

R. F. NAVARRO, DOING BUSINESS UNDER THE FIRM NAME OF R. F. NAVARRO & COMPANY, PLAINTIFF AND APPELLANT, VS. SUGAR PRODUCERS COOPERATIVE MARKETING ASSOCIATION, INC., DEFENDANT AND...

G.R. No. 12888. April 29, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

Plaintiff-appellant R. F. Navarro (doing business under the firm name of R. F. Navarro & Company) appeals directly to us from the order of the Court of First Instance of Rizal (in Civil Case No. 1733-P) dismissing his complaint for lack of cause of action, on the assertion that only questions of law are involved herein.

The material and pertinent allegations of plaintiff's complaint are:

"2. On September 19th, 1956, defendant formally offered to plaintiff the sale of from 15,000 to 20,000 metric tons of molasses, 185-degrees gravity, 60% sugar by invert, at P50.00 per metric ton, ex-warehouse San Carlos and Bais, Negros Occidental, giving him up to noon of September 24th, 1956 within which to accept the offer, with the admonition that upon its failure to hear from him by then, the defendant shall feel free to negotiate the sale with other possible buyers;

"3. On September 21st, 1956, answering an inquiry made by the plaintiff, the defendant advised the latter that the cost of pumping the molasses offered by it for sale is P1.20 per metric ton in San Carlos district and P3.00 per metric ton in Bais district and that the date of delivery thereof shall start from February on to March, April and May, 1957 as milling in the districts indicated (San Carlos and Bais) starts during the month of January;

"4. Promptly at five minutes before noon of September 24th, 1956, plaintiff formally accepted the offer of sale tendered by the defendant by informing the latter in writing that he binds himself to purchase from it the proffered 20,000 metric tons of molasses in question for P50.00 per metric ton, and the day after (September 25th, 1956) plaintiff, upon the request of defendant, made the following¹ clarifications of his agreement to purchase the said molasses,—(1) 20,000 metric tons of Philippine molasses, 185-degrees specific gravity, 60% sugar by invert; (2) Price—P50.00 Philippine currency, per metric ton ex-warehouse; (3) shipments to be in quantities of 3,000 or more metric tons every each shipment during the months of February, March, April and May until the whole amount has been completely shipped; and (4) payment shall be by irrevocable divisible and assignable domestic letter of credit to be opened in a local bank in defendant's favor;

"5. On the same day plaintiff made the foregoing clarifications of his acceptance of the sale, the defendant hurriedly advised plaintiff that it committed a typographical error in indicating the specific gravity of the molasses at 185-degrees which should be only 85-degrees, the latter being the highest for molasses at 60% sugar by invert, and requesting plaintiff that the 'specific gravity' be amended accordingly, which correction and amendment plaintiff readily agreed to and accepted;

"6. That neither on September 24th, 1956 when plaintiff exercised his option nor on September 25th when he requested plaintiff to clarify his acceptance to indicate the manner of payment, nor upon the submittal of the clarification which was presented by plaintiff himself and received by the defendant, thru its President, Amado Garcia, and for three days there-after, there was no single word, effort or hint that the defendant's offer,

accepted by the plaintiff, was qualified in any way whatsoever;

"7. That on September 24th, 1956, relying upon the consummation and perfection of the purchase and sale of 20,000 metric tons of molasses in question as indicated above, plaintiff, through his business associate here in Manila (J.D. Quirino) continued negotiations for the resale of said molasses to foreign buyers of said, commodity by immediately communicating the availability of said commodity through letters, cablegrams and long-distance calls to the latter's business contacts in U.S.A., and Japan, and ultimately disposing and reselling the said molasses for forward deliveries in accordance with plaintiff's agreement with the defendant;

"8. On September 28th, 1956, three days after an agreement had been consummated on the price, quantity and quality of said molasses and the manner of payment thereof, the defendant, belatedly and abruptly advised plaintiff of its desire to add certain additional conditions to be incorporated in the formal contract of purchase and sale then under preparation by it for signature,—which were never even mentioned nor hinted at in its original offer or proposal, on the untenable pretext that they were 'standard conditions' on all contracts for the sale of said commodity, the most onerous of which were,—

"(a) That upon the signing of the contract of purchase and sale, plaintiff shall pay defendant in cash an amount equivalent to 50% of the purchase value of the molasses;

"(b) That to cover the remaining and unpaid balance of the purchase price, plaintiff shall open with the Philippine National Bank an irrevocable domestic letter of credit in favor of defendant; which shall be assignable, and divisible; and

"(c) That in negotiating the said letter of credit, plaintiff shall allow defendant immediately to withdraw from the same the corresponding amount representing 50% of the value of the molasses withdrawn from the central, upon presentation of the requisite certificate thereof (certainly a condition which, taken with (a) above, is most one-sided in favor only of the seller);

