

MARY HAYDEN ARCACHE, ASSISTED BY HER HUSBAND, JOSEPH ARCACHE, PLAINTIFFS AND APPELLEES, VS. NICOLAS LIZARES & CO., INC., ET AL., DEFENDANTS. NICOLAS LIZARES & CO., INC., DEFENDA...

G.R. No. L-4333. May 23, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

Nicolas Lizares & Co., Inc., hereinafter to be referred to as the corporation, was organised by Nicolas Lizares and his wife Asuncion L. Vda. de Lizares, together with their children Jose L. Lizares, Jesus L. Lizares, Lydia L. Lizares and Ofelia L. Lizares. The corporation, among other properties, owned two parcels of land formerly registered in the names of Lydia L. Lizares and Ofelia L. Lizares, and now covered by certificate of title No. 1776 of the Office of the Register of Deeds of Rizal City, now Pasay City, in the name of the corporation.

Under a document dated May 10, 1944, the corporation sold the two parcels to Mary Hayden Arcache, assisted by her husband Joseph Arcache, for the sum of P621,500. The corporation acknowledged the receipt of the sum of P150,000 on March 10, 1944, as initial payment of the purchase price. The document recited that the balance of P471,500 was payable as follows: P200,000 within ninety days from April 3, 1944, and P271,500 within twelve months from April 3, 1944, for which the purchaser Mary Hayden Arcache was to execute two promissory notes. The sale was coupled with a mortgage of the two parcels in favor of the corporation, to secure the payment of the stipulated purchase price.

There is no dispute between the parties as to the payments before January 8, 1945, the only uppaid portion of the stipulated purchase price being P271,500. The payments upon account of the purchase price had been made directly to Nicolas Lizares, president of the corporation. On January 8, 1945, Nicolas Lizares was in Baguio, and this fact gave rise to the situation wherein Joseph Arcache, husband of Mary Hayden Arcache, had to deposit with the Philippine National Bank the unpaid balance of P271,500 to the credit of Nicolas Lieares, which deposit still appears in the name of Nicolas Lizares.

On February 6, 1950, Mary Hayden Arcache, assisted by her husband Joseph Arcache, filed in the Court of First Instance of Rizal a complaint against the corporation, Lydia L. Lizares, Ofelia L. Lizares and Manuel C. Monsod as Register of Deeds of Rizal City, which was amended on March 3, 1950, praying that the defendants be ordered to surrender to the plaintiff the certificate of title covering the two parcels hereinabove mentioned; ordering the Register of Deeds of Rizal City to register the deed of sale in favor of the plaintiffs, to cancel transfer certificate of title No. 72435, and to issue a new transfer certificate of title in the name of the plaintiff spouses, free from all liens and encumbrances; and requiring the corporation to pay damages in the sum of P150,000. The defendants moved to dismiss the amended complaint, and in its order of April 17, 1950, the Court of First Instance of Rizal dismissed the complaint as against Lydia L. Lizares and Ofelia L. Lizares, denying the motion to dismiss as against the defendant corporation. The latter filed an answer, in substance alleging that the sum of P271,500 has

never been paid to the corporation, on account of which the corporation already rescinded the contract of sale, and claiming against plaintiffs the return of the two parcels and damages in the sum of P18,000. After trial, the Court of First Instance of Rizal rendered a decision ordering the plaintiffs to pay the defendant corporation the sum of P2,262.50; ordering the defendant corporation, upon payment of said amount, to execute in favor of plaintiffs a deed of sale of the two lots in question free from all liens and encumbrances, plus the costs. No damages were awarded by the trial court to either side. From this decision the defendant corporation has appealed.

The only important question to be decided herein revolves around the effect of the deposit of P271,500 with the Philippine National Bank by Joseph Arcache, husband of Mary Hayden Arcache, in the name and to the credit of Nicolas Lizares, president of the defendant corporation. According to the testimony of Joseph Arcache, Nicolas Lizares (before leaving Manila for Baguio) had instructed Joseph Arcache to the effect that payment of the unpaid balance of the purchase price could be made to the corporation by depositing the amount with the Philippine National Bank, which allegation is however denied under the evidence submitted on behalf of the appellant corporation. Whether Joseph Arcache was in fact instructed as testified to by him is immaterial, since the trial court had ruled that his testimony is inadmissible, Nicolas Lizares having already died.

While the trial court ruled against the admissibility of the testimony of Joseph Arcache, it considered the uncontroverted deposit made by Joseph Arcache with the Philippine National Bank in the name of Nicolas Lizares, as being in good faith and as having produced the effect of at least allowing the plaintiffs-appellees to pay the balance of P271,500. In other words, the trial court considered the sum of P271,500 as still outstanding, although the appellees cannot be deemed as having so defaulted in their obligation under the contract of sale as to entitle the corporation to rescind it.

