

AYALA Y COMPAÑIA, PLAINTIFF AND APPELLEE, VS. JOSEPH ARCACHE, DEFENDANT AND APPELLANT.*G.R. No. L-6423. January 31, 1956*

Ponente: CONCEPCION, J.

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This is an appeal, taken by defendant Joseph Arcache, from a decision of the Court of First Instance of Rizal. The facts are:

On July 1, 1948, plaintiff, Ayala y Compañia, a commercial partnership organized in conformity with the Philippine laws, and defendant Joseph Arcache, executed the deed Exhibit B, whereby plaintiff agreed to sell to defendant, and the latter agreed to purchase from the former, four (4) lots situated in the municipality of Makati, Province of Rizal, more particularly described in Annexes A-1 to A-4 of said document, at the rate of P6 per square meter, or the aggregate sum of P447,972, payable as follows: P100,000 by promissory note (Exhibit C), executed and delivered simultaneously with said Exhibit B, and payable on or before August 9, 1948, and the balance of P347,972 in annual installments of P100,000 each, payable on August 9 of the subsequent years, except the last installment, which shall be P47,972, with interest, at the rate of 6 per cent per annum on the outstanding balances. Exhibit B provided, also, among other things that, upon payment of the first annual installment, with interests on the outstanding balances, title to the property would be transferred to the defendant, who, simultaneously, would secure and guarantee the payment of the balance due and the interests thereon with a first mortgage on said lots and the improvements thereon; that defendant could not sell or dispose of any portion thereof without the plaintiff's written consent, which would, not be withheld upon payment of an additional sum of P6.00 per square meter sought to be released; that defendant would expedite to the best of his ability, the paving of the Buendia Avenue—which adjoins the lots in question—by the National Government, in accordance with the terms of certain deeds of donation executed by the plaintiff in favor of the Government on February 2, 1948; that, should the Government decide to pave Buendia Avenue with concrete, defendant shall pay plaintiff's share in "the difference between the cost of paving the road with concrete and that with asphalt"; that real estate taxes and special assessments on said lots shall be paid by the defendant; that the latter may take immediate possession of said lots, but, until title thereto is transferred to him as above stated, his possession shall be that of a tenant, with option to purchase; that the ejectment of any occupant or intruder, after the ouster of the present occupants by the plaintiff, shall be made by the defendant and for his account; and that the defendant shall have, within one year from August 9, 1948, an option to purchase eight (8) additional parcels of land described in a sketch annexed to said deed, under the terms and conditions therein set forth.

On August 9, 1948, when defendant's promissory note for P100,000 fell due, he did not pay said sum. However, on August 10, 1948, he delivered, and plaintiff accepted, the sum of P1,000 as interest on said note, from August 9 to October 8, 1948, to which last date the due date of said promissory note was thereupon extended (Exhibit D). On August 30, 1948, defendant paid to plaintiff the sum of P50,000 "as earnest money to guarantee the fulfillment of all his obligations" under Exhibit B, as well as on account of said promissory note for P100,000, subject to the

following conditions.

- "That the due date of said promissory note of July 1, 1948 is hereby extended to January 31, 1949, Provided, however, That should on or before such date the said Mr. Joseph Arcache pays or causes to be paid the sum of fifty thousand (50,000) PESOS together with interest thereon at the rate of six (6%) PER CENT per annum from date hereof to date of payment, then this earnest money shall be considered as partial payment of the said promissory note of July 1, 1948;

- "On the other hand, should the said Mr. Joseph Arcache fail to pay the additional sum of fifty thousand (P50,000) pesos mentioned in the preceding subparagraph, then this- earnest money of fifty thousand (P50,000) pesos shall be automatically forfeited in favor of this Company, by way of liquidated damages under the 'Agreement to Purchase and Sell' of July 1, 1948, and the latter shall, by the mere fact of such nonpayment, be automatically rescinded as though it had never been entered into." (Exh 1.)

