

TEODORO VEGA, PLAINTIFF AND APPELLEE, VS. THE SAN CARLOS MILLING CO., LTD., DEFENDANT AND APPELLANT.

G.R. No. No. 21549. October 22, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Plaintiffs, the successors in interest of Matilde Magdañal and This action is for the recovery of 32,959 kilos of centrifugal sugar, or its value, P6,252, plus the payment of P500 damages and the costs.

The defendant filed an answer, and set up two special defenses, the first of which is at the same time a counterclaim.

The Court of First Instance of Occidental Negros that tried the case, rendered judgment, the dispositive part of which is as follows:

"By virtue of these considerations, the court is of opinion that with respect to the complaint, the plaintiff must be held to have a better right to the possession of the 32,959 kilos of centrifugal sugar manufactured in the defendant's central and the latter is sentenced to deliver them to the plaintiff, and in default, the selling price thereof, amounting to P5,981.06 deposited in the office of the clerk of the court. Plaintiff's claim for damages is denied, because it has not been shown that the defendant caused the plaintiff any damages. Plaintiff is absolved from defendant's counterclaim and declared not bound to pay the sum claimed therein. Plaintiff is also absolved from the counterclaim of P1,000 for damages, it not having been proved that any damages were caused and suffered by defendant, since the writ of attachment issued in this case was legal and proper. Without pronouncement as to costs.

"So ordered."

The defendant company appealed from this judgment, and alleges that the lower court erred in having held itself with jurisdiction to take cognizance of and render judgment in the cause; in holding that the defendant was bound to supply cars gratuitously to the plaintiff for the cane; in not ordering the plaintiff to pay to the defendant the sum of P2,866 for the cars used by him, with legal interest on said sum from the filing of the counterclaim, and. the costs, and that said judgment is contrary to the weight of the evidence and the law.

The first assignment of error is based on clause 23 of the Mill's covenants and clause 14 of the Planter's Covenant as they appear in Exhibit A, which is the same instrument' as Exhibit 1.

Said clauses are as follows:

"23. That it (the Mill—Party of the first part) will submit any and all differences that may arise between the Mill and the Planters to the decision of arbitrators, two of whom shall be chosen by the Mill and two by the Planters, who in case of inability to agree shall select a fifth arbitrator, and to respect and abide by the decision of said arbitrators, or any three of them, as the case may be."

"14. That they (the Planters—Parties of the second part) will submit any and all differences that may arise between the parties of the first part and the parties of the second part to the decision of arbitrators, two of whom shall be chosen by the said parties of the first part and two by the said party of the second part, who in case of inability to agree, shall select a fifth arbitrator, and will respect and abide by the decision of said arbitrators, or any three of them, as the case may be."

It is an admitted fact that the differences which arose between the parties, and which are the subject of the present litigation have not been submitted to the arbitration provided for in the above quoted clauses.

Defendant contends that as such stipulations on arbitration are valid, they constitute a condition precedent, to which the plaintiff should have resorted before applying to the courts, as he prematurely did.

The defendant is right in contending that such covenants on arbitration are valid, but they are not for that reason a bar to judicial action, in view of the way they are expressed :

"An agreement to submit to arbitration, not consummated by an award, is no bar to a suit at law or in equity concerning the subject matter submitted. And the rule applies both in respect of agreements to submit existing differences and agreements to submit differences which may arise in the future." (5 C. J., 42.)

And in view of the terms in which the said covenants on arbitration are expressed, it cannot be held that in agreeing on this point, the parties proposed to establish the arbitration as a condition precedent to judicial action, because these clauses quoted do not create such a condition either expressly or by necessary inference.

