

NICOLAS SANCHEZ, PLAINTIFF AND APPELLEE, VS. SEVERINA RIGOS, DEFENDANT AND APPELLANT.

G.R. No. L-25494. June 14, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of First Instance of Nueva Ecija to the Court of Appeals, which certified the case to Us, upon the ground that it involves a question purely of law.

The record shows that, on April 3, 1961, plaintiff Nicolas Sanchez and defendant Severina Rigos executed an instrument, entitled "Option to Purchase," whereby Mrs. Rigos "agreed, promised and committed * * * to sell" to Sanchez, for the sum of P1,510.00, a parcel of land situated in the barrios of Abar and Sibot, municipality of San Jose, province of Nueva Ecija, and more particularly described in Transfer Certificate of Title No. NT-12528 of said province, within two (2) years from said date, with the understanding that said option shall be deemed "terminated and elapsed," if "Sanchez shall fail to exercise his right to buy the property" within the stipulated period. Inasmuch as several tenders of payment of the sum of P1,510.00, made by Sanchez within said period, were rejected by Mrs. Rigos, on March 12, 1963, the former deposited said amount with the Court of First Instance of Nueva Ecija and commenced against the latter the present action, for specific performance and damages.

After the filing of defendant's answer – admitting some allegations of the complaint, denying other allegations, thereof, and alleging, as special defense, that the contract between the parties "is a unilateral promise to sell, and the same being unsupported by any valuable consideration, by force of the New Civil Code, is null and void" – on February 11, 1964, both parties, assisted by their respective counsel, jointly moved for a judgment on the pleadings. Accordingly, on February 28, 1964, the lower court rendered judgment for Sanchez, ordering Mrs. Rigos to accept the sum judicially consigned by him and to execute, in his favor, the requisite deed of conveyance. Mrs. Rigos was, likewise, sentenced to pay P200.00, as attorney's fees, and the costs. Hence, this appeal by Mrs. Rigos.

This case admittedly hinges on the proper application of Article 1479 of our Civil Code, which provides:

"ART. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

"An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price."

In his complaint plaintiff alleges that, by virtue of the option under consideration, "defendant agreed and committed to sell" and "the plaintiff agreed and committed to buy" the land described in the option, copy of which was annexed to said pleading as Annex A thereof and is quoted on the margin.^[1] Hence, plaintiff maintains that the promise contained in the contract is "reciprocally demandable," pursuant to the first paragraph of said Article 1479. Although defendant had really "agreed, promised and committed" herself to sell the land to the plaintiff, it

is not true that the latter had, in turn, "agreed and committed himself" to buy said property. Said Annex A does not bear out plaintiff's allegation to this effect. What is more, since Annex A has been made "an integral part" of his complaint, the provisions of said instrument form part "and parcel"[1] of said pleading.

The option did not impose upon plaintiff the obligation to purchase defendant's property. Annex A is not a "contract to buy and sell." It merely granted plaintiff an "option" to buy. And both parties so understood it, as indicated by the caption. "Option to Purchase," given by them to said instrument. Under the provisions thereof, the defendant "agreed, promised and committed" herself to sell the land therein described to the plaintiff for P1,510.00, but there is nothing in the contract to indicate that her aforementioned agreement, promise and undertaking is supported by a consideration "distinct from the price" stipulated for the sale of the land.

Relying upon Article 1354 of our Civil Code, the lower court presumed the existence of said consideration, and this would seem to be the main factor that influenced its decision in plaintiff's favor. It should be noted, however, that:

(1) Article 1354 applies to contracts in general, whereas the second paragraph of Article 1479 refers to "sales" in particular, and, more specifically, to "an accepted unilateral promise to buy or to sell." In other words, Article 1479 is controlling in the case at bar.

(2) In order that said unilateral promise may be "binding" upon the promisor. Article 1479 requires the concurrence of a condition, namely, that the promise be "supported by a consideration distinct from the price." Accordingly, the promisee can not compel the promisor to comply with the promise, unless the former establishes the existence of said distinct consideration. In other words the promisee has the burden of proving such consideration. Plaintiff herein has not even alleged the existence thereof in his complaint.

(3) Upon the other hand, defendant explicitly averred in her answer, and pleaded as a special defense, the absence of said consideration for her promise to sell and, by joining in the petition for a judgment on the pleadings, plaintiff has impliedly admitted the truth of said averment in defendant's answer. Indeed, as early as March 14, 1908, it had been held, in *Bauermann vs. Casas*,[3] that:

"One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (*La Yebana Company vs. Sevilla*, 9 Phil. 210)." (Italics ours.)

This view was reiterated in *Evangelista vs. De la Rosa*[4] and *Mercy's Incorporated vs. Herminia Verde*.^[5]

Squarely in point is *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf & Pacific Co.*,^[6] from which We quote:

"The main contention of appellant is that the option granted to appellee to sell to it barge No. 10 for the sum of P30,000 under the terms stated above has no legal effect because it is not supported by any consideration and in support thereof it invokes article 1479 of the new Civil Code. This article provides:

'Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

'An accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.'

