

JOSE DE LEON, CECILIO DE LEON, ALBINA DE LEON, IN THEIR INDIVIDUAL CAPACITY, AND JOSE DE LEON AND CECILIO DE LEON, AS ADMINISTRATORS OF THE INTESTATE ESTATE OF FELIX DE LEON, PE...

G.R. No. L-2724. August 24, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by certiorari from a decision of the Court of Appeals affirming a judgment of the Court of First Instance of Bulacan. Jose de Leon, Cecilio de Leon and Albina de Leon, petitioners herein and defendants in the court below, were natural children of Felix de Leon, deceased, while Asuncion Soriano, respondent herein and plaintiff below, is his widow. In the administration and settlement of the decedent's estate then pending in the Court of First Instance, the said widow, on the one hand, and the natural children, on the other, reached on March 23, 1943 an agreement, approved by the probate court, whereby the natural children obligated themselves, among other things, as follows:

"2. At the end of each agricultural year, by which shall be understood for the purposes of this agreement the month of March of every year, the following amounts of palay shall be given to the party of the FIRST PART (Asuncion Soriano) by the parties of the .SECOND PART (De Leons): in the month of March of the..current. year 1943; one thousand two hundred (1,200) cavanese of palay (macan); in the month of March of 1944, one thousand four hundred (1,400) cavanese of palay (macan); in the month of March 1945, one thousand five hundred (1,500) cavanese of palay (macan); and in the month of March of 1946 and every succeeding year thereafter, one thousand six hundred (1,600) cavanese of palay (macan). Delivery of the palay shall be made in the warehouse required by the government, or if there be none such, at the warehouse to be selected by the party of the FIRST PART, in San Miguel, Bulacan,. free from. the.cost, of.hauling, transportation, and from any and all taxes or charges.

"It is expressly stipulated that this annual payment of palay shall cease upon the death of the party of the FIRST PART, and shall not be transmissible to her heirs or to any other person, but during her lifetime this obligation for the annual payment of the palay hereinabove mentioned shall constitute a first lien upon all the rice lands of the estate of Dr. Felix de Leon in San Miguel, Bulacan.."

The defendants made deliveries to the plaintiff of 1,200 cavanese of palay in 1943, 700 in 1944, 200 in 1945, and another 200 in 1946, a total of 2,300 cavanese which was 3,400 cavanese short of the 5,700 cavanese which should have been delivered up to and including 1946. It was to recover this shortage or its value that this action was commenced.

For answer, the defendants averred that their failure to pay the exact quantities of palay promised for 1944, 1945 and 1946 was due to "the Huk troubles in Central Luzon which rendered impossible full compliance with the terms of the agreement;" and it was contended that "inasmuch as the obligations of the defendants to deliver the full amount of the palay is depending upon the produce as this is in the nature of an annuity, * * * the obligations of

the defendants have been fully fulfilled by delivering in good faith all that could be possible under the circumstances."

The court gave judgment for the plaintiff for 3,400 cavanes of palay or its equivalent in cash, which was found to be P24,900, and legal interest. As above stated, that judgment was affirmed by the appellate court.

Article 1182 of the Civil Code, which was in force at the time the agreement in question was entered into, provides that "Any obligation which consists in the delivery of a determinate thing shall be extinguished if such thing should be lost or destroyed without fault on the part of the debtor and before he is in default. Inversely, the obligation is not extinguished if the thing that perishes is indeterminate.

Manresa explains the distinction between determinate and generic things in his comment on article 1096 of the Civil Code of Spain, saying that the first is a concrete, particularized object, indicated by its own individuality, while a generic thing is one whose determination is confined to that of its nature, to the genus (genero) to which it pertains, such as a horse, a chair. These definitions are in accord with the popular meaning of the terms defined.

Except as to quality and quantity, the first of which is itself generic, the contract sets no bounds or limits to the palay to be paid, nor was there even any stipulation that the cereal was to be the produce of any particular land. Any palay of the quality stipulated regardless of origin or however acquired (lawfully) would be obligatory on the part of the obligee to receive and would discharge the obligation. It seems therefore plain that the alleged failure of crops through alleged fortuitous cause did not excuse performance.

As Escriche, in his *Diccionario Razonado de Legislacion y Jurisprudencia*, puts it, speaking of the effects of the loss of a thing:

"Extingue la obligacion del deudor cuando la cosa debida es un cuerpo cierto y determinado; pero si fuese generica o no estuviese determinada sino en cuanto a la especie, como por ejemplo, una onza de oro, 50 panegas de trigo o 3 toneladas de vino, siempre se perderia para el deudor, el cual, por consiguiente, no se libraria de la deuda, ya que se supone que el genero por su naturaleza nunca parece, 'nun quan genusperit', ya porque aunque se diga que parece, no puede perecer, sino para su dueño, que es el deudor !res domino suo perit'. (Libro 18, y su glosa l.a Titulo 11, Partida 5.a)

And he gives this example:

"Si prestais, pues, a Pedro una onza de oro que luego le roban, tendra que pagartela, porque su obligacion no consistia en haberte de dar aquella misma onza, sino generalmente una onza."

