

**GUILLERMO AZCONA AND FE JALANDONI AZCONA, PETITIONERS,
VS. JOSE JAMANDRE, ADMINISTRATOR OF THE INTESTATE ESTATE
OF CIRILO JAMANDRE (SP. PROC. 6921 OF THE COURT OF FIRST
INSTANCE...**

G.R. No. L-30597. June 30, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

This involves the interpretation of a contract of lease which was found by the trial court to have been violated by both the plaintiff and the defendant. On appeal, its decision was modified by the respondent court in favor of the plaintiff, for which reason the defendant has now come to us in a petition for certiorari.

By the said contract,[1] Guillermo Azcona (herein-after called the petitioner) leased 80 hectares of his 150-hectare pro indiviso share in Hacienda Sta. Fe in Escalante, Negros Occidental, to Cirilo Jamandre (represented here by the administrator of his intestate estate, and hereinafter called the private respondent). The agreed yearly rental was P7,200.00. The lease was for three agricultural years beginning 1960, extendible at the lessee's option to two more agricultural years, up to 1965.

The first annual rental was due on or before March 30, 1960, but because the petitioner did not deliver possession of the leased property to the respondent, he "waived" payment, as he put it, of that rental.[2] The respondent actually entered the premises only on October 26, 1960, after payment by him to the petitioner of the sum of P7,000.00, which was acknowledged in the receipt later offered as Exhibit "B".

On April 6, 1961, the petitioner, through his lawyer, notified the respondent that the contract of lease was "deemed cancelled, terminated, and of no further effect," pursuant to its paragraph 8, for violation of the conditions specified in the said agreement.[3] Earlier, in fact, the respondent had been ousted from the possession of 60 hectares of the leased premises and left with only 20 hectares of the original area.[4]

The reaction of the respondent to these developments was to file a complaint for damages against the petitioner, who retaliated with a counterclaim. As previously stated, both the complaint and the counterclaim were dismissed by the trial court* on the finding that the parties were in *pari delicto*.[5]

The specific reasons invoked by the petitioner for canceling the lease contract were the respondent's failure: 1) to attach thereto the parcelary plan identifying the exact area subject of the agreement, as stipulated in the contract; 2) to secure the approval by the Philippine National Bank of the said contract; and 3) to pay the rentals.[6]

The parcelary plan was provided for in the contract as follows:

"That the LESSOR by these presents do hereby agree to lease in favor of the LESSEE a portion of the said lots above-described with an extension of EIGHTY (80) hectares, more or less, which portion is to be identified by the parcelary plan duly marked and to be initialed by both LESSOR and LESSEE, and which parcelary plan is known as Annex "A" of this contract and considered as an integral part hereof." [7]

According to the petitioners, the parcelary plan was never agreed upon or annexed to the contract, which thereby became null and void under Article 1318 of the Civil Code for lack of a subject matter. Moreover, the failure of the parties to approve and annex the said parcelary plan had the effect of a breach of the contract that justified its cancellation under its paragraph 8.[8]

In one breath, the petitioner is arguing that there was no contract because there was no object and at the same time that there was a contract except that it was violated.

The correct view, as we see it, is that there was an agreed subject-matter, to wit, the 80 hectares of the petitioner's share in the Sta. Fe hacienda, although it was not expressly defined because the parcelary plan was not annexed and never approved by the parties. Despite this lack, however, there was an ascertainable object because the leased premises were sufficiently identified and delineated, as the petitioner admitted in his amended answer and in his direct testimony.[9]

Thus, in his amended answer, he asserted that "the plaintiff must delimit his work to the area previously designated and delivered." Asked during the trial how many hectares the private respondent actually occupied, the petitioner declared: "About 80 hectares. The whole 80 hectares." [10] The petitioner cannot now contradict these written and oral admissions.[11]

Moreover, it appears that the failure to attach the parcelary plan to the contract is imputable to the petitioner himself because it was he who was supposed to cause the pre-paration of the said plan. As he testified on direct examination, "Our agreement was to sign our agreement, then I will have the parcelary plan prepared so that it will be a part of our contract." [12] That this was never done is not the respondent's fault as he had no control of the survey of the petitioner's land.