Although the date of maturity of said promissory note was thereby extended, once more, to January 31, 1949, defendant did not seasonably honor it. On March 7, 1949, both parties executed the "amended agreement to purchase and sell" Exhibit E, in which it was stipulated that upon subdivision survey, the lots above referred to appear to have an area of 76,234 square meters, instead of 74,662 square meters, as stated in the annexes to Exhibit B; that the stipulated price was, therefore, increased from P447,972 to P457,404; that plaintiff had received from the defendant on August 30, 1948, the sum of P50,000, by way of "earnest money"; that defendant bound himself to pay, on or about April 4, 1949, the additional sum of P50.000 (balance of his promissory note of July 1, 1948) ; that should he comply with this obligation, the earnest money of P50.000 "shall be considered as part of the purchase price"; that, otherwise, said earnest money would be "automatically forfeited" to the plaintiff "by way of liquidated damages" and the amended agreement Exhibit E automatically annulled and cancelled, "except as to such portions of the property sold to third parties and duly released" by the plaintiff "in the form of absolute sales"; that upon payment of the balance of P50,000 due on defendant's promissory note (Exhibit C), title to the lots in question would be transferred to him, and he would simultaneously secure and guarantee, with a first mortgage on said lots, the payment of the balance of the purchase price thereof; and that defendant renounced his option under Exhibit B to purchase the additional parcels of land therein mentioned. In all other respects, Exhibit E is substantially identical to Exhibit B.

On March 16, 1949, defendant paid to plaintiff the sum of P50,000 with interests thereon. When the first annual installment of P100,000 fell due, on August 9, 1949, said amount was not paid by the defendant. Instead, both parties executed the deed Exhibit F, entitled "Amendment to the Amended Agreement to Purchase and Sell of March 7, 1949", which provided, among other things, that payment of said annual installment of P100,000, including interest, was extended to February 9, 1950; that plaintiff was relieved of its obligation to eject the "remaining squatters" on the lots in question; and that, in all other respects,. the amended agreement Exhibit E shall remain in full force and effect.

It is not disputed that the first annual installment of P100.000 was not paid within the extended period, expiring on February 9, 1950. Soon thereafter, or on May 13, 1950, plaintiff instituted the present case, for the rescission of the contracts, Exhibits B, E and F, and the recovery of the following sums: (1) P47,000, representing plaintiff's share in the difference between the cost of paving Buendia Avenue with concrete and that of asphalt; (2) P10.000, allegedly spent by the plaintiff to eject its tenants, so as to be in a position to deliver the lots in question to the defendants; (3) P1, 680.35 paid by the plaintiff, on account of the defendant, by way of real estate taxes; and (4) P1,000 as attorney's fees, in addition to costs.

Defendants answered alleging that his obligation was not fulfilled owing to the prior failure of the plaintiff to

comply with its own part of their contract; that the sum of P47,000 is not, as yet, due and demandable; that he has no sufficient knowledge of the facts upon which plaintiff relies in support of its claim for reimbursement of P10,000, which at any rate, should not be entertained because of plaintiff's default in the performance of its own obligations and that such default, on the part of the plaintiff, rendered it "iniquitous and burdensome" for the defendant to comply with his part of their agreement.

In due course, the Court of First Instance of Rizal rendered judgment, the dispositive part of which reads as follows:

"POR LAS CONSIDERACIONES EXPUESTAS, el Juzgado dicta decis a favor de la demandante Ayala y Compafiia, ordcnando la resolucin del contrato de compra y venta de fecha 7 de marzo de 1949 (Exhibito 'E'), tal como ha sido ultimamente enmendado el 9 de agosto del mismo afio, 1949 (Exhibito 'F'), y otros convenios poateriores; declarando a la demandante ser duena de todos los lotes o parcelas de terreno envueltas en este litigio, con derecho a su pose con derecho a cobrar y deducir de la suma de P50,000 la de P8,520.54 y otra de P3,000 en concepto de danos y honorarios de abogado, respectivamente; y ordena a la demandante a devolver al demandado cualquiera otra suma remanente a balance de loa P50,000, despues de deducidas las sumas aqui autoriaadas, con las costas d juicio contra el demandado." (Record on Appeal, pp. 98-99.)

The main issue in this case is whether or not defendant did not pay the first installment of P100,000, originally due on August 9, 1949, and subsequently extended to February 9, 1950, due to the alleged prior default of plaintiff herein. In this connection, defendant maintains that upon payment of the sum of P100,000 due on his promissory note (Exhibit C), which amount was fully paid on March 16, 1949, plaintiff was bound, under Exhibit E, to convey the lots in question to him; that, having failed to do so, plaintiff was in default in the performance of said obligation; and that, consequently, defendant cannot be compelled to pay the first annual installment, which became due on February 9, 1950.

