitting the due execution of the contracts but interposing the special defense of nullity thereof since private respondent failed to comply with his contractual obligations and further, that the conditions for the enforceability of the obligations of the parties failed to materialize. As a counterclaim, petitioners sought the return of P55,586.00 which private respondent had received from them pursuant to an alleged management agreement, plus attorney's fees and costs.

On October 7, 1968, private respondent filed his reply refuting the defense of nullity of the contracts in this wise.

"What were actually transferred and assigned to the defendants were plaintiff's rights and interest in a logging concession described in the deed of assignment, attached to the complaint and marked as Annex A, and agreement Annex E; that the 'shares of stocks' referred to in paragraph II of the complaint are terms used therein merely to designate or identify those rights and interests in said logging concession. The defendants actually made use of or enjoyed not the 'shares of stocks' but the logging concession itself; that since the proposed Timberwealth Corporation was owned solely and entirely by defendants, the personalities of the former and the latter are one and the same. Besides, before the logging concession of the plaintiff or the latter's rights and interests therein were assigned or transferred to defendants, they never became the property or assets of the Timberwealth Corporation which is at most only an association of persons composed of the defendants." [10]

and contending that the counterclaim of petitioners in the amount of P55,586.39 is actually only a part of the sum of P69,661.85 paid by the latter to the former in partial satisfaction of the latter's claim. [11]

After trial, the lower court rendered judgment dismissing private respondent's complaint and ordering him to pay petitioners the sum of P33,161.85 with legal interest at six percent per annum from the date of the filing of the answer until complete payment. [12]

As earlier stated, an appeal was interposed by private respondent to the Court of Appeals which reversed the decision of the court a quo.

On March 28, 1978, petitioners filed a motion in respondent court for extension of time to file a motion for reconsideration, for the reason that they needed to change counsel. [13] Respondent court, in its resolution dated March 31, 1978, gave petitioners fifteen (15) days from March 28, 1978 within which to file said motion for reconsideration, provided that the subject motion for extension was filed on time. [14] On April 11, 1978, petitioners filed their motion for reconsideration in the Court of Appeals. [15] On April 24, 1978, private respondent filed a consolidated opposition to said motion for reconsideration on the ground that the decision of respondent court had become final on March 27, 1978, hence the motion for extension filed on March 28, 1978 was filed out of time and there was no more period to extend. However, this was not acted upon by the Court of Appeals for the reason that on April 20, 1978, prior to its receipt of said opposition, a resolution was issued denying petitioners' motion for reconsideration, thus:

"The motion for reconsideration filed on April 11, 1978 by counsel for defendants-appellees is denied. They did not file any brief in this case. As a matter of fact this case was submitted for decision without appellees' brief. In their said motion, they merely tried to refute the rationale of the Court in deciding to reverse the appealed judgment." [16]

Petitioners then sought relief in this Court in the present petition for review on certiorari. Private respondent filed his comment, reiterating his stand that the decision of the Court of Appeals under review is already final and executory.

Petitioners countered in their reply that their petition for review presents substantive and fundamental questions of law that fully merit judicial determination, instead of being suppressed on technical and insubstantial reasons. Moreover, the aforesaid one (1) day delay in the filing of their motion for extension is excusable, considering that petitioners had to change their former counsel who failed to file their brief in the appellate court, which substitution of counsel took place at a time when there were many successive intervening holidays.

On July 26, 1978, we resolved to give due course to the petition.

The one (1) day delay in the filing of the said motion for extension can justifiably be excused, considering that aside from the change of counsel, the last day for filing the said motion fell on a holiday following another

holiday, hence, under such circumstances, an outright dismissal of the petition would be too harsh. Litigations should, as much as possible, be decided on their merits and not on technicalities. In a number of cases, this Court, in the exercise of equity jurisdiction, has relaxed the stringent application of technical rules in order to resolve the case on its merits.[17] Rules of procedure are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense.

We now proceed to the resolution of this case on the merits.

The assignment of errors of petitioners hinges on the central issue of whether the deed of assignment dated February 15, 1966 and the agreement of February 28, 1966 are null and void, the former for total absence of consideration and the latter for non-fulfillment of the conditions stated therein.

Petitioners contend that the deed of assignment conveyed to them the shares of stocks of private respondent in Timberwealth Corporation, as stated in the deed itself. Since said corporation never came into existence, no share of stocks was ever transferred to them, hence the said deed is null and void for lack of cause or consideration.

We do not agree. As found by the Court of Appeals, the true cause or consideration of said deed was the transfer of the forest concession of private respondent to petitioners for P120,000.00. This finding is supported by the following considerations, viz:

- Both parties at the time of the execution of the deed assignment knew that the Timberwealth Corporation stated therein was non-existent.[18]
- In their subsequent agreement, private respondent conveyed to petitioners his inchoate right over a forest concession covering an additional area for his existing forest concession, which area he had applied for, and his application was then pending in the Bureau of Forestry for approval.
- Petitioners, after the execution of the deed of assignment, assumed the operation of the logging concessions of private respondent.[19]
- The statement of advances to respondent prepared by petitioners stated: "P55,186.39 advances to L.A. Tiro be applied to succeeding shipments. Based on the agreement, we pay P10,000.00 every after (sic) shipments. We had only 2 shipments." [20]
- Petitioners entered into a Forest Consolidation Agreement with other holders of forest concessions on the strength of the questioned deed of assignment.[21]