Apparently, the Court of Appeals* found, the parties impliedly decided to forego the annexing of the parcelary plan because they had already agreed on the area and limits of the leased premises.[13] The identification of the 80 hectares being leased rendered the parcelary plan unnecessary, and its absence did not nullify the agreement.

Coming next to the alleged default in the payment of the stipulated rentals, we observe first that when in Exhibit "B" the petitioner declared that "I hereby waive payment for the rentals corresponding to the crop year 1960-61 and which was due on March 30, 1960," there was really no-thing to waive because, as he himself put it in the same document, possession of the leased property "was not actually delivered" to the respondent.[14]

The petitioner claims that such possession was not delivered because the approval by the PNB of the lease contract had not due to the respondent's neglect. Such approval, he submitted, was to have been obtained by the respondents, which seems logical to us, for it was the respondent who was negotiating the loan from the PNB. As the respondent court saw it, however, "paragraph 6 (of the contract) does not state upon whom fell the obligation to secure the approval" so that it was not clear that "the fault, if any, was due solely to one or the other." [15]

At any rate, that issue and the omission of the parcelary plan became immaterial when the parties agreed on the lease for the succeeding agricultural year 1961-62, the respondent paying and the petitioner receiving therefrom the sum of P7,000.00, as acknowledged in Exhibit "B," which is reproduced in full as follows:

"Bacolod City

"October 26, 1960

"R E C E I P T

"RECEIVED from Mr. Cirilo Jamandre at the City of Bacolod, Philippines, this 26th day of October, 1960, Philippine National Bank Check No. 180646-A (Manager's Check Binalbagan Branch) for the amount of SEVEN THOUSAND PESOS (P7,000.00), Philippine Cur-rency as payment for the rental corresponding to crop year 1961-62, by virtue of the con-tract of lease I have executed in his favor, dated November 23, 1959, and ratified under Notary Public Mr. Enrique F. Marino as Doc. No. 119, Page No. 25, Book No. XII, Series of 1959. It is hereby understood, that this payment corresponds to the rentals due on or before January 30, 1961, as per contract. It is further understood that I hereby waive payment for the rentals corresponding to crop year 1960-61 and which was due on March 30, 1960, as possession of the property lease in favor of Mr. Cirilo Jamandre was not actually delivered to him, but the same to be delivered only after receipt of the amount as stated in this receipt. That Mr. Cirilo Jamandre is hereby authorized to take immediate pos-session of the property under lease effective today, October 26, 1960.

"WITNESS my hand at the City of Bacolod, Philippines, this 26th day of October, 1960.

"(SGD.) GUILLERMO AZCONA

"SIGNED IN THE PRESENCE OF:

"(SGD.) JOSE T. JAMANDRE"

Citing the stipulation in the lease contract for an annual rental of P7,200.00, the petitioner now submits that there was default in the payment thereof by the respondent because he was P200.00 short of such rental. That deficiency never having been repaired, the petitioner concludes, the contract should be deemed canceled in accord-ance with its paragraph 8.[16]

For his part, the respondent argues that the receipt represented an express reduction of the stipulated rental in consideration of his allowing the use of 16 hectares of the leased area by the petitioner as grazing land for his cattle. Having unqualifiedly accepted the amount of P7,000.00 as rental for the agricultural year 1961-62, the petitioner should not now be heard to argue that the pay-ment was incomplete.[17]

After a study of the receipt as signed by the peti-tioner and witnessed for the respondent, this Court has come to the conclusion, and so holds, that the amount of P7,000.00 paid to by the respondent and received by the petitioner re-presented payment in full of the rental for the agricultural year 1961-62.

The language is clear enough: "The amount of SEVEN THOUSAND PESOS (P7,000.00), Philippine Currency, as payment for the rental corresponding to crop year 1961-62 . . . to the rental due on or before January 30, 1961, as per contract." The conclusion should be equally clear.

