

GEORGE LITTON AND ROSA TULOD DE LITTON, PLAINTIFFS AND APPELLANTS, VS. LUZON SURETY CO., INC. AND EULOGIO RODRIGUEZ, SR., DEFENDANTS AND APPELLANTS.

G.R. No. L-2603. February 11, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This appeal stems from an action initiated by plaintiffs-appellants in the Court of First Instance of Manila to compel defendants-appellants to execute in their favor a deed of sale of certain lots situated in the City of Manila, together with the three-story building erected thereon, free from any lien or encumbrance, to pay the sum of P100,000 representing the damage suffered by said property after the defendants-appellants had become in default in their obligation to convey and deliver the same to the plaintiffs, and to render an accounting of the rentals of said property at the rate of not less than P2,500 a month from May 7, 1943, until the date of the actual conveyance and delivery of the property to the plaintiffs.

The defendants answered the complaint setting up certain special defenses and a counter-claim. After trial, at which both parties presented their respective evidence, the court rendered judgment absolving the defendants from the complaint but ordering the defendants to return to the plaintiffs an amount equivalent to the sum of Php.10,000 in Philippine peso, according to the Ballantyne schedule, plus an equal amount of the same value in Philippine peso, which, according to the court, was paid to the defendants as advance payment of the consideration of the sale previously agreed upon by the parties. From this judgment both parties appealed.

The background of this case is as follows: Allison D. Gibbs and his sons Allison J. Gibbs and Finley J. Gibbs were originally the owners of two parcels of land, together with a three-story building erected thereon, situated in the city of Manila, and described in transfer certificate of title No. 61246. On April 18, 1941, the three Gibbs, father and sons, sold the land and the building to Raymundo F. Navarro and R. F. Navarro & Co., Inc., for the sum of \$125,000, United States currency, payable in ten installments, to secure which a deed of mortgage was executed on the same property under certain conditions.

On August 12, 1941, Raymundo F. Navarro and R. F. Navarro & Co., Inc. in turn sold the property to Eulogio Rodriguez Sr. for the sum of P40,000, the latter assuming the obligation to pay the balance of the purchase price which then amounted to \$101,250 and the fulfillment of the other conditions stipulated in the deed of sale executed in favor of the original owners. The transfer was made with the conformity of the Gibbs.

On December 16, 1941, Eulogio Rodriguez Sr. assigned his right and interest in the property to Luzon Surety Co., Inc. for P42,000, the Matter assuming the mortgage liability in favor of the original owners. This assignment was also made with the conformity of the Gibbs. As a result of these transfers, a new transfer certificate of title was issued in the name of Luzon Surety Co., Inc. with the necessary annotation of the mortgage in favor of the mortgagees. War came and the city of Manila was: occupied on January 2, 1942. As a result of a denunciation made by R. F. Navarro that Eulogio Rodriguez Sr. was hostile to the Japanese, the latter was taken to Fort

Santiago, and it was while he was confined there that he met George Litton, one of the plaintiffs herein.

On February 2, 1943, R. F. Navarro sent a letter to the Japanese Military Administration denouncing the fact that 80 per cent of the purchase price of the sale of the property in question was still owned by Allison J. Gibbs and his sons, who are American citizens, and as such it was enemy property, and he offered to purchase the same from the Japanese Military Administration. On February 11, 1943, Eulogio Rodriguez Sr. was released from Fort Santiago, and several days thereafter, he was visited by two Japanese who showed him the letter of Navarro and demanded from him the payment of the obligation then owing by the Gibbs, with the warning that upon his failure to do so the property would be confiscated. Rodriguez, who was then President of the Board of directors of Luzon Surety Co., Inc., immediately called a meeting of the board and, after broaching the matter to its members, he proposed the necessity of raising fund's with which to pay the obligation as demanded by the Japanese Military Administration. It was then resolved to sell the property for P300,000. Accordingly, the property was advertised for sale and one of the offers received was that of George Litton who, as already stated, became acquainted with Rodriguez at Fort Santiago. As the original terms offered for the sale of the property were not satisfactory, Litton and his wife, Rosa Tulod, made a counter-offer, which was accepted by Rodriguez, with the understanding that the sale would be subject to the approval of the board of directors of the Luzon Surety Co., Inc. (Exhibit "A"). One of the conditions of the offer was that the offerors would make a deposit of P10,000 to bind both parties to the fulfillment of the agreement. This sum was accordingly deposited and receipted for by the cashier of the company.

