

**WESTERN MINDANAO LUMBER CO., INC., PLAINTIFF-APPELLANT,
VS. NATIVIDAD M. MEDALLE AND ANTONIO MEDALLE,
DEFENDANTS-APPELLEES.**

G.R. No. L-23213. October 28, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the order of the Court of First Instance of Zamboanga City dismissing the complaint upon the ground that the claim on which it is founded is unenforceable under the Statute of Frauds and special law.

The complaint, filed on December 16, 1960, alleges that:

x x x x x x x x

“2. - The Plaintiff is engaged in log-ging operations in Curuan, Zamboanga City and in connection with the said logging operation it obtained on September 8, 1955 a right-of-way through the said Lot 2136 of the Cadastral Survey of Zamboanga from Mr. Luciano Hernandez, then the registered owner, a copy of the agreement being en-closed as Annex 'A';

“3. - The former owners of the log-ging concession operated by the Plaintiff constructed and maintained the said road through Lot 2136, but the Plaintiff improved the said road, paying to the registered owner for all the improvements damaged by the improvement of the road;

“4. - Long before the execution of the right-of-way agreement on September 8, 1955, since then and up to the present time the said road has been maintained and used not only by the predecessor of the Plaintiff and the Plaintiff, but also by the public;

“5. - The said Lot 2136 was pur-chased by the defendants in 1958 and the said road then existed and was in public use and the defendants did not oppose but instead allowed the continued use and main-tenance of the road by the Plaintiff and the public;

“6. - The said road is indispensable to the business operations of the Plaintiff, because it is the only access from their concession to the highway;

“7. - That defendants have now sent to the Plaintiff a notice (Annex 'B') of their intention to close the road; and

“8. - The Plaintiff has the right to the continued use of said road, the closing of which will cause injustice and irreparable damages to the Plaintiff and the Plaintiff is willing to post a bond for the issuance of a writ of preliminary injunction to stop the defendants from closing the road.”

x x x x x x x x

Wherefore, the plaintiff prayed that a writ of preliminary injunction be issued restraining the defendants from closing the said road, and after hearing, make the injunction per-manent. It also prayed that the defendants be directed to recognize and respect the said road right-of-way agreement.[1] Copies of the road right-of-way

agreement and the letter of the defendants advising the plaintiff of the closure of the road were attached thereto.[2] Upon the filing of a bond in the amount of P1,000.00, a writ of preliminary injunction was issued, restraining the defendants from closing the road.[3]

Instead of a responsive pleading, the defendants filed a motion to dismiss the complaint on January 4, 1961, upon the ground that the claim on which the action or suit is founded is unenforceable under the provisions of the Statute of Frauds and special law, in that 'the first page of the said road right-of-way agreement was not signed by both parties and their instrumental witnesses; page two thereof is not dated, and the signature of the plaintiff's corporate agent does not appear; and that said agreement is not acknowledged before a person authorized to administer oaths.[4]

The plaintiff opposed the motion, stating that the agreement between plaintiff and Luciano Hernandez is not one of those agreements specified in the Statute of Frauds.[5] Nevertheless, the trial court granted the motion to dismiss on January 17, 1961 and dismissed the cases.[6]

The plaintiff filed a motion for reconsideration of the said order, insisting that the road right-of-way agreement is not covered by the Statute of Frauds.[7] Then, on March 4, 1961, the plaintiff filed an Amended Complaint, accompanied by a motion for its admission. The plaintiff therein prayed, among others, that the Defendants be ordered to keep the road open and to respect the right-of-way agreement, and "should it be ascertained that under the law the plaintiff is bound to pay compensation for the right-of-way to the defendants, it is prayed that the reasonable amount of such compensation be fixed." [8]

After hearing the parties, the trial court issued an order on September 6, 1961, denying the motion for reconsideration.[9]

Whereupon, the plaintiff perfected an appeal to the Court of Appeals. [10] The appellate court, finding that only questions of law are raised, elevated the appeal to this Court.[11]

The plaintiff-appellant made the following assignment of errors in its Brief:

"1. The trial court erred in dismissing the complaint on the ground that the claim on which the action or suit is founded is unenforceable under the provisions of the Statute of Frauds and special law; and

"2. The trial court erred in denying plaintiff's motion for reconsideration."

The appeal is meritorious. The Statute of Frauds refers to specific kinds of transactions and cannot apply to any that is not enumerated therein.[12] The transactions or agreements covered by said statute are the following:

"(a) An agreement that by its terms is not to be performed within a year from the making thereof;

"(b) A special promise to answer for the debt, default, or miscarriage of another;

"(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

"(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of purchasers and person on whose account the sale is made, it is sufficient memorandum;

"(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

"(f) A representation as to the credit of a third person." [13]

Obviously, an agreement creating an easement of right-of-way is not one of those contracts covered by the statute of frauds since it is not a sale of real property or of an interest therein. The trial court, therefore, erred in dismissing the case upon the defendants' claim that the road right-of-way agreement in question is unenforceable under the statute of frauds. Besides, the complaint, as amended, may be viewed not only as a claim for the recognition of the existence of an easement of right-of-way on defendants' estate, but also a demand for the establishment of an easement of right-of-way, if none exists, pursuant to Art. 649 of the Civil Code, in view of the plaintiff's offer to pay reasonable compensation for the use of the land.

WHEREFORE, the judgment appealed from is hereby reversed and the orders of January 17, 1961 and September 6, 1961 set aside. Costs against the defendants-appellees.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] R.A., p. 3.

[2] Id., pp. 5, 10.

[3] Id., pp. 11, 12.

[4] Id., pp. 13-18.

[5] Id., p. 19.

[6] Id., p. 21.

[7] Id., p. 22.

[8] Id., pp. 36, 37.

[9] Id., p. 48.

[10] Id., p. 50.

[11] Rollo, p. 36.

[12] Faustino Cruz vs. J.M. Tuason & Co., et al., G.R. No. L-23749, April 29, 1977.

[13] Art. 1403, par. 2, Civil Code.

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