In the case of *Yu Tek & Go. vs. Gonzalez*, 29 Phil. 384), it appeared that the plaintiff advanced P3,000, to defendant in payment of 600 piculs of sugar. The contract in writing did not specify that the sugar was to come from the crop on defendant's land which was destroyed. It was held that the sugar to be sold not having been segregated, the sale was not perfected and the loss of the crop, even though through force majeure, did not extinguish defendant's obligation to deliver the sugar.

In the more recent decision of this Court, in the case of *Toribio Reyes vs. Caltex (Phil.) Inc.*, (47 Off. Gaz., 1193; 84 Phil., 654), a question similar to that at bar arose. There, we ruled that the inability of the lessee of a commercial -property to pay the stipulated rent because of war and because the premises had been occupied by Japanese forces did not affect the lessee's liability to fulfill its commitments. Shifting to American authorities, we cited *Pollard vs. Shaefer*, (1 Dall. [Pa.] 210), where the Court said that, "since by the lease, the lessee was to have the advantage of casual profits of the leased premises, he should run the hazard of casual losses during the term and not lay the whole burden of them upon the lessor." This Court went on to say:

"The general rule on performance of contracts is graphically set forth in American treatises, which is also the

rule, in our opinion, obtaining under the Civil Code.

"Where a person by his contract charges himself with an obligation possible to be performed, he must perform it, unless its performance is rendered impossible by the act of God, by the law, or by the other party, it being the rule that in case the party desires to be excused from performance in the event of contingencies arising, it is his duty to provide therefor in his contract. Hence, performance is not excused by subsequent inability to perform, by unforeseen difficulties, by unusual or unexpected expenses, by danger, by inevitable accident, by the breaking of machinery, by strikes, by sickness, by failure of a party to avail himself of the benefits to be had under the contract, by weather conditions, by financial stringency, or by stagnation of business. Neither is performance excused by the fact that the contract turns out to be hard and improvident, unprofitable or impracticable, ill advised, or even foolish, or less profitable, or unexpectedly burdensome. (17 C. J. S. 946-948.)

"In the absence of a statute to the contrary, conditions arising from a state of war in which the country is engaged, will not ordinarily constitute an excuse for non-performance of contract; and impossibility of performance arising from the acts of the legislature and the executive branch of government in war time does not, without more, constitute an excuse for non-performance. (17 C. J. S. 953, 951.)

"A few words are in order to straighten out the apparent confusion (of ideas) that exists regarding the influence of fortuitous events in contracts; when they excuse performance and when not.

"In considering the effect of impossibility of performance on the rights of the parties, it is necessary to keep in mind the distinction between; (1) Natural impossibility preventing performance from the nature of the thing; and (2) impossibility in-fact, in the absence of inherent impossibility in the nature of the thing stipulated to be performed. (17 C.J.S. 951.) In the words of one Court, impossibility must consist in the nature of thing to be done and not in the inability of the party to do it. (City of Montpelier vs. National Surety Co., 122 A. 484; 97 Vt. Ill; 33 A.L.R. 489.) As others have put it, to bring the case within the rule of impossibility, it must appear that the thing to be done cannot by any means be accomplished, for if it is only improbable or out of the power of the obligor, it is not in law deemed impossible. (17 C. J. S. 442.) The first class of impossibility goes to the consideration and renders the contract void. The second, which is the class of impossibility that we have to do here, does not. (17 C. J. S. 951, 952.)

"For illustration, where the entire product of a manufacturer was taken by the government under orders pursuant to a commandeering statute during the World War, it was held that such action excused non-performance of a contract to supply civilian trade. (40 S. Ct., 5; 252 U.S. 493; 64 Law. ed. 1031.) Another examples where a party obligates himself to deliver certain (determinate) things and the things perish through war or in a shipwreck, performance is excused, the destruction operating as a rescission or dissolution of the covenant. But if the promisor is unable to deliver the goods promised and his inability arises, not from their destruction but from, say, his inability to raise money to buy them due to sickness, typhoon, or the like, his liability is not discharged. In the first case, the doing of the thing which the obligor finds impossible is the foundation of the undertaking. (C.J.S. 951, note.) In the second, the impossibility partakes of the nature of the risk which the promisor took within the limits of his undertaking of being able to perform. (C.J.S. supra, 946, note). It is a contingency which he could have taken due precaution to guard against in the contract.

"Summoning the above principles to our aid, and by way of hypothesis, the defendant-appellee here would be relieved from the obligation to pay rent if the subject matter of the lease, were this possible, had disappeared, for the personal occupation of the premises is the foundation of the contract, the consideration that induced it (lessee) to enter into the agreement. But a mere trespass with which the landlord had nothing to do is a casual disturbance not going to the essence of the undertaking. It is a collateral incident which might have been provided for by a proper stipulation."

See also *Lacson et al. vs. Diaz*, supra, p. 150.

The decision of the Court of Appeals is affirmed with costs against the petitioners and appellants.

Moran, C.J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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