Upon the other hand, plaintiff tried to prove that it had caused the deed of conveyance in favor of the defendant to be prepared; that said instrument was ready for signature sometime after March 16, 1949; that, this notwithstanding, the deed was not executed, upon the request of the defendant, inasmuch as his creditors had filed several suits against him. In support of this pretense, plaintiff introduced the testimony of its counsel, , Messrs. McVittie, Tellechea, and Lorayes, which the lower court found more worthy of credence than that of defendant Joseph Arcache, not only because the latter's testimony is uncorroborated, but also, because the testimony of said witnesses for the plaintiff is borne out by documentary evidence.

Indeed, it appears that the following cases and proceedings against the defendant were filed and took place, to wit:

- On or about August 5, 1948, the Philippine Relief and Trade Rehabilitation Administration instituted civil case No. 6058 of the Court of First Instance of Manila, for the recovery of P55,118.06, with interests and costs. A writ of garnishment was issued therein on August 30, 1948 (Exhibit P);
- On or about August 17, 1948, Dr. Simplicio Ocampo commenced civil case No. 6120 of the same court, for the recovery of P8,000, with interests and costs. The case was, later, settled amicably and then dismissed, by an order dated March 4, 1949 (Exhibit Q);
- On or about October 16, 1948, Brias Roxas, Inc., began civil case No. 6867 of the same court, for the recovery of \$6,000, plus \$3,000 monthly, from November 1, 1948, in addition to attorney's fees and costs. On March 3, 1949, judgment was rendered for said plaintiff, in the sum of P24,000, plus P2,400 by way of attorney's fees, and costs. The corresponding writ of execution was issued on August 20, 1949 (Exhibits R and R-I);
- On May 28, 1949, the Manila Surety and Fidelity Co., Inc., brought civil case No. 8179 of the same court of Manila. On November 9, 1949, judgment was rendered therein for the sum of P2,800, plus attorney's fees, in the

sum of P285, and costs. The corresponding writ of execution was issued on February 8, 1950, and returned unsatisfied on April 27, 1950 (Exhibits S and R-1);

- On October 3, 1949, Hilaria Uy Isabelo initiated civil case No. 9046 of the municipal court of Manila for unlawful detainer, plus damages and attorney's fees. On appeal, the Court of First Instance of Manila—in which it was docketed as case No. 9937— rendered a decision on October 6, 1950, in conformity with a compromise agreement between the parties, whereby defendant acknowledged an indebtedness of P17,000, which he promised to pay on or before April 6, 1951. Owing, evidently, to defendant's to comply with this promise, a writ of execution was issued May 1, 1951 (Exhibit T) ;

- On September 3, 1949, the South Sea Surety and Insurance Co., Inc., filed civil case No. 9100 of the Court of first Instance of Manila, for the recovery of P10,000, plus attorney fees and costs. On March 3, 1950, said court rendered judgment prayed for and the corresponding writ of execution was issued on May 12, 1950 (Exhibits U and U-1);

- On December 22, 1949, the Central Surety and Insurance Co., commenced civil case No. 9801 of the same court, for the recovery of P6,000, plus attorney's fees, in the sum of P900, for which amounts judgement was rendered on March 23, 1950, and a writ of execution issued on May 23, 1950 (Exhibit V);

- On December 22, 1949, the Central Surety and Insurance Co., brought civil case No. 9972 of said court, for the recovery of P21,463.03, plus attorney's fees, in the sum of P3,219, costs. Decision was rendered, substantially as prayed for, on June 21, 1951 (Exhibit W);

- On April 10, 1950, the Philippine Air Lines began civil case No. 10789 of the same court, to recover P4,386.65, with interests and costs. On November 8, 1950, a decision was rendered in conformity with a compromise agreement between the parties whereby Areache undertook to pay the aforesaid sum of P4,386.65, in monthly installments of P200 each, beginning from November, 1950 (Exhibit X).

In other words, prior to March 16, 1949, three (3) civil actions for the recovery of sums of money, aggregating P92,518.06, had been filed against the defendant. Thereafter, or within the period from May 28, 1949 to April 10, 1950, six (6) additional civil actions, for the total sum of P94,113.68 more or less, were instituted. In every one of these cases—except the first, the status of which has not been sufficiently established, and the second which was settled amicably—judgment was eventually rendered against the defendant. What is more, the transactions from which the corresponding causes of action arose, and the acts, omissions and conflicts leading to said litigations, took place sometime before the commencement of the corresponding suits. Consequently, the defendant must have anticipated, not only the institution of the cases filed subsequently to March 16, 1949, but, also, the measures that the plaintiffs therein, as well as the plaintiffs in the actions begun before said date, could, and, in all probability, would have taken, in connection with the lots in question if conveyed by the plaintiff to him, with a view to holding said lots responsible for the payment of their respective credits.

