

GREGORIO ARANETA, INC., PLAINTIFF AND APPELLANT VS. PAZ TUASON DE PATERNO AND JOSE VIDAL, DEFENDANTS AND APPELLANTS

G.R. No. L-2886. January 26, 1953

Ponente: TUASON, J.

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TUASON, J.:

In the second motion for reconsideration by defendant-appellee, it is urged that the sale be resolved for failure of plaintiff-appellant to pay the entire purchase price of the property sold.

Rescission of the contract, it is true, was an alternative prayer in the cross-complaint, but the trial court declared the sale void in accordance with the main contention of the defendant, and passed no judgment on the matter of rescission. For this reason, and because rescission was not pressed on appeal, we deemed unnecessary, if not uncalled for, any pronouncement touching this point.

In the second place, the nonpayment of a portion, albeit big portion, of the price was not, in our opinion, such failure as would justify rescission under Articles 1124 and 1505 et seq. of the Civil Code of Spain, which was still in force when this case was tried. "The general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties." (*Song Fo & Co. v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827.)

In the present case, the vendee did not fail or refuse to pay by plan or design, granting there was failure or refusal to pay. As a matter of fact, the portion of the purchase price which is said not to have been satisfied until now was actually received by checks by the vendor and deposited by the with the court in the suit against Vidal, in accordance with the understanding if not express agreement between vendor and vendee. The question of who should bear the loss of this amount, the checks having been destroyed and the funds against which they were drawn having become of no value, was one of the most bitterly debated issues, and in adjudging the vendee to be the party to shoulder the said loss and ordering the said vendee to pay the amount to the vendor, this Court's judgment was not, and was not intended to be, in the nature of an extension of time of payment. In contemplation of the Civil Code there was no default, except possibly in connection with the alleged overcharges by the vendee arising from honest mistakes of accounting, mistakes which, by our decision, are to be corrected in a new trial thereby ordered.

The second motion for reconsideration is, therefore, denied.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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