We are constrained to agree with the trial court. There being no dispute that Nicolas Lizares (to whom previous payments under the contract of sale had been made by the appellees in Manila) was in Baguio, and conditions in January, 1945, were such as to preclude, even with the exercise of reasonable diligence, the appellees from actually contacting Nicolas Lizares, the appellees, in depositing the sum of P271,500 with the Philippine National Bank on January 8, 1945, in the name and to the credit of Nicolas Lizares, may be held to have acted in good faith to the extent at least of allowing their contract of sale to subsist. The appellant is of course correct in arguing that payment must be made to the person in whose favor the obligation has been constituted, or to another authorized to receive it in his name (Art. 1162, old Civil Code), and that therefore the deposit in question cannot be binding on the corporation. But the effect of the appealed decision is in consonance with Article 1162, because the trial court has not considered the balance of P271,500 as paid, the ruling being merely that said deposit amounted to a valid excuse for not holding the appellees in default. It would certainly be different if said deposit was made even when Nicolas Lizares was accessible in Manila on or about the date of said deposit.

The appellee had until April 3, 1945, within which to pay the sum of P271,500, and as the debt moratorium was declared as early as November 18, 1944, the payment of the obligation could not have been demanded by the defendant corporation. This is mentioned merely as another equitable consideration lending support to the conclusion that the appellees should not be held in default, even if the deposit in the Philippine National Bank cannot be deemed to be a valid payment.

In view of what has been stated, it becomes unnecessary for us to dwell at length on the point whether the execution by the appellees of a separate promissory note covering the balance of P271,500 simultaneously with the execution of the contract of sale, had the effect of consummating said sale, as held by the trial court, and precluding the defendant corporation from exercising the right of rescission reserved to it under the contract.

The sum of P2,262.50 which the trial court ordered the appellees to pay to the defendant corporation, represents

the equivalent in actual Philippine currency under the Ballantyne Scale of the sum of P271,500 as of January, 1945, the rate being 120 war notes to P1.00, Philippine currency. Considering all the circumstances and equities of this case, we are inclined to hold that the rate at which payment should be made by the appellees must be that as of May, 1944, when they executed the promissory note for the unpaid balance of P271,500. This is fairly consistent with the conclusion that the deposit made on January 8, 1945, is not binding on the corporation. In accordance with the Ballantyne Scale, the equivalent of said amount in actual Philippine currency is P22,625, and this is the amount which the appellees should pay to the defendant corporation. There can of course be no question that the promissory note executed on May 10, 1944, for the payment of P271,500, legal currency, within twelve months from April 3, 1944, contemplated payment in Japanese war notes, there being no stipulation that said obligation was payable in any specific currency, or after the liberation. The decisions in *Roño vs. Gomez*, 83 Phil., 890; 46 Off. Gaz., Supp. No. 11, p. 339, and *Gomez vs. Tabia*, 84 Phil., 269; 47 Off. Gaz., 641, cited by the appellant, are accordingly not applicable.

In view of the result thus reached, we agree with the trial court that neither party may recover the damages claimed in the complaint or in the answer.

It being understood that the plaintiffs-appellees are ordered to pay the sum of P22,625 to the defendant corporation within thirty days from the date this decision becomes final, the appealed decision is affirmed. So ordered, without costs.

Feria, Bengzon, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

DISIDENTE

PABLO, M., J.:

El deposito de P271,500 a nombre de Nicolas Lizares hecho en el Banco Nacional Filipino en 8 de enero de 1945 por Joseph Arcache en nombre de Mary Hayden Arcache, no es cumplimiento de los terminos del contrato habido entre las partes. El hecho de que Nicola's Lizares no estuviese en Manila, sino en Baguio, al tiempo del deposito, no es razon valida para que Mary Hayden Arcache quede liberada de su obligacion de pagar dicha cantidad debida a la corporacion vendedora o a consignarla. La ley determina el remedio apropiado, a saber, la consignacion judicial.

A falta de cumplimiento por parte de Mary Hayden Arcache de una de las condiciones del contrato, la de pagar la cantidad de P271,500, como tercer plazo, a la corporacion vendedora dentro del termino estipulado que termina en 3 de Abril de 1945, da derecho a esta a pedir la resolucion del contrato. (Art. 1124 en relacion con el Art. 1290 delCodigo Civil).

En mi opinion, debe decretarse—como se reclama en la contrademanda—la rescision del contrato y que se devuelvan por las partes las cosas que hayan recibido.

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