"Submission as Condition Precedent to Suit.—Clauses in insurance and other contracts providing for arbitration in case of disagreement are very dissimilar, and the question whether submission to arbitration is a condition precedent to a suit upon the contract depends upon the language employed in each particular stipulation. Where by the same agreement which creates the liability, the ascertainment of certain facts by arbitrators is expressly made a condition precedent to a right of action thereon, suit cannot be brought until the award is made. But the courts generally will not construe an arbitration clause as ousting them of their jurisdiction unless such construction is inevitable, and consequently when the arbitration clause is not made a condition precedent by express words or necessary implication, it will be construed as merely collateral to the liability clause, and so no bar to an action in the courts without an award." (2 R. C. L., 362, 363.) Neither does the reciprocal covenant No. 7 of said contract Exhibit A expressly or impliedly establish the arbitration as a condition precedent. Said reciprocal covenant No. 7, reads:

"7. Subject to the provisions as to arbitration, hereinbefore appearing, it is mutually agreed that the courts of the City of Iloilo shall have jurisdiction of any and all judicial proceedings that may arise out of the contractual relations herein between the party of the first and the parties of the second part."

The expression "subject to the provisions as to arbitration, hereinbefore appearing" does not declare such to be a condition precedent. This phrase does not read "subject to the arbitration," but "subject to the provisions as to arbitration hereinbefore appearing." And, which are these "provisions as to arbitration hereinbefore appearing?" Undoubtedly clauses 23 and 14 quoted above, which do not make arbitration a condition precedent.

We find no merit in the first assignment of error.

The second raises the most important question in this controversy, to wit: Whether or not the defendant was obliged to supply the plaintiff with cars gratuitously for cane.

The Central, of course, bound itself according to the contract Exhibit A in clause 3. of the "Covenant by Mill," as follows:

"3. That it will construct and thereafter maintain and operate during the term of this agreement a steam or

motor railway, or both, for plantation use in transporting sugar cane, sugar and fertilizer, as near the center of the cane lands as the contour of the lands will permit paying due attention to grades and curves; that it will also construct branch lines at such points as may be necessary where the present plantations are of such shape that the main line cannot run approximately through the center of said plantations, free of charge to the Planters, and will properly equip said railway with locomotives or motors and cars, and will further construct a branch line from the main railway line, mill and warehouses to the before mentioned wharf and will further construct yard accommodations near the sugar mill. All steam locomotives shall be provided with effective spark arresters. The railway shall be constructed upon suitable and properly located right-of-way, through all plantations so as to give, as far as practicable, to each plantations equal benefit thereof; said right-of-way to be two and one-half meters in width on either side from the center of track on both main line and switches and branches."

By this covenant, the defendant bound itself to construct branch lines of the railway at such points on the estate as might be necessary, but said clause No. 3 can hardly be construed to bind the defendant to gratuitously supply the plaintiff with cars to transport cane from his fields to the branch lines agreed upon on its estate.

But on March 18, 1916, the defendant company, through its manager Mr. F. J. Bell, addressed the following communication to the plaintiff:

"Dear Sir : In reply to yours of March 15th.

"Yesterday I tried to come out to San Antonio to see you but the railway was full of cars on San Jose and I could not get by with my car. I will try again as soon as I finish shipping sugar. The steamer is expected today.

"I had a switch built in the big cut on San Antonio for loading your cane near the boundary of Santa Cruz. Will not this be sufficient? We have not another switch here and I hope you can get along with the 3 you now have.

"Some of the planters are now using short switches made of 16-lb. rail portable track. These can be placed on the main line at any place and cars run off into the field and loaded, I think one on your hacienda would repay you in one season.

"The rain record can wait.

"Sincerely yours,

"San Carlos Milling Co., Ltd.

(Sgd.)

"F. J. Bell

"Manager"

It is suggested to the plaintiff in this letter that he install a 16-lb. rail portable track switch, to be used in connection with the main line, so the cars may run on it. It is not suggested that he purchase cars, and the letter

implies that the cars mentioned therein belong to the defendant.

As a result of this suggestion, the plaintiff bought a portable track which cost him about P10,000, and after the track was laid, the defendant began to use it without comment or objection from the latter, nor payment of any indemnity for over four years.