Three days after the offer had been accepted, the Luzon Surety Co., Inc. wrote a letter to the Japanese Military Administration informing the latter that the company was already in a position to pay the mortgage obligation of the Gibbs and asked for authority to deposit the money in the name of the Gibbs in the Philippine National Bank and to secure from them the corresponding release of the mortgage. This letter was returned to the Luzon Surety Co., Inc. without any reply. After the return of this letter, the Luzon Surety Co., Inc. sent another letter to the Japanese Military Administration informing the latter of the offer made by George Litton and his wife and reiterating the request that the transfer be approved and they be allowed to secure the release of the mortgage.

On May 29, 1943, the board of directors of Luzon Surety Co., Inc. approved the offer of Litton with the understanding that the sale would be subject to the approval of the Japanese Military Administration (Exh. 1-A-1). Litton when shown copy of the resolution expressed the opinion that such approval was not necessary, and as there was doubt on the matter, the Luzon. Surety Co., Inc. wrote on June 7, 1943, a letter to the Japanese Military Administration asking for instructions as to the best procedure to be followed to effectuate the sale and secure the cancellation of the mortgage from the Gibbs.

On July 21, 1943, the office in charge of enemy property of the Japanese Military Administration directed the Luzon Surety Co., Inc. to pay the mortgage credit of the Gibbs before the end of said month. Inasmuch as this order was not in line with the request of the Luzon Surety Co., Inc. and said company did not have enough funds to meet the demands, which amounted to P202,500 , the parties met and conferred on the matter and after a long deliberation they agreed to modify the original agreement (Exhibit "A"), in the terms embodied in a new resolution approved by said company on July 26, 1943 (Exh. 1-B-1). But when said resolution was submitted to Litton and the latter was asked to comply with it, the same was repudiated, for which reason the company had no other alternative than to borrow from the Philippine National Bank the money necessary to comply with the order of the Japanese Military Administration. This was done and that office cancelled the mortgage existing in favor of the Gibbs.

About a week thereafter, Litton formally repudiated the agreement contained in the resolution approved on July 26, 1943, in a letter he sent to Rodriguez wherein he used some unkind words, but for the sake of their friendship

and camaraderie, Rodriguez forgot the incident and called for another conference to discuss the matter, and in that conference the parties reached a compromise as expressed in the document Exhibit 19, which was approved by the Luzon Surety Co., Inc. in a resolution adopted by its board of directors (Exhibit 1-C-1). When this resolution was shown to Litton, the latter again backed out, and irked by this attitude, said company decided to call off the negotiations and to return to Litton his deposit of P10,000. Litton declined to accept the return. The company offered to double the amount of the deposit by way of compromise, but this was also rejected. On September 14, 1943, Litton and his wife filed this action in court against the defendants for specific performance.

On October 5, 1943, one week after the defendants had interposed their answer to the complaint, Rodriguez and Narciso G. Isidro, manager of the Luzon Surety Co., Inc., were cited by a Japanese major, one Kurumatani, to appear in his office in San Beda College, Mendiola Street, Manila. When they appeared before said major, they were told that they had been cited to appear at the instance of the plaintiffs George Litton and his wife in order to arrange an amicable settlement of their controversy. After Major, Kurumatani had heard both parties, he proposed the following solution: to sell the property and divide the profit in equal shares between the parties, or to return to the plaintiffs the deposit of P10,000 plus an additional amount of P20,000. As to who was given the option to choose either of the two alternatives, there is conflict in the evidence. Both parties claimed that they were given the option. The defendants, however, chose to return the deposit with the additional amount of P20,000, but when they attempted to deliver the money to the plaintiffs, the latter declined to accept it saying that they wanted to receive the money in the presence of Rodriguez. The defendants reiterated their offer to deliver the money but the plaintiffs again declined the offer, and instead asked for the delivery of P40,000 alleging as reason the heavy expenses he had incurred and the high fees required of him by his attorney.

On December 20, 1944, plaintiffs offered to pay to the defendants the purchase price agreed upon in the amount of P285,000 and when the latter refused to accept the payment, they deposited said sum in court. The case dragged for sometime until liberation came. The record was destroyed but was reconstituted, and the case was given course in the manner and under the circumstances above pointed out.