"On the other hand, appellee contends that, even granting that the 'offer of option' is not supported by any consideration, that option became binding on appellant when the appellee gave notice to it of its acceptance, and that having accepted it within the period of option, the offer can no longer be withdrawn and in any event such

withdrawal is ineffective. In support of this contention, appellee invokes article 1324 of the Civil Code which provides:

'Art. 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon consideration, as something paid or promised.'

"There is no question that under article 1479 of the new Civil Code 'an option to sell,' or 'a promise to buy or to sell,' as used in said article, to be valid must be 'supported by a consideration distinct from the price.' This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration. In other words, 'an accepted unilateral promise' can only have a binding effect if supported by a consideration, which means that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration. Here it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the acceptance made of it by appellee.

"It is true that under article 1324 of the new Civil Code, the general rule regarding offer and acceptance is that, when the offerer gives to the offeree a certain period to accept, 'the offer may be withdrawn at any time before acceptance' except when the option is founded upon consideration, but this general rule must be interpreted as modified by the provision of article 1479 above referred to, which applies to 'a promise to buy and sell' specifically. As already stated, this rule requires that a promise to sell to be valid must be supported by a consideration distinct from the price.

"We are not oblivious of the existence of American authorities which hold that an offer, once accepted, cannot be withdrawn, regardless of whether it is supported or not by a consideration (12 Am. Jur. 528). These authorities, we note, uphold the general rule applicable to offer and acceptance as contained in our new Civil Code. But we are prevented from applying them in view of the specific provision embodied in article 1479. While under the 'offer of option' in question appellant has assumed a clear obligation to sell its barge to appellee and the option has been exercised in accordance with its terms and there appears to be no valid or justifiable reason for appellant to withdraw its offer, this Court cannot adopt a different attitude because the law on the matter is clear. Our imperative duty is to apply it unless modified by Congress." [7]

However, this Court itself, in the case of *Atkins, Kroll and Co., Inc. vs. Cua Hian Tek*, [8] decided later than *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf & Pacific Co.*, [9] saw no distinction between Articles 1324 and 1479 of the Civil Code and applied the former where a unilateral promise to sell similar to the one sued upon here was involved, treating such promise as an option which, although not binding as a contract in itself for lack of a separate consideration, nevertheless generated a bilateral contract of purchase and sale upon acceptance. Speaking through Associate Justice, later Chief Justice, Cesar Bengzon, this Court said:

"Furthermore, an option is unilateral: a promise to sell at the price fixed whenever the offeree should decide to exercise his option within the specified time. After accepting the promise and before he exercises his option, the holder of the option is not bound to buy. He is free either to buy or not to buy later. In this case, however, upon accepting herein petitioner's offer a bilateral promise to sell and to buy ensued, and the respondent ipso facto assumed the obligations of a purchaser. He did not just get the right subsequently to buy or not to buy. It was not a mere option then, it was bilateral contract of sale.

"Lastly, even supposing that Exh. A granted an option which is not binding for lack of consideration, the authorities hold that

"If the option is given without a consideration, it is a mere offer of a contract of sale, which is not binding until accepted. If, however, acceptance is made before a withdrawal, it constitutes a binding contract of sale, even

though the option was not supported by a sufficient consideration. * * *.' (77 Corpus Juris Secundum p. 652. See also 27 Ruling Case Law 339 and cases cited.)

'It can be taken for granted, as contended by the defendants, that the option contract was not valid for lack of consideration. But it was, at least, an offer to sell, which was accepted by letter, and of the acceptance the offerer had knowledge before said offer was withdrawn. The concurrence of both acts – the offer and the acceptance – could at all events have generated a contract, if none there was before (arts. 1254 and 1262 of the Civil Code).' (Zayco vs. Serra, 44 Phil. 331.)"

In other words, since there may be no valid contract without a cause or consideration, the promisor is not bound by his promise and may, accordingly, withdraw it. Pending notice of its withdrawal, his accepted promise partakes, however, of the nature of an offer to sell which, if accepted, results in a perfected contract of sale.

This view has the advantage of avoiding a conflict between Articles 1324 – on the general principles on contracts and 1479 – on sales – of the Civil Code, in line with the cardinal rule of statutory construction that, in construing different provisions of one and the same law or code, such interpretation should be favored as will reconcile or harmonize said provisions and avoid a conflict between the same. Indeed, the presumption is that, in the process of drafting the Code, its author has maintained a consistent philosophy or position. Moreover, the decision in *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf & Pacific Co.*,^[10] holding that Art. 1324 is modified by Art. 1479 of the Civil Code, in effect, considers the latter as an exception to the former, and exceptions are not favored, unless the intention to the contrary is clear, and it is not so, insofar as said two (2) articles are concerned. What is more, the reference, in both the second paragraph of Art. 1479 and Art. 1324, to an option or promise supported by or founded upon a consideration, strongly suggests that the two (2) provisions intended to enforce or implement the same principle.