With this letter Exhibit D, and its conduct in regard to the same, the defendant deliberately and intentionally induced the plaintiff to believe that by the latter purchasing the said portable track, the defendant would allow the free use of its cars upon said track, thus inducing the plaintiff to act in reliance on such belief, that is, to purchase such portable track, as in fact he did and laid it and used it without payment, the cars belonging to the defendant.

This is an estoppel, and defendant cannot be permitted to gainsay its own acts and agreement.

The defendant cannot now demand payment of the plaintiff for such use of the cars. And this is so, not because the fact of having supplied them was an act of pure liberality, to which having once started it, the defendant was forever bound, which would be unreasonable, but because the act of providing such cars was, under the circumstances of the case, the compliance of an obligation to which defendant is bound on account of having induced the plaintiff to believe, and to act and incur expenses on the strength of this belief.

The question of whether or not the plaintiff was under the necessity of first showing a cooperative spirit and conduct, does not affect the right which he thus acquired of using the cars in question gratuitously.

We do not find sufficient reason to support the second assignment of error.

The point raised in the third assignment of error is a consequence of the second. If the plaintiff was entitled, as we have said, to use the cars gratuitously, the defendant has no right to demand any payment from him for the use of said cars.

The other assignments of error are consequences of the preceding ones.

We find nothing in the record to serve as a legal and sufficient bar to plaintiff's action against the defendant for the delivery of the sugar in question, or its value. A discussion as to the retention of this deposit to apply upon what is due by reason thereof made in the judgment appealed from, is here unnecessary. The parties do not raise this question in the present Instance. Furthermore, it has not been proven that the plaintiff owes the defendant anything by reason of such deposit.

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Johnson. Street, and Villamor, JJ., concur.

CONCURRING

AVANCEÑA, J.,

I concur in the majority opinion, but desire to state, however, that my vote on the first error is based upon the fact that inasmuch as clause 23 of the Mill's Covenants, and clause 14 of the Planter's Covenants provide that the parties should respect and abide by the decision of the arbitrators, they bar judicial intervention and consequently are null and void in accordance with the ruling of this court in the case of Wahl and Wahl vs. Donaldson, Sims &

Co. (2 Phil., 301). Clause 7 of the Mutual Covenants, naming the Court of First Instance of Iloilo as the one with jurisdiction to try such cases as might arise from the parties' contractual relations, by the very fact that it was made subject to the arbitration clauses previously mentioned, does not render such arbitration merely a condition precedent to judicial action, nor does it change its scope, as clearly indicated by its wording and the intention of the parties. Said clause 7 was doubtless added in case it became necessary to resort to the courts for the purpose of compelling the parties to accept the arbitrators' decision in accordance with the contract, and not in order to submit anew to the courts what had already been decided by the arbitrators, whose decision the contracting parties had bound themselves to abide by and respect.

DISSENTING

MALCOLM, J.,

I join with Mr. Justice Ostrand in his dissent based on the proposition that the defendant is not bound to furnish cars free of charge for use on the plaintiffs portable railway tracks, in relation with its corollary, that the letter written by the manager of the defendant's mill on March 18, 1916, does not estop the defendant from demanding compensation for the future use of the cars. I dissent also on another ground, which is, that the parties having formally agreed to submit their differences to arbitrators, while recognizing the jurisdiction of the courts, arbitration has been made a condition precedent to litigation, and should be held valid and enforceable.

Lamentable, to say the least, is the chaotic condition which exists with reference to the efficacy of arbitration agreements. While the variety of reasons advanced by the courts for refusing to compel parties to abide by their arbitration contracts are not always convincing, and while research discloses that the rules have mounted on antiquity rather than on reason, yet we presume that, with or without reason, the general principles must be accepted. A light is, however, breaking through the clouds of obscurity and courts which formerly showed hostility to arbitration are now looking upon it with reluctant favor. The possibly inevitable jealousy of the courts toward anything which deprives them of jurisdiction and the idea which once prevailed that since there are courts, therefore everybody must go to the courts, is, as Federal Judge Hough declares in the case of *United States Asphalt Refining Co. vs. Trinidad Lake Petroleum Co.* ([1915], 222 Fed., 1006), "A singular view of juridical sanctity."

