

TIDEWATER OIL COMPANY, PETITIONER, VS. ADELAIDA C. DIONISIO, FORTUNATO DIONISIO AND COURT OF APPEALS, RESPONDENTS.*G.R. No. L-25888. October 29, 1968*

Ponente: MAKALINTAL, J.

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Petitioner seeks a review of the decision of the Court of Appeals in its case CA-G.R. No. 33936-R, affirming the decision of the Court of First Instance of Manila in its civil case No. 49825 entitled Adelaida C. Dionisio, etc. vs. Tidewater Oil Co. and the Provincial Sheriff of Rizal.

The facts as found by the appellate court are as follows: In 1954 one Tomas Baluyut leased two adjacent lots in Makati, Rizal, from their owners, the Lacmans, for a term of five years, renewable for a like period, at a monthly rental of P60.00. Baluyut put up a gasoline station on the property, and sometime later signed an "Associated Dealer's Sales Contract" with the Tidewater Oil Company for the sale of its petroleum products. Simultaneously Baluyut subleased the premises to the company for a rental of one-half (1/2) centavo per liter of gasoline purchased by the sub-lessor from the sub-lessee and sold through the aforesaid gasoline station. To enable Baluyut to use the station as dealer, the company leased the premises back to him for a nominal monthly rental of P1.00.

On February 1, 1957 Adelaida C. Dionisio bought the station from Baluyut for P1,600.00, together with the latter's leasehold right over the two lots and his rights and interests as dealer of the company's petroleum products. On the same date the company leased back the station to Dionisio for P1.00 monthly, obviously so she could use it as the new dealer vice Baluyut.

In June 1959 Adelaida C. Dionisio bought the two lots from the Lacmans, after which she made improvements on the gas station, borrowing the sum of P50,000.00 for that purpose, of which P31,000 came from the company. To secure this latter amount she executed a mortgage on the two lots and the improvements thereon.

On August 20, 1959 Dionisio executed a new contract of lease of the premises to the company. The period of the lease was fifteen (15) years, subject to cancellation by the lessee at the end of the 5th and the 10th years upon 30 days written notice. As rental the contract stipulated that "the company shall pay to the lessor . . . an amount equivalent to three-fourth centavo (P0.0075) per liter of gasoline sold through company pumps installed in the leased premises with a minimum rental of ONE PESO (P1.00) per month payable with-in the first ten (10) days of the month following that to which the rental corresponds." The sublease previously executed by Baluyut in favor of the company, the rights under which had been sold by him to Dionisio, was cancelled ex-pressly in the new lease contract.

On September 30, 1961 the company and Dionisio agreed to terminate Baluyut's contract of dealership which had been acquired by her on February 1, 1957, as well as the contract of the same date whereby the company had leased back the service station to Dionisio. As of September 30, 1961, therefore, Dionisio ceased to be the dealer of

the company's products, and the only effective contract between them was the lease executed on August 20, 1959, under which it was also stipulated that "the company may, at any time, sublease all the property herein leased without the consent of the lessor."

From October 1961 to March 1962 a Mrs. Luciano Espiritu was designated by the company to operate the gasoline station and sell its products. After March 1962 nobody operated the station, until August of the same year, when a Mr. Tempongco took over as operator.

Meanwhile, on January 26, 1962 the company sent a letter to Adelaida C. Dionisio, demanding payment of the balance of her mortgage indebtedness, which then amounted to P28,998.46. On February 22 following, Dionisio wrote back through counsel, asking for negotiation of the matter and for payment of a fair rental value on her property from October 1, 1961, to be deducted from her indebtedness. On February 28, 1962 the company requested the provincial sheriff of Rizal to foreclose the mortgage extrajudicially, pursuant to the mortgage contract, for the satisfaction of the obligation which by then had risen to P29,189.14, plus P2,918.91 as attorney's fees and liquidated damages.

The sheriff issued the corresponding notice of sale, whereupon Adelaida C. Dionisio, assisted by her husband Fortunato Dionisio, commenced the present action on March 9, 1962, praying for the rescission of the lease contract of August 20, 1959, the cancellation of the mortgage, and for damages. Upon her petition a writ of preliminary injunction was issued to stop the foreclosure and sale.

The trial court gave judgment for the plaintiff, holding that the lease contract was included in the "termination of agreements" which the parties executed, by mutual consent, on September 30, 1961; ordering the company to pay for the use and occupancy of the two lots and the service station erected thereon at the rate of P900 a month from October 1, 1961 until said property was returned to the plaintiff; and making the injunction permanent. The company appealed to the Court of Appeals, which affirmed the judgment, although on a different ground, namely, that the lease contract, while valid in the beginning, subsequently became void for lack of cause when Dionisio ceased to be a dealer of the company's petroleum products upon cancellation of the "Associated Dealer's Sales Contract" on September 30, 1961.

