

**FRANCISCO BASTIDA AND JUAN YSMAEL & CO., INC.,
PLAINTIFFS AND APPELLEES, VS. DY BUNCIO & CO., INC.,
DEFENDANT AND APPELLANT.**

G. R. No. L-5145. May 27, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila ordering defendant to execute a deed of sale covering its oil and lard factory located in Makati, Rizal, together with the lot but excluding the machinery for manufacturing paper, in favor of plaintiff Juan Ysmael & Co., Inc., which in turn is ordered to pay defendant the sum of P260,000 as purchase price, and the sum of P4,503.10 as rental for September, 1950, said decision further ordering defendant to pay the plaintiffs the sum of P10,000 as attorney's fees and the costs of action.

On February 20, 1948, Francisco Bastida and Juan Ysmael & Co., Inc., hereafter to be designated as Ysmael, entered into a partnership agreement for the operation of a lard and oil factory under the name of "Washington Lard and Oil Factory", with the former as an industrial partner and the latter as a capitalist partner.

While Bastida and Ysmael were thus engaged in the business of oil and lard manufacturing, on August 10, 1948, Dy Buncio & Co., Inc., whose president is Guillerrao Dy Buncio, both of whom to be hereinafter known as Dy Buncio, authorized Bastida as a broker to offer for sale its own oil and lard factory in Makati, Rizal, for P300,000, of which P100,000 would be paid on the signing of the deed of sale and the balance of P200,000 in 12 monthly installments with interest at 8 per cent a year. Said authority would expire 30 days from August 10, 1948.

Bastida offered the factory to his partner Ysmael who, while willing to make the purchase, found the price of P300,000 very high, but expressed a desire to be given some time to inspect the factory and determine whether it was in good working condition.

Bastida transmitted to Dy Buncio the reaction of Ysmael to his offer, and suggested that the latter be given more time to consider the offer. Dy Buncio agreed and to this effect he leased the factory for two years to Bastida and gave him an opinion to buy it within the same period at the reduced price of P260,000. The rental of the factory was fixed at P3,000 a month.

Explaining why the option to buy was placed in his name, Bastida said that Dy Buncio had previously prepared a letter addressed to Hemady, manager of Ysmael & Co., Inc., giving him the option to buy said factory, and granting Bastida a commission of 8 per cent in the transaction, but Bastida suggested that the option be placed in his name to give him a chance to earn extra money in the transaction.

Pursuant to the lease with option to buy, Bastida and Ysmael took possession of the lard and oil factory on September 28, 1948 and operated the business under the name of "Washington Lard and Oil Factory". This arrangement was well known to Dy Buncio. In fact, Ysmael paid to Dy Buncio all the rentals beginning October 15, 1948, and a current account was opened between Dy Buncio and Ysmael whereby the former purchased lard

and oil on credit from the factory and sometimes Dy Buncio's debt was set off against the rentals on the factory leased.

Although the factory was occupied by Bastida and Ysmael on September 28, 1948, it actually commenced to function on October 15, 1948. The reason for the delay in the operation was that the machinery had to be repaired and cleaned. New motors had to be installed.

On December 2, 1948, an agreement was entered into between Ysmael and Bastida whereby the latter assigned to the former his option to buy the factory (Exhibit G). This assignment was communicated in writing to Dy Buncio on August 29, 1950 wherein Bastida asked to be furnished with the necessary data for the preparation of the deed of sale, informing him at the same time that he had assigned his option to Hemady as early as December, 1948. By this time, Ysmael had already invested more than P300,000 worth of improvements on the factory which explains his interest in buying it.

Dy Buncio wrote to Bastida on the following day, August 30, expressing his objection to the transfer of the option to a third person. Bastida countered with a letter to Dy Buncio dated September 1, 1950 wherein Bastida said he would exercise the option himself. Bastida had an understanding with Hemady that the latter would supply the money for the purchase of the factory and then Bastida would transfer the factory to Ysmael.

