

ABELARDO PAGES, PLAINTIFF AND APPELLANT, VS. BASILAN LUMBER COMPANY, DEFENDANT AND APPELLEE.*G.R. No. 10679. November 29, 1958*

Ponente: MONTEMAYOR, J.

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This is an appeal from the order of the Court of First Instance of Cebu, dismissing the complaint filed by plaintiff Abelardo Pages against the Basilan Lumber Company, for breach of contract and for damages, P1,080,000.00 as compensatory damages, P500,000.00 as moral damages, F8,000.00 for the value of the logs which the defendant allegedly refused to buy or to pay for, and P150,000.00 as attorney's fees, including the amount of P183,155.55 as the value of the units and equipment said to belong to the plaintiff in case of failure to deliver the same.

After plaintiff-appellant had presented his evidence and rested his case, defendant-appellee moved for the dismissal of the complaint on the ground that the plaintiff had no cause of action against it, that the contract sued upon was void and invalid, since it did not express the true intent of the parties, and the cause and consideration was contrary to law and the existing rules and regulations of the Bureau of Forestry. The trial court granted the motion and dismissed the complaint on the same grounds alleged by the defendant.

The contract involved (Exhibit B) was entered into between the parties on September 4, 1950. For purposes of reference, we reproduce the pertinent portions thereof:

"1. Party of the First Part is the sole proprietor of the Port Santa Maria Lumber located at Siocon, Zamboanga, holding Forest License No. Twenty-four-F (24-F) from the Bureau of Forestry Manila, Philippines;

"2. Party of the First Part does hereby agree and bind himself, his heirs and administrators to sell, within the terms of this agreement, all the logs which are, or may be, produced from the forestry area described under the above mentioned license at the following prices based upon the Bureau of Forestry monthly scale report:

- (a) Eight (P8.00) pesos, Philippine Currency, per Cubic-Meter of export logs;
- (b) Four (F4.00) pesos, Philippine Currency, per Cubic-Meter of mill logs;
- (c) Fifteen (15.00) pesos, Philippine Currency, per Cubic-Meter of group one species.

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"3. Party of the Second Part does hereby agree and bind itself to buy and purchase from Party of the First Part all the logs which may be produced at the Port Santa Maria Lumber within the term of this agreement at the prices and under the conditions mentioned in Paragraph 2 hereof;

"4. The term of this agreement shall be for a period of TEN (10) YEARS counted from the date of approval hereof by the Bureau of Forestry. Thereafter, it shall be renewed yearly. Provided, however, that this term shall be subordinated and subject to the period during which the Party of the First Part shall continue to hold a license from the Bureau of Forestry regarding the forest area, under which license Party of the First Part presently operates;

"5. In order to speed up and facilitate logging operations at the Port Santa Maria Lumber by Party of the First Part, Party of the Second Part does hereby agree and bind itself to transport all necessary units belonging to Party of the First Part to the Basilan Lumber Company, Isabela, Basilan City, for overhaul and repair without costs to Party of the First Part. Any addition and improvement which party of the Second Part may place on said units shall become the property of the Party of the First Part;

"6. In order to further facilitate log production, Party of the Second Part does agree and bind itself to send technical men within a reasonable time and as necessary, and to move equipments belonging to the Basilan Lumber Company to the Abelardo Pages License forest area. These equipments shall remain the property of the Party of the Second Part. This shall be in consideration of all saw-mill facilities, equipments, shop tools and machineries which Party of the First Part shall turn over to Party of the Second Part as loan during all the time this contract is in effect;

"7. Party of the Second Part will advance and deliver to Party of the First Part the sum of ten thousand (P10,000.00) pesos Philippine Currency, upon approval hereof by the Director of the Bureau of Forestry, Manila, as advance payment against log deliveries from the Abelardo Pages forest area.

"9. The logging operational expenses shall be for the account of the Party of the First Part. The Party of the Second Part shall, however, reimburse and pay to Party of the First Part whatever sums of money he may have spent on account thereof during a monthly accounting period:

* * * * *

"10. It shall be understood that the reimbursements contemplated and referred to in paragraph nine (9) hereof, shall be in addition to the purchase price mentioned and referred to in paragraph two (2) and three (3) hereof. In other words, the total consideration which will be paid for the logs shall be the operational costs plus the amount which may be paid for the logs as contemplated in paragraph two, (2) hereof."