Let us now discuss the errors assigned by both parties. While counsel for plaintiffs-appellants have assigned six errors as committed by the lower court, however, he vehemently asserts that the only real issue involved in this case is "whether or not defendants had the right, under the terms of the contract, to demand that plaintiffs assume the risk of the validity of the payment of the Gibbs mortgage". On the other hand, counsel for defendants-appellants contend that the issues are: (1) Is the contract Exhibit "A" still in force when this action was brought?; (2) in the affirmative case, are the terms and conditions thereof legally feasible?; and (3) who will suffer the loss of the sum of P285,000 which was deposited in court by the plaintiffs?

The issues involved in this case are indeed varied and confusing, but we will proceed to discuss them as they are presented by both parties.

Counsel for plaintiffs contends that the lower court erred in overlooking and failing to decide squarely the issue whether the defendants had the right, under the terms of the contract, to demand that plaintiffs assume the risk of the validity of the payment of the Gibbs mortgage for the reason that this is the main excuse alleged by the defendants for not complying with the contract Exhibit A, or the justification they advanced for their non-fulfillment of the contract. Counsel further contends that the defendants have no right to advance said excuse because, under the very terms of the contract, they bound themselves to answer for any claim that may be asserted against the property by any third party.

The evidence on this point is not clear. The contract Exhibit A does not say in so many words what should be done with the encumbrance existing on the property in favor of the Gibbs. This ambiguity has given rise to

misunderstanding and varied interpretations. But one thing stands out in bold relief: the plaintiffs wanted to buy the property free from any lien or encumbrance. The defendants agreed to sell the property also free from any encumbrance. Both however knew from the very beginning that the property was encumbered in favor of the Gibbs for a substantial amount and the only problem was how to free the property from that encumbrance without either party assuming further liability therefore. Here lies the crux of the disagreement. And this disagreement was aggravated by the requirement of the Japanese Military Administration that the mortgage credit of the Gibbs be paid in full to that office.

Should the defendants pay the mortgage credit of the Gibbs to the Japanese Military Administration, which they did in obedience to its bidding, who is to assume the consequent liability in case the Gibbs should later demand the payment of their mortgage credit? It is true that after the payment was made to the Japanese Military Administration the latter cancelled the mortgage and the cancellation was annotated on the title of the property, but this is not the cancellation which was contemplated by the parties in the contract. Evidently the parties contemplated the cancellation of the encumbrance as coming from the Gibbs who were the real creditors, either judicially or otherwise, and as this was not feasible for obvious reasons, the defendants did not want to assume the risk of having to pay the mortgage credit again to the Gibbs. Neither did the plaintiffs want to assume that risk. As both parties had foreseen this contingency, and the warranty assumed by the defendants to give to the plaintiffs a clean title has become legally impossible, we are of the opinion and so hold that the defendants had thereby become relieved of their obligation to sell the property in question to the plaintiffs. This case comes squarely under article 1116 of the old civil code which provides that impossible conditions shall annul any obligation dependent upon them.

Plaintiffs dispute the fact that there was an agreement between the parties that the cancellation of the mortgage existing in favor of the Gibbs should be effected through judicial proceedings, which an excuse is advanced by the defendants to justify their failure to comply with the contract. It is true that the contract does not say in so many words that the cancellation of the mortgage in favor of the Gibbs should be procured through court proceedings, but this is clearly inferred from paragraph 3 (c) of the contract, which refers to the institution of judicial proceedings for the cancellation of the mortgage. This paragraph can not refer but to the mortgage of the Gibbs. If that is not so, that paragraph would be a mere surplusage.

Coming now to the issues raised by the defendants, we find that the most important and decisive is: is the contract Exhibit A still in force when this action was brought?