Upon mature deliberation, the Court is of the considered opinion that it should, as it hereby reiterates the doctrine laid down in the *Atkins, Kroll & Co.* case, and that, insofar as inconsistent therewith, the view adhered to in the *Southwestern Sugar & Molasses Co.* case should be deemed abandoned or modified.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against defendant-appellant Severina Rigos.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

Ruiz Castro, J., did not take part.

Antonio, J., see concurring opinion.

[1]

"OPTION TO PURCHASE

"KNOW ALL MEN BY THESE PRESENTS:

"I, SEVERINA RIGOS, Filipino, of legal age, widow, with residence at San Jose, Nueva Ecija, do by these presents –

WITNESSETH:

"That I am the owner of that property covered by Transfer Certificate of Title No. NT-12528 of the Land Records of Nueva Ecija, my ownership thereof is evidenced by a Deed of Absolute Sale in my favor known as Doc. No. 47; Page No. 12; Book No. 1; Series of 1961 of Notary Public, A. Tomas;

"That I have agreed, promised and committed and do hereby agree, promise and commit to sell the property covered by the above numbered certificate of title to NICOLAS SANCHEZ, Filipino, of legal age, married to Engracia Barrantes, with residence at San Jose, Nueva Ecija, within a period of two (2) years from the execution of this instrument for the amount of One Thousand Five Hundred Ten Pesos (P1,510.00) Philippine Currency;

"That if within the period of two (2) years from the execution of this instrument said Nicolas Sanchez shall fail to exercise his right to buy the property under this option, then his right is deemed terminated and elapsed and that I shall no longer be compelled to sell to him the property;

"That I, NICOLAS SANCHEZ, whose personal circumstances are mentioned above hereby agree and conform with all the conditions set forth in this option to purchase executed in my favor; that I bind myself with all the terms and conditions.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures below this 3rd day of April, 1961, at San Jose, Nueva Ecija.

(Sgd.) NICOLAS SANCHEZ (Sgd.) SEVERINA RIGOS

Res. Cert. No. A-3914416 Res. Cert. No. A-2977240

Issued at San Jose, N. E. Issued at San Jose, N. E.

on April 3, 1961 April 1, 1961

SIGNED IN THE PRESINCE OF:

(Sgd.)E. R. Bautista (Sgd.) Hipolito Francisco"

[1] As alleged in paragraph 5 of the Complaint.

[3] 10 Phil. 386, 390.

[4] 76 Phil. 115.

[5] L-21571, September 19, 1956.

[6] 97 Phil. 249, 251-252.

[7] Italics ours.

[8] 102 Phil. 948, 951-952.

[9] Supra.

[10] Supra.

CONCURRING OPINION

ANTONIO, J.:

I concur in the opinion of the Chief Justice.

I fully agree with the abandonment of the view previously adhered to in *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf and Pacific Co.*[1] which holds that an option to sell can still be withdrawn, even if accepted, if the same is not supported by any consideration, and the reaffirmance of the doctrine in *Atkins, Kroll & Co. Inc. vs. Cua Hian Tek*,[2] holding that "an option implies * * * the legal obligation to keep the offer (to sell) open for the time specified;" that it could be withdrawn before acceptance, if there was no consideration for the option, but once the "offer to sell" is accepted, a bilateral promise to sell and to buy ensues, and the offeree ipso facto assumes the obligations of a purchaser. In other words, if the option is given without a consideration, it is a mere offer to sell, which is not binding until accepted. If, however, acceptance is made before a withdrawal, it constitutes a binding contract of sale. The concurrence of both acts – the offer and the acceptance – could in such event generate a contract.

While the law permits the offeror to withdraw the offer at any time before acceptance even before the period has expired, some writers hold the view, that the offeror cannot exercise this right in an arbitrary or capricious manner. This is upon the principle that an offer implies an obligation on the part of the offeror to maintain it for such length of time as to permit the offeree to decide whether to accept or not, and therefore cannot arbitrarily revoke the offer without being liable for damages which the offeree may suffer. A contrary view would remove the stability and security of business transactions.[3] In the present case the trial court found that the "Plaintiff (Nicolas Sanchez) had offered the sum of P1,510.00 before any withdrawal from the contract has been made by the Defendant (Severina Rigos)." Since Rigos' offer to sell was accepted by Sanchez, before she could withdraw her offer, a bilateral reciprocal contract – to sell and to buy was generated.

[1] 97 Phil., 249.

[2] 102 Phil., 948.

[3] 1 Gasperi 302, 6 Planiol & Ripert 180.

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