It is also, important to note that—despite defendant's testimony to the contrary—during the period from March 16 to August 9, 1949, and, subsequently thereto, .defendant did not have the money required to meet his obligations in favor of the plaintiff, and was trying to raise the funds necessary therefor, by enlisting the help, assistance or support of other persons, whose interest in the lots in question he had been endeavoring to prick. This he could not hope to achieve, if plaintiff executed the corresponding deed of conveyance in his favor and caused the title to said lots to be transferred to his name, for the same would require the registration of said deed of conveyance, with the result that defendant's creditors would come to know about it, and, hence, levy attachment upon said lots, in which event nobody would care to finance defendant's venture in connection therewith.

Moreover, it clearly appears that the plaintiff was well-meaning, considerate and accommodating in dealing with the defendant. Thus, although in his letter of May 11, 1948 (Exhibit A), offering to purchase said property, defendant undertook to pay P100,000 in cash, upon the signing of the agreement, Exhibit B, he did not comply with this part of the offer. Plaintiff could have refused, therefore, to execute said deed and cancel the deal. Yet, it did not do so. What is more, it allowed the defendant to give a promissory note for P100,000, payable on August 9, 1948. Plaintiff had another chance to demand a rescission of their contract when defendant failed to honor his promissory note on the date last mentioned, but, instead, it gave him up to October 8, 1948, to pay said amount. Neither did plaintiff take advantage of a similar opportunity, as defendant was unable to fulfill his obligation within the extension of time thus granted him. Upon payment of one-half ($\frac{1}{2}$) of the amount of said promissory note on August 30, 1948, he got a third extension of time, which expired on January 31, 1949, without full settlement of said obligation. Once again, plaintiff refrained from, taking, against the defendant, any drastic action, which would have been more justified than before not only because of his repeated defaults, but also, because prior to January 31, 1948, he had secured no further extension of time. As if this were not enough, over a month later, or on March 7, 1949, plaintiff executed Exhibit E, giving defendant a fifth extension, to expire on April 4, 1949. It is true that, eventually, or on March 16, 1949, defendant paid the balance of P50,000 due on his promissory note (Exhibit C). Soon, however, when the first annual installment of P100,000 fell due on August 9, 1949, defendant became delinquent. Instead of availing of this development, to relieve itself of its obligations, plaintiff gave him an extension up to February 9, 1950, within which to pay said installment.

After such display of a degree of morality higher than that which was absolutely demanded by the circumstances, we find it difficult to conceive that plaintiff would fail to comply with its legal obligation to convey the lots in dispute to the defendant and cause the title thereto to be issued in his name. In the light of this conduct of the plaintiff towards the defendant, it would be unjust and unfair to assume and hold in the absence of concrete, tangible, clear, unbiased and corroborated evidence to the contrary—and there is none on record to this effect—that, realizing, all of a sudden (as if it were incapable of visualizing it before) that the market value of the land in question would rise, or had, meanwhile, risen already, plaintiff became, as suggested by the defendant, possessed of the desire to exclude him from the enjoyment of the corresponding profits, and, hence, cast aside its moral scruples—to which it had consistently adhered in the near past—in order, not only to dishonor its formal commitments in favor of the defendant, but also, and this is worse, to add insult to injury, by imputing to him a breach of his own contractual undertaking.

Any possible doubts on this point are dispelled by the fact that the deed, Exhibit F, executed on August 9, 1949—granting the defendant an extension up to February 9, 1950, for the payment of the first annual installment of P100,000—states that the reason therefor was that he "found himself in a position not to be able to pay the obligation falling due on August 9, 1949" and had, accordingly, "requested" the plaintiff "to grant him an extension of six (6) months within which to pay the first annual installment of P100,000." Had he felt that plaintiff was, then, in default in the performance of its obligation to execute the deed of assignment in his favor, it would have been unnecessary for the defendant to request said extension of time, for plaintiff would have had no right to demand payment of the first annual installment of P100,000 on said date. The express acknowledgment made by the defendant in Exhibit F of the fact that he was unable to pay said installment of P100,000 on August 9, 1949, and his aforementioned request for an extension of time within which to settle said obligation—which eventually was not satisfied—clearly show that he did not regard the plaintiff in default in the performance of any of its undertakings under Exhibits B, E and F and strongly corroborate the evidence for the plaintiff to the effect that, although it had prepared, and was ready to sign, the deed of conveyance, in favor of the defendant, the same was not executed upon the latter's request, for fear that his creditors may step in and deprive him of the lots in question.