"9. On October 2nd, 1956, plaintiff personally conferred with the defendant's manager, Amado G. Garcia, with a view of threshing out the difficulties necessarily evoked by the foregoing conditions belatedly demanded by the defendant, but the latter remained adamant in its attitude and the day after (October 3rd, 1956), it peremptorily gave plaintiff up to noon again of October 26th, 1956, within which to decide upon his acceptance of said additional conditions with the warning that if he failed to do so, it would feel to advise its planters concerned that they could negotiate their molasses with other parties:

"10. On October 5th, 1956, plaintiff, in a spirit of cooperation and in his desire to insure the success of his purchase of the molasses in question, reiterated to the defendant his readiness and willingness,—already imparted to it during their conference on October 2nd—to assist defendant in working to certain financing transactions with the bank whereby it may be possible to provide in the letter of credit to be opened in favor of the defendant authority to draw cash advances up to 50% of the contract value of the molasses, under certain conditions, and alternatively, plaintiff expressed his willingness to satisfy defendant's desire to be paid in advance an amount equivalent to 50% of the purchase value of the molasses, but provided, that their original agreement of P50.00 per metric ton were to be converted into what is known as 'equal standard condition,' under which the purchase value would be only P32.00 per metric ton;

"11. On the very same day and evidently without even any attempt to consider the matter further, defendant simply and rudely turned down the foregoing friendly gesture of the plaintiff caused by the additional conditions demanded by the defendant in its letter of September 28, 1956 (indicated in par. 7 above), and bluntly informed plaintiff that in view of his non-acceptance of said conditions it would not continue with the sale of the molasses in question to plaintiff and that it felt free to offer the same to any other interested buyer;"

Claiming breach of contract, plaintiff prayed that judgment be rendered ordering defendant to comply with and perform its contractual obligations, pursuant to its agreement with plaintiff of September 19 and 24, 1956 and in case of failure to do so, to pay plaintiff any and all damages he may suffer by reason of such non-compliance, plus moral damages, and to pay plaintiff reasonable attorney's fees and actual costs of the litigation.

As heretofore stated, upon defendant's motion to dismiss on the ground that it (complaint) states no cause of action for the reason that "there is no binding contract between" plaintiff and defendant, under Article 1479 of the New Civil Code, the trial court dismissed the action in an order which in part reads:

"ORDER

* * * *

"The defendant contends that the complaint states no cause of action because defendant's promise to sell, although accepted by the plaintiff, is not supported by any consideration distinct from the price and, under Article 1479 of the New Civil Code, is not binding. Article 1479 provides:

'A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

'An accepted unilateral promise to buy or sell, a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.'

"Although the existence of a lawful consideration or cause to support a contract is presumed, yet from the allegations of the herein complaint, it is apparent that the defendant's promise to sell is not supported by any consideration. In fact, the absence of any consideration of the option given to the plaintiff was admitted by plaintiff's counsel in his oral argument opposing the defendant's motion to dismiss. Plaintiff, however, contends that the option became binding on the defendant when plaintiff gave notice of its acceptance and that having been accepted within the period of the option, the offer can no longer be withdrawn and, in any event, such withdrawal is ineffective because there had already arisen an existing bilateral contract which can be enforced.

"The case of *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf & Pacific Co.* 97 Phil., 249; (51 Off. Gaz. 3447) is practically on all fours with the case at bar. In said case, on March 24, 1953, defendant Atlantic Gulf & Pacific Co. granted an option to plaintiff Southwestern Sugar & Molasses Co. to buy its barge for P30,000.00 to be exercised within ninety days. On May 11, 1953, Atlantic Gulf wrote Southwestern Sugar that it was exercising its option and that it be notified as soon as the barge was available. On May 12, 1953, Atlantic Gulf replied that their understanding was that the 'offer of option' is to be cash transaction and to be effected at the time the barge was available. On June 25, 1953, Atlantic Gulf informed Southwestern Sugar that the barge could not be turned over to the latter. On June 27, 1953, Southwestern Sugar instituted an action for specific performance in line with the accepted option, depositing with the Court the purchase price of P30,000.00. Atlantic Gulf, relying upon Article 1479 of the New Civil Code contended that the option was not valid because it was not supported by any consideration apart from the price. Southwestern Sugar contended the option became binding on Atlantic Gulf when plaintiff gave notice of its acceptance during the option period, citing as its authority Article 1324 of the New Civil Code which provides that 'when the offeror has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal except when the option is founded upon a consideration, as something paid or promised.' Upholding the contention of Atlantic Gulf and holding that the promise to sell was not valid because it was not supported by a consideration distinct from the price, the (Supreme) Court stated:

"There is no question that under Article 1479 of the New Civil Code "an option to sell" or a "promise to buy or to sell", as used in said article, to be valid must be "supported by a Consideration distinct from the price". This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration. In other words, "an accepted unilateral promise" can only have a binding effect if supported by a consideration. Here, it is not disputed that the option is without consideration. It can, therefore, be withdrawn notwithstanding the acceptance made of it by appellee.'