The words "as per contract" are especially signifi-cant as they suggest that the parties were aware of the provisions of the agreement, which was described in detail elsewhere in the receipt. The rental stipulated therein was P7,200.00. The payment being acknowledged in the receipt was P7,000.00 only. Yet no mention was made in the receipt of the discrepancy and, on the contrary, the payment was acknowledged "as per contract." We read this as meaning that the provisions of the contract were being maintained and respected except only for the reduction of the agreed rental.

The respondent court held that the amount of P200.00 had been condoned, but we do not think so. The petitioner is correct in arguing that the requisites of condonation under Article 1270 of the Civil Code are not present. What we see here instead is a mere reduction of the stipulated rental in consideration of the withdrawal from the leased premises of the 16 hectares where the petitioner intended to graze his cattle. The signing of Exhibit "B" by the petitioner and its acceptance by the respondent manifested their agreement on the reduction, which modified the

lease contract as to the agreed consideration while leaving the other stipulations intact.

The petitioner says that having admittedly been drafted by lawyer Jose Jamandre, the respondent's son, the receipt would have described the amount of P7,000.00 as "payment in full" of the rental if that were really the case.

It seems to us that this meaning was adequately conveyed in the acknowledgment made by the petitioner that this was "payment for the rental corresponding to crop year 1961--62" and "corresponds to the rentals due on or before January 30, 1961, as per contract." On the other hand, if this was not the intention, the petitioner does not explain why he did not specify in the receipt that there was still a balance of P200.00 and, to be complete, the date when it was to be paid by the respondent.

It is noted that the receipt was meticulously worded, suggesting that the parties were taking great pains, indeed, to provide against any possible misunderstanding, as if they were even then already apprehensive of future litigation. Such a reservation - if there was one - would have been easily incorporated in the receipt, as befitted the legal document it was intended to be.

In any event, the relative insignificance of the alleged balance seems to us a paltry justification for annulling the contract for its supposed violation. If the petitioner is fussy enough to invoke it now, it stands to reason that he would have fussed over it too in the receipt he willingly signed after accepting, without reservation and apparently without protest, only P7,000.00.

The applicable provision is Article 1235 of the Civil Code, declaring that:

"Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest objection, the obligation is deemed fully complied with."

The petitioner says that he could not demand payment of the balance of P200.00 on October 26, 1960, date of the receipt because the rental for the crop year 1961-62 was due on or before January 30, 1961.[18] But this would not have prevented him from reserving in the receipt his right to collect the balance when it fell due. Moreover, there is no evidence in the record that when the due date arrived, he made any demand, written or verbal, for the payment of that amount.

As this Court is not a trier of facts,[19] we defer to the findings of the respondent court regarding the losses sustained by the respondent on the basis of the estimated yield of the properties in question in the years he was supposed to possess and exploit them. While the calculations offered by the petitioner are painstaking and even apparently exhaustive, we do not find any grave abuse of discretion on the part of the respondent court to warrant its reversal on this matter. We also sustain the P5,000.00 attorney's fee.

WHEREFORE, the decision of the respondent Court of Appeals is AFFIRMED in full, with costs against the petitioners.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Exh. A.

[2] Exhibit "B".

[3] Rollo, p. 66.

[4] Ibid., p. 99.

* Presided by Judge Jose F. Fernandez.

[5] Id., pp. 99-101.

[6] id., p. 99.

[7] id., p. 52.

[8] id., p. 15.

[9] id., p. 74; TSN, p. 48, Dec. 11, 1963.

[10] TSN, p. 48, Dec. 11, 1963.

[11] Lianga Lumber Co. v. Lianga Timber Co. Inc., 76 SCRA 197; Cunanan v. Amparo, 80 Phil. 227.

[12] TSN, p. 11, Dec. 11, 1963.

* Gatmaitan, J., ponente, Enriquez Soriano, J.J.

[13] Rollo, p. 102.

[14] Exh. "B"

[15] Id., p. 102.

[16] id., p. 34.

[17] id., p. 144.

[18] id., p. 34.

[19] Chemplex Phil. Inc. v. Pamatian, 57 SCRA 408.

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