The theory of the trial court was that the lease contract of August 20, 1959 did not express the true intention of the parties; that the stipulated rental of P0.0075 per liter of gasoline sold at the station "was apparently for no other purpose than to give an additional rebate or discount to the plaintiff for the purchases made by her as dealer of the products of the defendant corporation;" and that consequently when her contract as such dealer (by assignment from Baluyut) was terminated by mutual consent on September 30, 1961, the lease contract was likewise terminated. The Court of Appeals, on the other hand, proceeded on a different if analogous theory: that when she ceased to be dealer, she also "ceased to receive the 3/4 centavo per liter sold, which sum was the real price (precio real) of the lease," and therefore the same became a contract without cause, the minimum stipulated rental of P1.00 a month "being either fictitious or too insignificant as to amount to no price at all."

Both the trial court and the Court of Appeals, it would seem, considered the dealership contract and the lease contract as inseparably linked to each other, such that without the first the second could not stand alone. The trial court, of course, found a congenital infirmity in the lease contract in that the rental of P0.0075 per liter sold was in its opinion not really the cause or consideration for the lease but rather "an additional rebate or discount" given to the plaintiff in her capacity as dealer and not as lessor of the service station and its premises; while the appellate court considered the said amount in concept of rental, but found the lessor no longer entitled to receive it after September 30, 1961, because she was then no longer a dealer of the company's petroleum products.

In our view, neither one of the two positions is justified by the pertinent provisions of the lease contract or by the

other facts of this case. The said contract is quite explicit: "that the Company shall pay to the lessor as rental, an amount equivalent to three-fourth centavo (P0.0075) per liter of gasoline sold through company pumps installed in the leased premises with minimum rental of ONE PESO (P1.00) per month." The payment of the rental is not equated with, or made to depend upon, the lessor's being herself the operator of the station or a dealer of the company's pro-ducts. Who is to sell the gasoline has no material bearing on the right to collect the rental, the measure of which is simply the quantity of gasoline sold through the pumps installed in the leased premises. The very fact that the parties stipulated a minimum rental of P1.00 per month is, if anything, an indication that they took into consideration the contingency that for some reason or other the sale of gasoline at the leased premises might be temporarily suspended, in which event the continuance of the lease would still have a cause to support it. In the same manner the parties considered the possibility that a person other than the lessor might be designated to operate the station without affect-ing the lease contract, when they stipulated therein that the company could at anytime sublease the property without the consent of the lessor, as indeed it was subleased, first to Luciano Espiritu and later on to Tempongco. For it stands to reason that the only interest a third party can have in acquiring a sublease on the property is to operate the gasoline station himself.

The implied termination of the lease contract, found by the trial court to be the result of the "termination of agreements" signed by both parties on September 30, 1961, is belied by the very terms of that document itself. The following, "together with any additions or supplements thereto or modifications thereof, but none others," were expressly terminated: (1) Flying A-Dealers Sale's Contract entered with between Dionisio's assignor, Baluyut, as dealer, and the Com-pany, on April 1, 1954; and (2) the Service Station Lease entered into between Dionisio as lessee and the Company as lessor effective February 1, 1957." There is nothing in that agreement which even remotely suggests that the lease contract of August 20, 1959, was also being terminated. On the con-trary the parties were careful and precise in not only enumera-ting the contracts included but also using the words "none others." The construction by the trial court unduly extended the scope of the termination agreement beyond the restrictive limits defined by the parties themselves.

We now come to the decision of the Court of Appeals. It is based on the assumption that after Adelaida C. Dionisio ceased to be a dealer of the company's petroleum products she automatically ceased to receive the stipulated rental of 3/4 centavo for every liter of gasoline sold. The assumption is not borne out by the record. As already observed, Dionisio's right to that rental continued irrespective of whether she or somebody else was the operator of the service station subject of the lease. Nothing in the contract justifies a contrary view. The reference therein to the sale of gasoline through the "company pumps" does not identify the seller, but only serves as basis for the computation of the rental. And it is a fact, undisputed by the plaintiff, that the company continued to credit her with the rentals that periodically became due and payable on that basis, pursuant to the deed of "Assignment of Lease Rentals" she executed in favor of the company on November 28, 1959, authorizing the latter "to withhold such rentals as would be sufficient to pay the monthly amortization of P599.32 (on the mortgage indebtedness) and to apply said rentals to the payment of the loan plus interest;" and providing further that "in the event that the monthly rentals due the assignor under the contract of lease is not sufficient to pay the monthly amortization, then the assignor will pay the deficiency out of her own personal funds . . . (and that) this assignment of lease rentals shall take effect on the rentals due for the month of December, 1959, and shall continue until the loan plus interest is fully paid." (Parenthesis supplied.) Exhibit 10 of the company, admitted as evidence without objection by Dionisio, shows that except for five (5) months (March through July 1962) when there was no dealer operating the station, she was credited with all the monthly rentals on the basis of the quantity of gasoline sold, from October 1961 up to and including April 1963, when the said exhibit was presented in court.