Said evidence for the plaintiff is further bolstered up by three (3) additional facts, namely: (a) the defendant had never demanded, in writing, from the plaintiff, the performance of its aforesaid obligation; (b) on March 16 and 21, 1949, plaintiff actually executed in favor of the defendant the deeds of sale Exhibits G and H, whereby the former conveyed to the latter, for the sums of P30,000 and P15,000 respectively, under the first instrument, four (4) lots, with a total area of 4,992 square meters (which defendant forthwith conveyed to Senator Jose C. Zulueta for P60,000), and, under the second instrument, two (2) lots aggregating 2,500 square meters (Exhibits G, H and 3) ; and (c) plaintiff had disbursed the sum of P8,520.54 in order to eject the occupants of the lots in question, so that possession thereof could be turned over to defendant herein.

It is next urged by the defendant that plaintiff was, also, in default in its duty to pave the Buendia Avenue in its entirety. Upon ocular inspection made by His Honor the Trial Judge, it appeared, however, that said road is completely paved with concrete, except a portion thereof forming part of the railroad track, which does not belong to plaintiff herein. We agree with the lower court that the contract between the parties should not be construed—in the absence of explicit stipulation to the contrary—as imposing upon the plaintiff the obligation to attend to the paving of such portions of said avenue as were the property of others. Apart from containing no such stipulation, Exhibits B, E and F indicate clearly the contrary, for, in these instruments, the defendant agreed "to expedite, to the best of his ability, the paving of the Buendia Avenue by the National Government, in accordance with the terms of the donations of February 2, 1948, between the donors and the Government." Inasmuch as the deeds of donation have not been introduced in evidence, we must assume that the paving therein contemplated referred to the portions donated by the plaintiff to the Government, and to no other property. At any rate it was the defendant, not plaintiff, who undertook to expedite the paving by the National Government. Insofar as the decision appealed from sentences him to pay the sum of P8,520.54 disbursed by the plaintiff for the ejectment of the tenants of the lots in question, defendant herein assails it upon the ground that plaintiff was bound to incur in such expense, pursuant to the provisions of their contract. This fact does not warrant the conclusion drawn therefrom by appellant herein. To begin with, plaintiff assumed said obligation, in Consideration of the obligations, in turn, contracted by the defendant. In other words, plaintiff undertook to defray, and did defray, said expenses, because the defendant had, on his part, bound himself, among other things, to pay the annual installment of P100,000, at first, on August 9, 1949, and, subsequently, on February 9, 1950. In view of defendant's delinquency in the payment of this sum, it is but fair and just that the indemnity the plaintiff for what the latter would not have disbursed had it not been for the representations and promises made—and, subsequently, broken— by him. In other words, said expenditures now represent damages sustained by the plaintiff on account of the non- performance of defendant's obligation.

Lastly, defendant maintains, invoking Article 1592 of the Civil Code of the Philippines (which is substantially identical to Article 1504 of the Civil Code of Spain) that rescission or resolution should not have been ordered without giving him an opportunity to pay the first annual installment of P100,000, which, he claims, he is ready, willing and able to pay and offered to pay in open court. There is no merit in this pretense. The cases cited in support thereof refer to slight or casual violations of contractual obligations, whereas the breach of contract in the present case is substantial. Besides, the records abundantly show that defendant was neither ready nor able to pay said sum of P100,000 either on August 9, 1949, or on February 9, 1950, or at any time during the hearing of this case in the lower court. In fact, he never deposited, or made a formal offer to deposit in court said amount. Lastly, said legal provision governs contracts of purchase and sale, but has no application to a promise to sell (*Caridad Estates Inc. vs. Santero*, 71 Phil. 114; *Alfrea vs. Inaunimboy*, 47 Off. Gaz., Supp. 131; *Decision of the Supreme Court of Spain of October 7, 1896*) such as the one involved in the contract between the parties herein.

Wherefore, we find no merit in the appeal taken by defendant-appellant, and, accordingly, the decision appealed from, is, hereby, affirmed in toto, with costs against said defendant-appellant. It is so ordered.

Parás, C J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ. concur.

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