

FILEMON H. MENDOZA, ET AL., PLAINTIFF AND APPELLANTS, VS. AQUILINA COMPLE, DEFENDANT AND APPELLEE.

G.R. No. L-19311. October 29, 1965

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

The plaintiffs have appealed from the order of Judge Honorio Romero of the Batangas Court of First Instance, dismissed their action to require defendants to comply their alleged contract of purchase and sale of a Parcel of land.

His Honor held that the complaint merely described an accepted promise to sell by defendant, which promise could be withdrawn (and was withdrawn on time) because it was not supported by "a consideration distinct" from price of the sale.

The material allegations of the complaint are the following:

"4. That, the plaintiffs were at first reluctant to purchase the said parcel of land x x x;

"5. That after a series of negotiations x x x upon the insistence of the defendant that the plaintiffs purchase the said parcel of land, the defendant finally agreed to sell to the plaintiffs the parcel of land in question plus the additional area of twenty-four square meters above stated, for the price of P4,500.00, Philippine currency; and upon their mutual agreement, the plaintiffs were given by the defendant a period of three weeks from April 15, 1961 and until May 6, 1961, within which to raise the amount of P4,500.00;

"6. That, it was likewise agreed upon between the plaintiffs and the defendants that the final deed of conveyance will be executed by the latter in favor of the former as soon as the plaintiffs shall be ready with the cash within the period given them;

"7. That, on May 1, 1961, before the expiration of the period of three weeks given to the plaintiffs by the defendant on aforesaid, the said defendant came over to the house of the plaintiffs, and then and there advised them that she is calling off the deal and that she is backing out from their agreement."

It will be observed that there is no allegation that plaintiffs had agreed to buy the land. So, according to the facts described in the complaint, if plaintiffs did not produce or have the money on or before May 6, 1961, no liability attached to them. Neither could defendant (if she so selected) compel them to buy.

The negotiations as thus related in the complaint merely amounted to an undertaking by defendant that if plaintiffs had the amount of P4,500.00 on or before May 6, 1961, she would sell the lot to them for that sum upon the execution of the contract; and that plaintiffs accepted or agreed to such promise. The new Civil Code provides that such promise is binding upon the promisor if the promise is supported by a consideration distinct from the price (Art. 1479). Now, as there was no such "distinct" consideration (no allegation as to it), the defendant was not bound to stand by her promise even if accepted, before withdrawal. The lower court applied and followed our decisions in *Southwestern Sugar & Molasses Co. v. Atlantic Gulf & Pacific Co.*, 51 Of. Gaz. 3447 and *Navarro v.*

Sugar Producers Association, 60 Of. Gaz. 511. We are satisfied that on the facts and the law, both said cases enunciated principles conclusive on this litigation.

Consequently, the appealed order is affirmed, with costs.

Bautista Angelo, Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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