In the Philippines fortunately, the attitude of the courts toward arbitration agreements is slowly crystallizing into definite and workable form. The doctrine announced in *Wahl and Wahl vs. Donaldson, Sims & Co.* ([1903], 2 Phil., 301), was that a clause in a contract providing that all matters in dispute shall be referred to arbitrators and to them alone, is contrary to public policy and cannot oust the courts of jurisdiction. But even this conservative expression of the doctrine has been modernized by the subsequent cases of *Chang vs. Royal Exchange Assurance Corporation of London* ([1907], 8 Phil., 399); *Allen vs. Province of Tayabas* ([1918], 38 Phil., 356); and *Chan Linte vs. Law Union and Rock Ins. Co.* ([1921], 42 Phil., 548), The rule now is that unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable arrangements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator.

The new point of the judiciary in the progressive jurisdiction of Pennsylvania, in England, and under the Civil Law, is also worthy of our serious consideration. It is the rule in Pennsylvania that when the persons making an executory contract stipulate in it that all disputes and differences between them, present or prospective, in reference to such contract or any sum payable under it, shall be submitted to the arbitrament of a named individual, or specifically designated persons, they are effectually bound irrevocably by that stipulation, and

precluded from seeking redress elsewhere until the arbiter or arbiters agreed upon have rendered an award or otherwise been discharged. The courts there, however, make a distinction between agreements for a general reference to arbitration and designating a particular individual or tribunal to arbitrate. The former may be waived or revoked, and is no obstacle to a suit or action for the same matter; the latter is irrevocable and until the designated arbiter or arbiters have decided, no right of action arises which can be enforced in law or in equity. (Snodgrass vs. Gavit [1857], 28 Pa., 221; Commercial Union Assur. Co. vs. Hocking [1886], 115 Pa., 407; 2 Am. St. Rep., 562; Page vs. Vankirk, 1 Brewst. [Pa.], 282; 47 L. R. A. [N. S.], note, pp. 399, 400.)

In England, the view seems now to prevail that a contractual stipulation for a general arbitration, constitutes a condition precedent to the institution of judicial proceedings for the enforcement of the contract. (Compagnie de Commerce etc. vs. Hamburg Amerika etc. [1917], 36 Phil., 590, 635.) Lord Watson in Hamlyn vs. Talisker Distillery ([1894], App. Cas., 202), said: "The rule that a reference to arbiters not named cannot be enforced does not appear to me to rest upon any essential considerations of public policy. Even if an opposite inference were deducible from the authorities by which it was established, the rule has been so largely trenched upon by the legislation of the last 50 years, * * * that I should hesitate to affirm that the policy upon which it was originally based could now be regarded as of cardinal importance."

Finally, it is within our knowledge that the Spanish civil law wisely contains elaborate provisions looking to the amicable adjustment of controversies out of court. Litigation by means of friendly adjusters was formerly well known. The procedure in this kind of litigation was minutely outlined in the Ley de Enjuiciamiento Civil. Two articles of the Civil Code, namely, articles 1820 and 1821, were given up to the subject of arbitration, and expressly confirmed this method of settling differences. (See Cordoba vs. Conde [1903], 2 Phil., 445.)

Now, with all these legal views to the forefront, let us notice the facts to which they should be applied.

Clause 23 of the Mill's Covenants, clause 14 of the Planters' Covenants, and clause 7 of the Mutual Covenants, read as follows:

"23, That it (the Mill—Party of the First Part) will submit any and all differences that may arise between the Mill and the Planters to the decision of arbitrators, two of whom shall be chosen by the Mill and two by the Planters, who in case of inability to agree shall select a fifth arbitrator, and to respect and abide by the decision of said arbitrators, or any three of them, as the case may be."

