

FRANCISCO BATAÑGAN, PLAINTIFF AND APPELLANT, VS. ISIDRA COJUANGCO, DEFENDANT AND APPELLEE.*G.R. No. L-224. May 31, 1947*

Ponente: TUASON, J.

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This is the third time appellant has come to this court. The three cases stemmed from the foreclosure of a mortgage. In the first case, appellant undertook to compel the Court of First Instance of Nueva Ecija to approve his record on appeal. There he attacked the validity of the lower court's judgment on the ground that the agreement embodied therein was fraudulent. The petition was denied. The second was an appeal from an order of the trial court refusing to set aside the sale of the mortgaged property by the sheriff. In that appeal, the appellant again failed. Now he seeks to have the appellee resell to him the property. It is a suit in the nature of an action for specific performance based on a statement in the brief of the appellee in the case for annulment of the sale. This statement was copied in this court's decision as a footnote to the court's conclusion that "appellant has no right to redeem the property sold pursuant to the foreclosure of the mortgage thereon." It reads:

"In order to impress the appellant that appellee is not interested in owning the mortgaged property and that she was only forced for lack of another buyer to acquire it in the auction sale, she is willing to resell the property to him for the same amount in which it was purchased at the auction sale, that is, for P1,508.28, provided it be in cash."

Other pertinent facts in this connection are these: Our decision was promulgated on September 27, 1943. On October 29, 1943, Attorney Marcelino Lontok, who has represented the herein appellant in the three cases, sent Isidra Cojuangco a missive with three postal money orders for P800, stating that he was remitting that amount in behalf of his client "in accordance with your agreement," and promising to pay the balance "at the shortest possible time." The amount was rejected by Mrs. Cojuangco, who told Atty. Lontok in her answer that she was surprised because she had not had any agreement with his client. On January 28, 1944, Atty. Lontok sent a letter through a messenger to Mrs. Cojuangco's counsel, Atty. Antonio Lucero, in Manila, enclosing the same money orders for P800 and P708.30 in paper money. This tender was also refused. On January 7, 1944, Attorney Lontok came to this court with a motion to order the appellee to comply with the offer she had made in her brief. That motion was "rejected" in a resolution dated February 18, 1944, "for having been filed after the entry of judgment."

The suit at bar is a reiteration of the motion just mentioned. Because of their identity, our resolution denying the motion to compel Cojuangco to live up to her commitment was set up as a bar to the present action. The plea was overruled by the lower court as not well taken. The lower court also declared that "the statement contained in the brief of the defendant herein in R. G. No. 48980 and footnoted in the decision of the Supreme Court (was) a promise on the part of the defendant herein to resell the land in question to the plaintiff herein." Nevertheless it found that "the time for him (Batangan) to accept the promise was from the date of the brief of the defendant herein in R. G. No. 48980 until the entry of judgment," and that the acceptance having been made after the judgment had been rendered, it came too late.

The question of the conclusiveness of our resolution referred to is not pressed in this appeal. Apparently abandoning her plea in this regard, the appellee makes no reference in her brief to her former contention that this action is *res adjudicata*. And she seems to take for granted that the signification in her brief of her willingness to allow the repurchase of the property constituted a formal offer that could have served as basis for the creation of legal relations.

The sole question on which the parties have joined issue in this appeal relates to whether the appellee's offer has been duly accepted by the appellant. We are of the opinion that the acceptance was tardy. An offer of compromise settlement must be accepted within a reasonable time. (15 C. J. S., Section 7.) And acceptance or rejection of an offer of compromise may be inferred from circumstances. (*Id.*) The appellant's failure to act on the offer before the judgment was entered was an implied rejection of said offer. In pushing the appeal to final conclusion the appellant made it clear that he was not interested in his creditor's liberal concession. A compromise has for its purpose the avoidance or termination of a law suit. (Article 1809, Civil Code.) With the rendition of judgment the reason which induced the appellee to make her proposition ceased to exist.

Again, acceptance in order to conclude the agreement must in every respect meet and correspond with the terms and conditions of the offer. (17 C. J. S., 378.) Granting that the appellant acted on time, payment of P800 fell short of the appellee's requirement. The appellee wanted P1,508.28 in cash. This was the least she was entitled to, it being the amount which the court below had found to be due her. In her proposition she did not even include any interest.

The substantial variance between the amount in the offer and the amount tendered not only made the purported acceptance inoperative but "put an end to the negotiations without forming a contract unless the party making the offer agreed to the suggested modification." (17 C. J. S., 383.) Otherwise, as the trial judge aptly observed, "promisors would be tied to their promises indefinitely and would not be able to dispose of the property involved" in the promise or offer. In addition, the promisor would be placed in a position where he would always lose without anything to gain. The promisee could wait until judgment is rendered and accept the offer of compromise if the judgment happened to be more onerous to him.

Appellant assigns as error the refusal of the trial court to make the finding that there was a new agreement entered into between the appellant and the appellee whereby the appellee would allow appellant to make a down payment of P800 and to pay the balance afterward.

This case was submitted and decided on the pleadings. No evidence was introduced. This assignment of error involves a question of fact which the plaintiff should have proved by competent evidence. His only reliance is on Exhibit 4, which is Attorney Lontok's letter transmitting P800 in money orders to the appellee. This letter is self-serving and is absolutely incompetent as proof of the alleged agreement. The reference in Exhibit 4 to an alleged understanding between the parties might have been made in contemplation of this suit. The argument which the appellant now adduces, that "we could never believe that the appellant, who came to Manila purposely to see her, would dare send her such amount without any agreement," tends to confirm this possibility. It is of interest to know that there is not the slightest intimation of such agreement in the complaint.

The judgment of the lower court is affirmed with costs against the appellant.

Paras, Pablo, and Bengzon, JJ., concur.

TUASON, J.:

I am authorized by Mr. Justice Hontiveros to certify that he concurs in this decision.

CONCURRING

PERFECTO, J.:

We concur in this decision, except the statements implying identity between this Supreme Court and the one which functioned during the enemy occupation. Ours derives its authority from the sovereign Filipino people, while the other had it from the Emperor of Japan.

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