It should be recalled that when the Japanese Military Administration required the Luzon Surety Co., Inc. to pay the mortgage credit of the Gibbs sometime in July 1943, the parties met and conferred on the matter and after a long deliberation they agreed to modify the original agreement (Exhibit "A") in the manner expressed in the resolution approved by the Board of Directors of the Luzon Surety Co., Inc. on July 26, 1943 (Exh. 1-B-1 and when this compromise agreement was repudiated by the plaintiffs, said company was forced to borrow money from the Philippine National Bank to comply with the order of the Japanese Military Administration. Sometime thereafter, the parties met again and reached a new compromise agreement (Exhibits 19, and 1-C-1). This time the Littons agreed to advance the sum of P95,000 with an option to buy the property within six months after the cessation of hostilities. This compromise was again repudiated by the Littons, and irked by this attitude, the Luzon Surety Co., Inc., decided to call off the negotiations and to return to the Littons their deposit of P10,000. Of course these facts are disputed by the plaintiffs who claim that they were mere attempts made by the defendants to reach an amicable settlement. But the preponderance of evidence in our opinion militates in favor of the defendants, as may be gleaned from the oral and documentary evidence submitted by them on the matter. On two occasions the parties and their counsel conducted a series of negotiations and held a prolonged deliberation in an

effort to reach an understanding and find a solution to the difficulties with which they were confronted, and each time their negotiations culminated in the approval of a resolution by the Board of Directors of the Luzon Surety Co., Inc. Two different resolutions were approved embodying their compromise which they believed was the best that could be reached under the circumstances, but these compromises failed to materialize because the plaintiffs changed their mind. If the parties had really not reached an understanding after a prolonged deliberation, it would be a waste of time and effort on the part of said company to adopt said resolutions. The mere averment of George Litton disputing and setting at naught the compromises so agreed upon cannot stand in the face of the impressive evidence of the defendants, and so we hold that the terms of the contract as they appear in Exhibit "A" had been modified and novated by the parties.

Again, it should be recalled that, after the complaint in this case had been filed, the parties herein were cited to appear before a certain Japanese Major Kurumatani in order to arrange an amicable settlement of their controversy. Major Kurumatani proposed the following solution: to sell the property and divide the profit in equal shares between the parties, or to return to plaintiffs the deposit of P10,000 plus an additional amount of P20,000. The parties agreed to the solution proposed, but it was not carried out because the plaintiffs declined to accept the sum of P30,000 and demanded instead P40,000, alleging as reason the heavy expense's he had incurred and the high fees demanded from him by his attorney. Of course, there is a controversy as to who was given the option to choose either of the two alternatives, both parties claiming that they were given the option. But again the preponderance of evidence here militates in favor of the defendants. Mrs. Betty Limpo, who acted as interpreter when the conference took place in the office of Major Kurumatani testified that the choice was given to Litton, but that the latter chose the payment of the sum of P30,000, which in turn was agreed to by the plaintiffs, and that when the latter tendered payment to Litton, it was repudiated. And this testimony in substance appears corroborated by three other witnesses. The only witness for the plaintiffs is Litton. In the opinion of the court, the testimony of Mrs. Limpo is disinterested and deserves credence. These facts again show that the original contract has been novated and has ceased to be binding upon the parties.

The remaining question to be determined is whether the defendants should be ordered to return to the plaintiffs the sum of P10,000 in Philippine peso to be reduced according to the Ballantyne schedule, plus an additional sum of P10,000 in Philippine peso, also to be reduced in the same manner. It is contended that the sum of P10,000 given by Litton to the defendants when the contract Exhibit "A" took place was not in the nature of an advance payment but of a deposit or earnest money, contrary to the finding of the lower court. And that even if it be considered as earnest money, the defendants can not be required to return it now because they had twice offered to return the same to the plaintiffs during the Japanese occupation when that deposit still had some value, but the plaintiffs refused to accept the same. Under the circumstances, defendants contend, they are now relieved of the obligation to return the same under article 1182 of the old civil code.

The contention that the delivery of the sum of P10,000 was in the form of deposit or earnest money intended merely to bind the parties is correct. This clearly appears in the contract Exhibit "A" wherein the parties speak of it as a mere deposit. Being a mere deposit and the contract not having been carried out because of circumstances beyond the control of the parties, or for which neither can be blamed, equity requires that only said deposit be returned in Philippine peso to be reduced according to the Ballantyne schedule.

Wherefore, the decision appealed from is affirmed with the only modification that the defendants be ordered to return to the plaintiffs the equivalent of the sum of P10,000, deposited by the latter with the former, in Philippine currency, to be determined according to the Ballantyne schedule, without pronouncement as to costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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