"14. That they (the Planters—Parties of the Second Part) will submit any and all differences that may arise between the parties of the first part and the parties of the second part to the decision of arbitrators, two of whom shall be chosen by the said parties of the first part and two by the said party of the second part, who in case of inability to agree, shall select a fifth arbitrator, and will respect and abide by the decision of said arbitrators, or any three of them, as the case may be."

"7. Subject to the provisions as to arbitration, hereinbefore appearing, it is mutually agreed that the courts of the City of Iloilo shall have jurisdiction of any and all judicial proceedings that may arise out of the contractual relations herein between the party of the first and the parties of the second part."

It was plainly the solemn purpose of the parties to settle their controversies amicably if possible before resorting to the courts. They provided for themselves by mutual consent a method which was speedier and less expensive for all concerned and less likely to breed that ill-feeling which is often the consequence of hotly contested litigation. All this was done by the Planters on the one hand and by the Milling Company on the other, to the end

that justice might guide them and possible differences be quickly adjusted.

It is clear, by paragraph 7 of the Mutual Covenants, that these parties did not intend that the decision of the arbitrators should prevent resort to the courts, for they expressly agreed to carry litigation between them to the courts of Iloilo. Acting under legal rules, even in their most restrictive form, disputes arising out of the contract, were to be referred to arbitration so that the damages sustained by a breach of the contract, could be ascertained by specified arbitrators before any right of action arose; but the matters in dispute were not to be referred to arbitrators and to them alone, to the utter exclusion of the courts. It is exactly correct to state that the clauses of the Covenants hereinbefore quoted, were meant as a condition precedent to litigation, which accordingly should be given effect.

For the two reasons above explained, I vote for reversal.

DISSENTING

OSTARD, J.,

I must dissent from the conclusion of the court that the defendant is bound to furnish cars free of charge for use on the plaintiff's portable railway tracks. It is admitted that the written contract between the parties does not impose this obligation upon the defendant, but it is argued that the letter of March 18, 1916, written by the manager of the defendant's mill, taken in connection with the fact that many of the defendant's patrons were permitted to use its cars on their portable railroads, without charge, now estops the defendant from demanding compensation for the future use of the cars.

That the court has here misapplied the doctrine of equitable estoppel or estoppel in pais seems clear. The definitions of such estoppel may vary somewhat but all authorities agree that the party invoking the doctrine must have been misled to his prejudice. That is the final and, in reality, most important of the elements of equitable estoppel. These elements are thus stated in 3 Words and Phrases, 2498:

