

**“JAVIER SECURITY SPECIAL WATCHMAN AGENCY”
AND CONCEPCION D. JAVIER, IN HER OWN BEHALF AND AS
GUARDIAN AD LITEM OF THE MINORS CLARO D. JAVIER AND RENE
D. JAVIER, PLAINTIFFS AND A...**

G. R. No. L-18639. January 31, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case for breach of contract with damages was filed originally with the Court of First Instance of Manila. After trial, the court a quo dismissed the complaint on 14 October 1958 . Plaintiffs elevated it to the Court, of Appeals, but the latter remanded it to this Court, because only questions of law are involved.

The facts are simple and undisputed. Since 1954, H. L. Swiryn had engaged at P290.00 a month the services of Federico E. Javier to guard the premises of appellee Shell-Craft & Button Corporation, of which Swiryn is the vice-president and manager. Because the services rendered by Federico B. Javier were efficient, defendant corporation renewed annually its contract with him. The last renewal, on 4 May 1956 (Exhibit 3), would have expired on 1 December 1957, as per agreement, which stipulated the following:

"For and in consideration of the sum of P290.00 per month, the Javier Security Special Watchman Agency with business address at 3195 Sta. Mesa Blvd , Manila, through its representative, Federico E. Javier, hereby agrees to guard the establishment of Shell-Craft and Button Corporation, located at 114 Beata, Pandacan, subject to the following conditions;

- That in order to carry out this agreement, the Javier Security Special Watchman Agency will furnish the necessary guards or watchmen between the hours of 4:00 P.M. and 8:00 A.M. daily, seven days a week;
- That tile number of said: guards or watchmen will not be less than two (2);
- That Javier Security Special Watchman Agency shall be responsible for the payment of the- salaries of said guards or watchmen and such other benefits to which they may be entitled under existing labor laws;
- That the JAVIER SECURITY SPECIAL WATCHMAN AGENCY shall furnish the Shell-Craft & Button Corporation every 15th and end of the month a copy of the payrolls and time records duly signed by each and every guard- or watchman who might be employed by the said Javier Security Special Watchman Agency;
- That this Contract shall expire on December 1, 1957 renewable for another year upon mutual consent."

It is pertinent to note that the "Javier Security Special Watchman Agency" is merely a service name adopted by the late Federico B. Javier to identify his business, which was owned and managed exclusively by him. The "Javier Security Special Watchman Agency" is not a corporation nor a registered partnership. Hence, it has no personality to sue or to be sued.

Before the contract expired, Federico E. Javier died suddenly on 9 May 1957 . His widow, appellant Concepcion

D. Javier, was then in Hongkong. To guard the compound of the corporation, Swiryn engaged the services of another agency on the same day. For this reason, the heirs of Federico E. Javier sued for breach of contract, with damages for its unexpired term from 9 May to 1 December 1957 .

The only issue to be resolved is whether or not said Exhibit "C" is a personal contract, in the sense that the rights and obligations thereunder are intransmissible to the heirs of a party thereto. The trial court held the contract to be "intuitu personae", and dismissed the action; whereupon the plaintiffs appealed.

From the conditions of Exhibit "C", and according to the findings of fact of the trial court, the primordial consideration which prompted Swiryn to enter into the contract was the personality (i.e., the qualifications) of the deceased, who supervised personally the watchmen employed and controlled by him. To the corporation, it was immaterial who were the guards assigned by Federico E. Javier to watch its establishments. The lower court, in its decision above-referred to, aptly stated:

"* * * In the matter of security guard duty, discipline and promptness on the part of the guards is indispensable, and this was the primary reason why the defendant engaged the services of the Javier Security Special Watchman Agency, because with the personal supervision and attention the late Federico Javier had over his guards, the defendant had found their services very satisfactory, for which reason since 1954, it had retained the services of said watchman agency until the death of said Federico Javier on May 9, 1957, as testified to by Mr. H. L. Swiryn, manager of the defendant corporation. Considering that at that time Mr. Swiryn could not have expected any other person to render the same personal supervision and attention that the deceased Federico Javier had exercised over his guards during his lifetime, and considering further the immediate need of guard duty in the premises of the defendant after his death, specially so when it was not until one week after his death that the widow went to see Mr. Swiryn to have plaintiffs' guards continue guarding its premises, the defendant was justified in replacing the guards of plaintiffs' agency." (Record on Appeal, pp. 25-26).

While the Civil Code of the Philippines of 1950 has not seen fit to reenact Article 1161 of the Civil Code of 1889 to the effect, that—

"In obligations to do the creditor can not be compelled to accept the performance of the obligation or the rendition of a service by third person when the personal qualifications and circumstances of the debtor have been taken into consideration in the creation of the obligation."

it is not to be assumed that the omission implies that the rule embodied in that article has been discarded altogether. The spirit of Article 1161 of the old Civil Code is latent in other provisions of the new Code, such as its Articles 1311 and 1726.

"Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent."

"Art. 1726. When a piece of work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded upon his death."

If at all, the Civil Code of the Philippines appears to have broadened the principle, and made it applicable to all kinds of obligations, not only to obligations to do; for among the rules governing performance (payment) of obligations, Article 1236 (paragraph 1) prescribes that:

"Art. 1236. The creditor is not bound to accept payment or performance by a third person -who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary."

The fact that the late Federico Javier was not required to guard in person the premises of the appellee company

does not negate that the guarding job was entrusted to him by reason of his personal qualifications. It is clear that the failure to specify in the contract the conditions required of the individual guards and watchmen proves, not that they were of no concern to the company, but that the latter relied upon their proper selection and supervision by Javier himself. This trust and confidence the company can not be compelled to repose in Javier's wife or heirs, and as to them, the contract is to be deemed not transmissible.

Because the widow could not be expected to perform the contract for custodial services celebrated by her husband, and because upon the death of Javier no one could take his place (his widow being at the time in Hongkong and his children minors), while the premises could not be left unguarded by trusted persons, the appellee was entitled to regard its contract with Javier terminated then and there. Hence it was free to engage other guards.

The decision appealed from is affirmed, with costs against the plaintiffs-appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador , Concepcion , Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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