The plaintiff is the grantee or owner of a lumber concession, given by the Bureau of forestry, of a forest area in Siocon, Zamboanga, and was licensed to operate it under the name of Port Santa Maria Lumber. The defendant is a corporation with its principal office at Basilan City, and is presumably engaged in the lumber business and possesses machinery and equipment used in said business. It would appear that there was a preliminary agreement, Exhibit A, between the parties before the execution of the contract, Exhibit B. Under this preliminary agreement, the Basilan Lumber Company was to operate the lumber concession of the plaintiff and actually conduct logging operations with its own equipment, all at its own expense. When this agreement was submitted to the Bureau of Forestry, the latter objected to it, saying that according to its rules and regulations, only the licensee or concessionaire is allowed to conduct logging operations within the concession; that if the plaintiff wanted to retain the license in his name, and he needs machinery or equipment and technical men belonging to another party, he should lease said machinery and equipment and hire the technical men to operate the concession, but that said technical men must be employed by the concessionaire himself. This evidently was the reason why the contract, Exhibit B, in order to be approved by the Director of Forestry, which in fact was approved, made it appear that the plaintiff himself was going to operate the concession and conduct logging operations and was to finance the same, although eventually, it would be reimbursed by the defendant for its operational expenses, the same to be in addition to the cost of the logs to be bought by the defendant; that the defendant was not only to lend its equipment for the use in the logging operations, but it would even overhaul and repair the equipment of the plaintiff by transporting the same to its compound and shops in Basilan. From this, the trial court correctly found that Exhibit B did not express the true intent of the parties; that it was simulated, and that as a matter of fact, from the time of the execution of the contract, Exhibit B, or shortly thereafter, about December, 1950, up to June, 1952, when logging operations were suspended, it was the Basilan Lumber Company that actually conducted logging operations and financed said operations, this being the real intention and agreement of the parties, the plaintiff never advancing or paying any of the said operational expenses; all contrary to the rules and

regulations of the Bureau of Forestry and the policy of the Government, and contrary to what the Director of Forestry was given to understand by the parties.

In suing on the contract, Exhibit B, and in his effort to prove breach thereof, the plaintiff introduced evidence to the effect that about the month of June, 1952, the defendant removed from the logging area logging and hauling equipment, which it never returned to the same, and withdrew its technical men, thereby stopping operations. As to the technical men, it will be remembered that one of the conditions imposed by the Director of Forestry in the approval of the contract, Exhibit B, was that technical men needed by the plaintiff should be hired by him so that they would be under his employment and control. The plaintiff, however, never hired said technical men, but were merely supplied, presumably, free, to him, contrary to the understanding between the Bureau of Forestry and the plaintiff. Again, according to the communications exchanged between plaintiff and the defendant after June, 1952, it would appear that said logging and hauling equipment were removed from the logging area with the knowledge and consent of the plaintiff and taken to Basilan for purposes of repair and overhauling, in accordance with the contract, Exhibit B.

The communication of the defendant to the plaintiff marked as Exhibit D, showed that the defendant never intended to abandon the logging operations, because it had invested considerable amount of money in the same, only that because future logging operations would cover the hilly portions of the area, a resurvey had to be made, besides the fact that during the rainy season from July to about December, the weather and the conditions of the ground were not favorable for logging operations. This, in addition to the fact that the typhoon that passed over the area had considerably damaged some of the equipment.

Another point raised by the defendant and favorably discussed by the trial court in its order of dismissal, is that although according to the contract, the defendant promised to buy all the logs produced and made ready for sale by the plaintiff, there was no period of time or limit fixed for said purchase, neither was there a time limit or period which was agreed upon by the parties as regards the logging operations actually to be conducted by the defendant, naturally, not under the contract, Exhibit B, which did not provide for such logging operations by the defendant, but even according to their own private understanding. Naturally, when there is no time limit fixed, plaintiff cannot well demand performance of the obligation.

But the plaintiff in his brief claims that the trial court should have fixed the period, if no period was fixed in the agreement. It seems that this point was never raised before the trial court, and he is not allowed now to raise this point before us. Furthermore, plaintiff may not ask for the performance of the obligation without first asking for the fixing by the court of the period or term. The period should first be determined, because in the absence of such term or period, there can be no breach of contract or failure to perform the obligation. In the case of *Ungson vs. Lopez*, 50 Off. Gaz. 4297, 4299-4300, citing the case of *Concepcion vs. People of the Philippines*, 74 Phil. 63, and *Gonzales vs. De Jose*, 66 Phil. 369, citing Article 1128 of the Old Civil Code (now Article 1197 of the New Civil Code), this Court said:

"On obligations coming within the purview of the above cited provision the only action that can be maintained is that to ask the court to determine the term within which the obligor must comply with his obligation for the reason that the fulfillment of the obligation itself cannot be demanded until after the court has fixed the period for its compliance and such period has arrived."

With respect to the logs amounting to 2,000 cubic feet, which defendant supposedly failed or refused to purchase, although ready for sale, plaintiff himself admitted that logs to be bought by the defendant must be placed at the seashore, and after the necessary scaling thereof by the forest officer; however, the logs in question were still up in the mountains or the forest where they had been cut and had not yet been scaled. Consequently, defendant was not yet called upon to make the purchase.

Considering the facts and circumstances in the case, we agree with the trial court. The appealed order dismissing the complaint is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Order affirmed.

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