"To constitute an estoppel, the following elements are essential: (1) There must be conduct, acts, language, or silence amounting to a representation or a concealment of material facts. (2) These facts must be known to the party estopped at the time of his said conduct, or, at least, the circumstances must be such that knowledge of them is necessarily imputed to him. (3) The truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel at the time when such conduct was done, and at the time when it was acted upon by him. (4) The conduct must be done with the intention, or, at least, with the expectation, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon. (5) The conduct must be relied upon by the other party, and, thus relying, he must be led to act upon it. (6) He must in fact act upon it in such a manner as to change his position for the worse. (First Nat. Bank vs. Dean, 17 N. Y. Supp., 375, 377; 60 N. Y. Super. Ct. 299 [citing Pom. Eq. Jur.]; Grange vs. Palmer, 10 N. Y. Supp., 201, 204; 56 Hun., 481; Roberts vs. Trammell, 40 N. E., 162; 15 Ind. App., 445; First Nat. Bank vs. Williams, 26 N. E., 75, 77; 126 Ind., 423; Appeal of Crans [Pa.], 9 Atl., 282, 287; Brighani Young Trust Co. vs. Wagener, 40 Pac, 764, 765; 12 Utah, 1; Blodgett vs. Perry, 10 S. W., 891, 892; 97 Mo. 263; 10 Am. St. Rep., 307; Gentry vs. Gentry, 26 S. W., 1090, 1095; 122 Mo., 202; Taylor vs. Zepp, 14 Mo., 482, 488; 55 Am. Dec, 113; Acton vs. Dooley, 74 Mo., 63, 67; De Berry vs. Wheeler, 30 S. W., 338, 339; 128 Mo., 84; 49 Am. St. Rep., 538; Hall vs. Warren [Ariz.], 48 Pac, 214, 216; Smith vs. Brown [Ariz.], 42 Pac, 949, 950; Hampton vs. Alford [Tex.], 14 S. W., 1072, 1073; Long vs. Cude [Tex.], 26 S. W., 1000; Nichols—Steuart vs. Crosby, 29 S. W., 380, 381; 87 Tex., 443; Security Mortgage & Trust Co. vs. Caruthers, 32 S. W., 837, 843; 11 Tex. Civ. App., 430; Chesapeake & O. R. Co. vs. Walker, 40 S. E., 633, 641; 100 Va., 69 [quoting 4 Am. & Eng. Dec. Eq., 268]; Stevens vs. Dennett, 51 N. H., 324, 333; Troy vs. Rogers, 20 South., 999, 1003; 113 Ala.,

131; Griffith vs. Wright, 6 Colo., 248, 249.)"

Bearing in mind the principles stated, let us now analyze the facts in the case. The letter of March 18, 1916, is quoted in the decision. It contains a suggestion that the plaintiff install short switches made of 16-lb. rail portable track on his hacienda and expresses the opinion that the installation would pay for itself in one season. Nothing is said about cars. The plaintiff acted on this advice and purchased and installed portable railroad tracks. He was allowed to use the defendant's cars on the tracks free of charge for over four years. It is not suggested that defendant's estimate of the saving to be effected through this installation of the portable railway system was misleading and we can therefore assume that the system has paid for itself several times over. If so, in what respect can it be said that the plaintiff has been misled to his prejudice? As we have seen, if he has not been so misled the doctrine of equitable estoppel will not apply. It is evident that in this case the doctrine is invoked for-positive gain, a purpose which is entirely beyond the scope of the doctrine. In *Lindsay vs. Cooper* (94 Ala., 170), the court, speaking of equitable estoppels, says: "Their operation should be limited to saving harmless, or making whole, the person in whose favor they arise, and they should never be made the instrument of gain or profit." (See also 10 R. C. L., 698 and other authorities there cited.)

The principles stated are elementary and should become obvious to any lawyer upon a moment's reflection. But I may, perhaps, suggest a homely illustration bearing on the application of these principles: A advises his neighbor B to buy a saddle-horse. B has no saddle but, in view of their good neighborly relations, expects to be able to borrow one from A. B buys the horse, borrows A's saddle and keeps it for several years. He does not regret the purchase of the horse but asserts that he would not have bought it but for the fact that he expected to use A's saddle and that this expectation was justified by the further fact that A appeared to be an easy man to borrow from and was in the habit of extending similar assistance to all of his neighbors. It seems to me that as far as the principles involved are concerned, the example given is a close parallel to the present case, but I hope that this court would not hold A estopped from asserting his title to the saddle and from demanding its return.

In the present case the relations between the parties are governed by contracts in writing which are presumed to contain all the terms of their agreement. (Sec. 285, Code of Civ. Proc.) It is not alleged that the written agreement fails to express the true intent and agreement of the parties. Yet the court through what clearly is a misapplication of the doctrine of equitable estoppel in effect varies that written agreement and proceeds to create a new contract between the parties. The decision of the court upon this point is, as far as I can find, unique and I suppose that most men who have occasion to enter into written business agreements will fervently hope that it will so remain.

Judgment affirmed.

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