Instead of answering the letter, Dy Buncio referred it to his lawyers who wrote Bastida on September 20, 1950 telling him that, before discussing his offer to exercise the option, he should first pay the rental for the month of September. Bastida tendered to Dy Buncio the rental for said month, but Dy Buncio refused to accept the same alleging that Bastida owed him more and sent him a statement of account, dated September 8, 1950, for P4,503.10 which, besides the rent, included other items and charges. Bastida found the statement excessive by P100, but in order to expedite the execution of the sale he tendered to Dy Buncio the sum demanded in full settlement of the account. Dy Buncio's lawyers issued a receipt which was objected to by Bastida's counsel because of a statement included therein to the effect that the receipt was to be without prejudice to the rescission of the lease agreement. As a result the payment was not carried out. On September 25, 1950, Dy Buncio's counsel wrote a letter to Bastida announcing the rescission of the lease due to the alleged failure to pay the rental for September, 1950 and asking him to return the leased property to Dy Buncio.

Upon the foregoing facts, the court a quo rendered decision holding in substance that the option given by Dy Buncio to Bastida to buy the oil and lard factory in question is valid and binding, that it was validly assigned to Ysmael, who gave notice of his intention to exercise the option within the two-year period agreed upon, and that, consequently, defendant is bound to respect it and to execute the corresponding deed of sale as called for in the option. From this decision defendant has appealed.

The option which was given by defendant to Bastida to buy the factory in question appears in the following letter of defendant dated September 28, 1950:

"28 de septiembre de 1948

"DON FRANCISCO BASTIDA

1988 Calls Roberts

Ciudad de Rizal

Muy señor nuestro:

La presente es para confirmar el convenio hecho con Ud. en arrendarle nuestra fabrica de manteca situada en San Pedro Makati, por un periodo de dos años a partir desde la fecha en que la fabrica oomience a funcionar.

Ud. nos pagara un alquiler mensual de P3,000. Durante la vigencia de este contrato le damos a Ud. la opcion de comprar la mencionada fabrica con todas sus maquinarias por la cantidad de P260,000, excluyendo las maquinarias para papel.

De Uds. atto. y s.s.,

(Fdo.) G. DY BUNCIO
Presidente"

It appears from the evidence that the option to buy the factory for the sum of P260,000 was given to Bastida, and when the latter assigned his right to Ysmael and the latter gave notice of his desire to exercise the option, Dy Buncio changed his mind and refused to perform the sale alleging as his reason the fact that the option was given to Bastida and not to any other person. Defendant, however, now contends that the option he has given has no valid effect on Bastida because, being a Spanish citizen, he has no right to buy the factory under our Constitution.

This contention cannot be sustained for several reasons. In the first place, there is enough evidence in the record to show that as far back as August 10, 1958, Dy Buncio was very much desirous of disposing of his factory so much so that he gave Bastida a written authority to sell it as a broker to any interested person for the sum of P300,000. Dy Buncio had known Bastida for many years and knew well that Bastida did not possess the necessary financial means to buy the factory or operate it himself. Dy Buncio also knew that at that time Bastida and Ysmael had entered into a partnership agreement for the operation of a lard and oil factory under the name of "Washington Lard and Oil Factory" with the former as industrial partner and the latter as capitalist partner, and when he gave Bastida the authority to sell his factory he, Dy Buncio, was toying with the idea that if the matter be brought to the knowledge of Ysmael the latter might be interested in buying it. In fact, such offer was made to Ysmael who, while he evinced interest in the property, he considered the price very high, and to give him an opportunity to see the factory and determine its worth the idea of leasing it was born. And though the original plan was to place the lease in the name of Ysmael, because it was Ysmael who had the means to buy the factory, the plan was later changed upon the suggestion of Bastida who asked that the transaction be placed in his name so that he may have a chance to earn extra money in the form of overprice. It therefore appears that while the letter containing the option was written in the name of Bastida, that was done merely for his accommodation, but in effect it was intended for Ysmael.