But the one feature of this case which militates most strongly against the theories adopted in the decisions below is that they were not the theories on which the complaint for rescission was predicated. Under the first cause of

action the plaintiff sought rescission of the lease contract by reason of the failure of the company to "construct any building on the leased property as agreed upon." The pertinent provision of the contract, however, did not obligate the company to put up such construction but merely permitted it to do so.^[1] In any event the plaintiff does not press this point at all in her brief.

The second cause of action averred another ground for rescission, namely, that the company was obligated to reimburse the plaintiff the amount of P50,000.00 which she had spent in putting up a gasoline station on her property, and the company failed to do so. This obligation, it was alleged, arose from the failure of the company to make the construction referred to in the first cause of action. The trial court correctly rejected the pretension and the same was not pressed further on appeal.

The third and last cause of action in the complaint merely assailed the justifiability of the extrajudicial foreclosure of the mortgage initiated by the company on the ground that by its failure to fulfill its obligations under the first two causes of action the company's liability to the plaintiff was greater than the latter's mortgage indebtedness.

The point in all this is that the question of rental was nowhere raised in the complaint in relation to the prayer for rescission of the lease contract. It was raised for the first time in the supplemental complaint dated September 18, 1962, and the theory advanced therein was that from March to August 14 of that year the company failed to operate the gasoline station and to pay the corresponding rentals for that period. The situation, of course, was precisely what the parties envisaged and provided for in their lease contract when they stipulated a minimum rental of P1.00 a month. But what is significant in the supplemental complaint is the implied admission that from October 1961 (following the termination of agreements on September 30, 1961) up to and including February 1962 the plaintiff had been receiving rentals under the lease contract - on the basis of 3/4 centavo per liter of gasoline sold at the service station - during a period when the plaintiff was no longer operating the same. This admission completely throws overboard the finding of the Court of Appeals that after the termination agreement of September 30, 1961 the plaintiff ceased to receive any rentals under the lease contract, which was thereby rendered void for lack of sufficient cause.

According to Exhibit 10 of the company the following amounts were credited to respondent Dionisio by way of rentals for the first four months of 1963 and applied to her mortgage obligation: January - P501.86, February - P506.43, March - P553.49, and April - P586.71. There is also a statement in the brief for the company as petitioner that after April 1963 sales of gasoline in the service station subject of the lease showed increases, to the point where the respondent had been credited amounts ranging from as much as P725 to a minimum of P362.25. There is no denial of this allegation in the brief for the respondent. Her real grievance, as may be gathered therefrom, is that the rentals she had been receiving were not commensurate with her investment, and that P2,000 a month would be a fair return thereon. But it is one thing to say that she made a bad transaction and a different thing altogether to conclude that the transaction is rescissible, let alone null and void. There is no suggestion that fraud was employed in obtaining her consent to the lease contract. Indeed it appears that her husband, who is a lawyer, signed with her as proof of his marital consent. The fact that the bargain was a hard one or that the results thereof are not as they were expected to be is not a sufficient ground for cancellation of the contract entered into when each of the parties was in a position to form an independent judgment (*Askay vs. Cosalan*, 46 Phil. 179).

However, it must be remarked that the circumstances of this case give the impression that the company, in ignoring the respondent's request for a renegotiation of the matter of the monthly rental, and in starting foreclosure of the mortgage on the respondent's property instead, was bent on exacting its pound of flesh by an unyielding adherence to the letter of the contract. But the problem addresses itself to the goodwill of the petitioner, not to judgment of the courts.

Premises considered, the decision of the Court of Appeals is reversed; the complaint is dismissed and the writ of injunction issued by the trial court is set aside. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Zaldivar, J., is on official leave.

Sanchez, J., reserves his vote.

Capistrano, J., did not take part.

[1] The lessor hereby grants permission to the company to use the leased premises as a gasoline service station and to construct, erect or install thereon such buildings, structures, tanks and any other improvements that may be necessary to carry out this purpose" (par. C of lease contract).

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