The aforesaid contemporaneous and subsequent acts of petitioners and private respondent reveal that the cause stated in the questioned deed of assignment is false. It is settled that the previous and simultaneous and subsequent acts of the parties are properly cognizable indicia of their true intention.[22] Where the parties to a contract have given it a practical construction by their conduct as by acts in partial performance, such construction may be considered by the court in construing the contract, determining its meaning and ascertaining the mutual intention of the parties at the time of contracting.[23] The parties' practical construction of their contract has been characterized as a clue or index to, or as evidence of, their intention or meaning and as an important, significant, convincing, persuasive, or influential factor in determining the proper construction of the agreement.[24]

The deed of assignment of February 15, 1966 a relatively simulated contract which states a false cause or consideration, or one where the parties conceal their true agreement.[25] A contract with a false consideration is not null and void per se.[26] Under Article 1346 of the Civil Code, a relatively simulated contract, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

The Court of Appeals, therefore, did not err in holding petitioners liable under the said deed and in ruling that –

“x x x In view of the analysis of the first and second assignment of errors, the defendants-appelles are liable to the plaintiff-appellant for the sale and transfer in their favor of the latter's forest concessions. Under the terms of the contract, the parties agreed on a consideration of P120,000.00, P20,000.00 of which was paid upon the signing of the contract and the balance of P100,000.00 to be paid at the rate of P10,000.00 for every shipment of export logs actually produced from the forest concessions of the appellant sold to the appellees. Since plaintiff-appellant's forest concessions were consolidated or merged with those of the other timber license holders by appellees' voluntary act under the Forest Consolidation Agreement (Exhibit D), approved by the Bureau of Forestry (Exhibit D-3), then the unpaid balance of P49,338.15 (the amount of P70,661.85 having been received by the plaintiff-appellant from the defendants-appellees) became due and demandable.”[27]

As to the alleged nullity of the agreement dated February 28, 1966, we agree with petitioners that they cannot be held liable thereon. The efficacy of said deed of assignment subject to the condition that the application of private respondent for an additional area for forest concession be approved by the Bureau of Forestry. Since private respondent did not obtain that approval, said deed produces no effect. When a contract is subject to a suspensive condition, its birth or effectivity can take place only if and when the event which constitutes the condition happens or is fulfilled.[28] If the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[29]

The said agreement is a bilateral contract which gave rise to reciprocal obligations, that is, the obligation of private respondent to transfer his rights in the forest concession over the additional area and, on the other hand, the obligation of petitioners to pay P30,000.00. The demandability of the obligation of one party depends upon the fulfillment of the obligation of the other. In this case, the failure of private respondent to comply with his obligation negates his right to demand performance from petitioners. Delivery and payment in a contract of sale, are so interrelated and intertwined with each other that without delivery of the goods there is no corresponding obligation to pay. The two complement each other.[30]

Moreover, under the second paragraph of Article 1461 of the Civil Code, the efficacy of the sale of a mere hope or expectancy is deemed subject to condition that the thing will come into existence. In this case, since private respondent never acquired any right over the additional area for failure to secure the approval of the Bureau of Forestry, the agreement executed therefor, which had for its object the transfer of said right to petitioners, never became effective or enforceable.

WHEREFORE, the decision of respondent Court of Appeals is hereby MODIFIED. The agreement of the parties dated February 28, 1966 is declared without force and effect and the amount of P30,000.00 is hereby ordered to be deducted from the sum awarded by respondent court to private respondent. In all other respects, said decision of respondent court is affirmed.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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[1] Penned by Justice Crisolito Pascual, with Justices Samuel F. Reyes and Rafael C. Climaco concurring.

[2] Rollo, 60.

[3] Ibid., 49-55.

[4] Ibid., 49-55.

- [5] Ibid., 16-17.
- [6] Folder of Original Exhibits for Plaintiff, Exh. A.
- [7] Id., Exh. D, D-1 to D-2.
- [8] Id., Exh. D-3.
- [9] Folder of Original Exhibits for Defendants, Exh. 18.
- [10] Rollo, 73; Record on Appeal, CA-G.R. No. 52296-R, 35-36.
- [11] Ibid., id., id., 36-37.
- [12] Ibid., id., id., 103-114.
- [13] Rollo, CA-G.R. No. 52296-R, 73-74.
- [14] Ibid., id., 75.
- [15] Ibid., id., 76-86.
- [16] Ibid., Id., 87.
- [17] Helmuth, Jr. vs. People of the Philippines, et al., 112 SCRA 573 (1982); St. Peter Memorial Park, Inc., et al. vs. Cleofas, et al., 121 SCRA 287 (1983); Serrano vs. Court of Appeals, et al., 139 SCRA 179 (1985).
- [18] Rollo, 34.
- [19] Ibid., 54.
- [20] Folder of Original Exhibits for Defendants, Exh. 9.
- [21] Folder of Original Exhibits for Plaintiff, Exh. D.
- [22] Velasquez, et al. vs. Teodoro, et al., 46 Phil. 757 (1923); Bacordo vs. Alcantara, et al., 14 SCRA 730 (1965).

**[23] 17A C.J.S. 228.**

- [24] Op. cit., 233-234.
- [25] Art. 1345, Civil Code.
- [26] Concepcion vs. Sta. Ana, 87 Phil. 787 (1950).
- [27] Rollo, 58-59.
- [28] Art. 1181, Civil Code; Araneta vs. Rural Progress Administration, 92 Phil. 98 (1952).
- [29] Gaito vs. Fonacier, et al., 2 SCRA 830 (1961).
- [30] Pio Barrette Sons, Inc. vs. Compania Maritima, 62 SCRA 147 (1975).

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