In the second place, in the supposition that the lease with option to buy was in truth and in fact given to Bastida, we believe that, to dispute it now on the technical ground that Bastida, being a Spanish citizen, cannot be given that option, is most unfair considering the time and effort he has spent in the transaction. There is no doubt that this objection is but a mere afterthought motivated by Dy Buncio's desire to retain the factory considering its future and the handsome improvements made thereon by Ysmael. This Dy Buncio cannot do. There are certain moral and legal considerations that stand on his way. He is barred from doing so not only by the rule of equity which requires that whoever goes to court must do so with clean hands, but by the well-known rule of law that he who has capacity to contract may not invoke the incapacity of the party with whom he contracted as a defense against performance (Articles 1397, New Civil Code; Article 1302, Spanish Civil Code).

But Dy Buncio contends that the assignment made by Bastida to Ysmael is ineffective because under the contract he could not make the assignment without his consent. And when he did it, Dy Buncio contends, he withheld his approval. This, according to him, renders the assignment ineffective.

We disagree with this contention. The contract, Exhibit C, does not contain any stipulation forbidding Bastida from assigning the option or requiring Dy Buncio's consent for the assignment. Nor was the option given to Bastida in consideration of his personal qualifications. On the contrary, there is enough evidence to show that the

intention was just the opposite. It appears that, at the time the authority was given, the manifest purpose of Dy Buncio was to have Bastida offer the property for sale to Ysmael. The intention was not to sell it exclusively to Bastida, as now claimed by Dy Buncio, so much so that he previously gave Bastida an authority to sell the property for P300,000 to any interested person. There is therefore no impediment on the part of Bastida to transfer his right under the option, and this he can do either under the contract or under the law. Thus, "All rights acquired by virtue of an obligation are transmissible in accordance with law if the contrary is not stipulated" (Article 1112, Old Civil Code).

As to whether Bastida actually made the assignment of his option to Ysmael which is now disputed by Dy Buncio, we find correct the following findings of the lower court:

"The Court likewise finds no merit in the contention of the defendant that there was in fact no assignment of the option nor any exercise thereof by plaintiff Ysmael. Exhibit G indubitably proves the assignment of the option even before December 2, 1948. Ysmael, through Bastida, its industrial partner, served notice upon defendant on August 29, 1950 that it would exercise the option, (Exhibit H). And, as correctly contended by plaintiffs, the filing of the instant action for specific performance on September 26, 1950, or before the expiration of the term of the option (which date of expiration is September 28, 1950, according to the defendant and October 15, 1950, according to plaintiffs) is itself an exercise of the option.

"Defendant in its letter to Bastida dated August 30, 1950 sought to cancel the option because the latter allegedly had not complied with the terms of the agreement between them. (Exhibits I, M & 5). Presumably, the agreement referred to was the alleged intransferability of the option. As already noted, the Court does not believe that there was an agreement that the option should not be transferred. All the surrounding circumstances, on the contrary, indicate that the option was in fact to be exercised by Ysmael.

"The Court cannot believe that Ysmael would have invested more than P300,000 if it had not believed that it was entitled to exercise the option given to its industrial partner Bastida, and if had known that it would be required to remove all the improvements from the factory so soon after they were installed.

"The explanation for defendant's conduct is not hard to find. In the beginning it wanted to get rid of the factory because it was not inclined to operate the same. But later, it realized that the factory would become a profitable business, so it changed its attitude and sought a way to escape from its obligation under the irrevocable option given to Bastida. Defendant is estopped from assailing the validity of the option or its assignment to Ysmael." (pp. 45-47, Record on Appeal).

Defendant makes the final plea that, should the plaintiff be declared entitled to exercise the option given to Bastida by defendant to purchase the land in question, it be ordered that, if plaintiff should fail to pay the purchase price and the rental of P4,503.10, the plaintiff should return to defendant the property and pay defendant a monthly rental until the land should have been returned to the defendant, in addition to a reasonable sum for attorney's fees.

This point was not raised in the lower court. It is raised for the first time in this appeal. To accede to the plea now would be prejudging the failure of plaintiff to exercise the option as declared in the decision. Since this is an action for specific performance, it is to be presumed that if the relief prayed for is granted, plaintiff will comply with the decision of the court. To take action on defendant's plea now would be premature.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellant.

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

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