

ARTEMIO KATIGBAK, PETITIONER, VS. COURT OF APPEALS, DANIEL EVANGELISTA AND V. K. LUNDBERG, RESPONDENTS.*G.R. No. L-16480. January 31, 1962*

Ponente: PAREDES, J.

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This case arose from an agreed purchase and sale of a Double Drum Carco Tractor Winch Artemio Katigbak upon reading an advertisement for the sale of the winch placed by V.K. Lundberg, owner and operator of the International Tractor and Equipment Co., Ltd., went to see Lundberg and inspected the equipment. The price quoted was P12,000.00. Desiring a reduction of the price, Katigbak was referred to Daniel Evangelista, the owner. After the meeting, it was agreed that Katigbak was to purchase the winch for P12,000.00, payable at P5,000.00 upon delivery and the balance of P7,000.00 within 60 days. The condition of the sale was that the winch would be delivered in good condition. Katigbak was apprised that the winch needed some repairs, which could be done in the shop of Lundberg. It was then stipulated that the amount necessary for the repairs will payment of P5,000.00. The repairs were undertaken and the total of P2,029.85 for spare parts was advanced by Katigbak for the purpose. For one reason or another, the sale was not consummated and Katigbak sued Evangelista, Lundberg and the latter's company, for the refund of such amount.

Lundberg and Evangelista filed separate Answer to the complaint, the former alleging non-liability for the amount since the same (obligation for refund) was purely a personal account between defendant Evangelista and plaintiff Katigbak. Lundberg asked P500.00 by way of actual and compensatory damages and P5,000.00 as moral damages, claiming that the filing of the suit was malicious; that there is a misjoinder because he is a stranger in the case, not being a party to the agreement between Evangelista and Katigbak.

Evangelista, on his part, claimed that while there was an agreement between him and Katigbak for the purchase and sale of the winch and that Katigbak advanced the payment for the spare parts, he (Katigbak) refused to comply with his contract to purchase the same; that as a result of such refusal he (Evangelista) was forced to sell the same to a third person for only P10,000.00, thus incurring a loss of P2,000.00, which amount Katigbak should be ordered to pay, plus moral damages of P5,000.00 and P700.00 for attorney's fees.

The lower court rendered judgment, the dispositive portion of which reads -

WHEREFORE, judgment is hereby rendered ordering the defendants Daniel Evangelista and V.K. Lundberg to pay plaintiff the sum of P2,029.85, with legal interest thereon from the filing of the complaint until fully paid, plus the sum of P300.00 as attorney's fees, and the costa."

The Court of Appeals, on September 5, 1959, reversed the judgment in the following manner:-

"Notwithstanding the breach of contract committed by him, we may concede appellee's right to a refund of the sum of P2,029.85 but equally undeniable is appellant Evangelista's right to recover from him his loss of P2,000.00, which is the difference between the contract price for the sale of the winch between him and appellee and the actual price for which it was sold better the latter had refused to carry out his agreement. As

held in the above-cited case of Hanlon, if the purchaser fails to take delivery and pay the purchase price of the subject matter of the contract, the vendor, without the need of first rescinding the contract judicially, is entitled to resell the same, and if he is obliged to sell it for less than the contract price, the buyer is liable for the difference. This loss, which is the subject matter of Evangelista's main counterclaim, should therefore be set off against the sum claimed by appellee, which would leave in favor of the latter a balance of P29.85.

Considering our finding that it was appellee who committed a breach of contract, it follows that the present action was unjustified and he must be held liable to appellant Evangelista for attorney's fees in the sum of P700.00.

Lastly, inasmuch as, according to the evidence appellant Lundberg was merely an agent of his co-appellant, it is obvious that he cannot be held liable to appellee in connection with the refund of the sum advance by the latter.

WHEREFORE, the appealed judgment is hereby modified by dismissing the complaint as to V.X. Lundberg; by reducing the judgment in favor of appellee to the sum of P29.85, and by sentencing him, in turn, to pay appellant Evangelista the sum of P700.00 as attorney's fees."

Plaintiff-appellee Katigbak brought the matter to this Court on appeal *nu certiorari*. In his petition he claims that the Court of Appeals erroneously applied the doctrine enunciated in the *Hanlon v. Hausserman* case (40 Phil. 796, 815-816), and failed to apply the law relative to rescission of contracts. Other issues raised are strictly factual and will only be mentioned here for reference.

We quote from the *Hanlon* case -

"x x x. In the present case the contract between Hanlon and the mining company was executory as to both parties, and the obligation of the company to deliver the shares could not arise until Hanlon should pay or tender payment of the money. The situation is similar to that which arises every day in business transactions in which the purchaser of goods upon an executory contract fails to take delivery and pay the purchase price. The vendor in such case is entitled to resell the goods. If he is obliged to sell for less than the contract price, he holds the buyer for the difference; if he sells for as much as or more than the contract price, the breach of contract by the original buyer is *dammum abaque injuria*. But it has never been held that there is any need of an action of rescission to authorize the vendor, who is still in possession, to dispose of the property where the buyer fails to pay the price and take delivery. x x x" (40 Phil. 815.) "

The facts of the case under consideration are identical to those of the *Hanlon* case. The herein petitioner failed to take delivery of the winch, subject matter of the contract and such failure or breach was, according to the Court of Appeals, attributable to him, a fact which We are bound to accept under existing jurisprudence. The right to resell the equipment, therefore, cannot be disputed. It was also found by the Court of Appeals that in the subsequent sale of the winch to a third party, the vendor thereof lost P2,000.00, the sale having been only for P10,000.00, instead of P12,000.00 as agreed upon, said difference to be borne by the supposed vendee who failed to take delivery and/or to pay the price.

Of course, petitioner tried to draw a distinction between the *Hanlon* case and his case. The slight differences in the facts noted by petitioner are not, however, to our mode of thinking, sufficient to take away the case at bar from the application of the doctrine enunciated in the *Hanlon* case.

WHEREFORE, the petitioner is dismissed, and the decision appealed from is affirmed in all respects, with costs against petitioner.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, Barrera and De Leon, JJ., concur.
Padilla and Dizon, JJ., no part.

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