'It is true that under Article 1324 of the New Civil Code, the general rule regarding offer and acceptance is that, when the offerer gives to the offeree a certain period to accept, "the offer may be withdrawn at any time before acceptance" except when the option is founded upon consideration, but this general provision must be

interpreted as modified by the provision of Article 1470 above referred to," which applies to "a promise to buy and sell" specifically. As already stated, this rule requires that a promise to sell to be valid must be supported by a consideration distinct from the price.'

"On the strength of the above ruling laid down in the above-cited case of *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf & Pacific Co.*, supra, the facts of which are identical with those alleged in the present complaint, this Court rules that, since the herein defendant's promise to sell is not supported by any consideration distinct from the price, said promise is not valid and not enforceable. Plaintiff's complaint does not, hence, state a cause of action.

"While under the allegations of the present complaint, herein defendant may have assumed a clear obligation to sell its molasses to plaintiff at P50.00 per metric ton and, under the complaint, said defendant may have no justifiable reason not to proceed with the sale, yet, this Court cannot do otherwise than declare the option not binding and unenforceable in view of the clear provisions of the law on the matter. Thus, said the Supreme Court in the above mentioned case of *Southwestern Sugar vs. Atlantic Gulf*:

"While under the "offer of option" in question, appellant has assumed a clear obligation to sell its barge to appellee and the option has been exercised in accordance with its terms, and there appears to be no valid or justifiable reason for the appellant to withdraw its offer, this Court cannot adopt a different attitude because the law on the matter is clear. Our imperative duty is to apply it unless modified by Congress.'

"WHEREFORE, the Court sustains, as it hereby sustains the defendant's motion to dismiss and hereby declares plaintiff's complaint dismissed, without costs.

"SO ORDERED."

His motion for reconsideration having been denied, plaintiff interposed this appeal.

It is the contention of plaintiff-appellant that "the lower court erred in characterizing the transaction had between plaintiff and the defendant as an accepted unilateral promise to buy or to sell, and in deciding that as there was no consideration therefor, Article 1479, paragraph 2 of the Civil Code, and the ruling in *Southwestern Sugar & Molasses Co. vs. Atlantic Gulf & Pacific Co.*, 51 Off. Gaz., 3447, are applicable thereto."

In support of his claim, appellant seeks in his brief to differentiate his case from that of *Southwestern Sugar & Molasses Company vs. Atlantic Gulf & Pacific Company* relied upon by the trial court by arguing that what was involved in the Atlantic Gulf case was a mere option, while here the transaction is a bilateral promise to sell and buy which requires no consideration distinct from the selling price.

This contention is not borne out by the facts alleged in the complaint. In the first place, as noted by the trial court in its order denying plaintiff's motion for reconsideration, plaintiff himself, in paragraph 6 of his complaint, referred to the transaction as an "option" which he exercised on September 24, 1956. Then again, in his memorandum in lieu of oral argument, he expressly agreed that the offer made by defendant and described in paragraph 2 of plaintiff's complaint is an option, a unilateral promise to sell. (See page 4 of the memorandum.) And, undoubtedly, this is the offer, the option, the unilateral promise to sell that was accepted by plaintiff five minutes before the deadline—noon of September 24, 1956. (See first part of paragraph 4 of the complaint.) This acceptance, without consideration, did not create an enforceable obligation on the part of the defendant. The offer, as well as the acceptance, did not contemplate nor produce an immediately binding and enforceable contract of sale. Both lacked a most essential element—the manner of payment of the purchase price. In fact, it was only after the exercise of the option or acceptance of the unilateral promise to sell that the terms of payment were first discussed. This was in connection with the clarification of plaintiff's acceptance which was transmitted to defendant on September 25, 1956. (See last part of paragraph 6 of the complaint.) Plaintiff's offer of a domestic

letter of credit was not accepted by defendant who insisted on a cash payment of 50% of the purchase value, upon signing of a contract. (See paragraphs 8 and 9 of the complaint.) Plaintiff, on the other hand, agreed to accede to this provided the price is reduced from P50.00 per metric ton to P32.00. Defendant relected plaintiff's alternative counter-offer. In the circumstance, there was no complete meeting of the minds of the parties necessary for the perfection of a contract of sale.[1] Consequently, appellee was justified in withdrawing its offer to sell the Molasses in question. (See *Zayco vs. Serra*, 44 Phil., 236; *Montinola vs. Victorias Milling Co., et al.*, 54 Phil., 783, and *Batangan vs. Cojuangco*, 78 Phil., 431.)

In view of the conclusion we have reached, it would not be necessary to pass upon appellee's motion to dismiss the appeal.

Wherefore, finding no reversible error in the order appealed from, the same is hereby affirmed, with costs against the plaintiff-appellant. So ordered.

Bengzon, C.J., Bautista Angelo, Labrador, Paredes, and Dizon, JJ., concur.
Concepcion and Reyes, J.B.L., JJ., concur in the result.

[1] Art. 1475, New Civil Code.

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