

FEDERICO CALERO, PLAINTIFF AND APPELLANT, VS. EMILIA CARRION Y SANTA MARINA, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 13246. March 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

From the order of the Court of First Instance of Manila (in Civil Case No. 31409) dismissing his complaint, on the ground of prescription, plaintiff Federico Calero interposed this appeal directly to this Court on questions purely of law.

On December 20, 1956, plaintiff filed with the above-mentioned court a complaint which, in part, reads:

* * * * *

"3. Que a principios del año de 1937, el demandante propuso a don Enrique Carrion, padre de las demandadas, el siguiente negocio: adquirir entre los dos una finca en la Plaza Santa Cruz, por al precio de P250,000.00, de los cuales se pagarían P25,000.00 al contado y el resto a plazos, en diez años; en el bien entendido de que para pagar la suma de P25,000.00, don Enrique Carrion aportaría P15,000.00 y el demandante aportaría los P10,000.00 restantes.

"4. Que despues de examinar la finca, don Enrique Carrion acepto la proposicion del demandante, y le autoriza cerrar la transaccion, a nombre de sus hijas, es decir, de las dos (2) demandadas principales en este asunto.

"5. Que en el entretanto, don Enrique Carrion se ausento de Filipinas, continuando las negociaciones su apoderado y administrador, don Santiago Carrion quien tambien era el apoderado y administrador de las demandadas.

"6. Que cuando se fue a preparar la escritura de compra, don Santiago Carrion, como apoderado de las demandadas, explico al demandante que era muy complicado constituir una comunidad de bienes en esa finca, pues habria necesidad de rendir cuentas mensuales, y consultarse en caso de reparaciones, mejoras, etc.

"7. Que para evitar estas dificultades, don Santiago Carrion propuso comprar la finca a nombre exclusivo de las demandadas, con la obligacion de pagar al demandante el veinte por ciento (20%) de los beneficios, cuando so vendiera la finca.

"8. Que el demandante acepto esa proposicion, en el bien entendido de que la finca seria vendida tan pronto como se encontrara un comprador por una cantidad no menor de P300,000.00.

"9. Que debido a la confianza que existia entre las partes, el demandante acepto esa proposlcion, como ya se ha dicho, y las partes otorgaron el dia 28 de mayo de 1937, un contrato formal, en el cual se hizo constar el ultimo convenio celebrado por las partes, es decir, quea a la venta de la finca situada en la Plaza Santa Cruz, las demandadas pagarian al demandante,

'una cantidad equivalente un veinte por ciento (20%) de cualquier cantidad que se obtenga de la venta de los mencionados edificios y terrenos, despues de descontar el importe total pagado por dichas demandadas.'

"12. Que la verdadera intencion de las partes al otorgar el contrato exhibito 'A' era dar al demandante una participacion del veinte por ciento (20%), en todos los beneficios, rentas y utilidades de la finca descrita en ese contrato.

"13. Que desde el año 1937 el demandante ha hecho varias ofertas a las demandadas CARRION, para vender esa finca al precio ofrecido por los compradores.

"14. Que ahora el demandante tiene un comprador de dicha finca por la suma de P1,455,900.00, pero las demandadas, CARRION continuan negandose a vender dicha finca por ese precio, a pesar de la enorme ganancia que representa esa transaccion.

"15. Que durante todo el tiempo transcurrido desde el año 1937 hasta la fecha, las demandadas CARRION se han lucrado con las rentas de esa finca, sin dar ninguna participacion al demandante, quien hasta la fecha no ha recibido un centimo de dicha finca por ningun concepto.

"16. Que debido a los actos de las demandadas CARRION, el demandante ha sufrido y sigue sufriendo daños y perjuicios en una cantidad inestimable con certeza, pero que por lo menos, debe ser el veinte por ciento (20%) de los beneficios liquidos obtenidos de es finca por las demandadas CARRION.

"17. Que el demandante ha requerido a las demandadas CARRION a rendir cuentas de la Administracion de esa finca, a lo cual tambien se han negado.

"18. Que si vende esa finca ahora en la cantidad de P1,455,900.00, las demandadas CARRION tendrian un beneficio liquido de P1,205,900.00, o sea, la diferencia entre el precio de venta antes mencionado y los P250,000.00 pagados por dicha finca; y por consiguiente, el demandante tendria derecho a percibir la suma de P241,180.00, o sea, el veinte por ciento (20%) de los benneficios obtenidos, de conformalidad con el contrato exhibito 'A' de esta demanda.

"19. Que las demandadas CARRION se han negado a rendir cuentas de los beneficios obtenidos de dicha finca y a pagar la participacion del demandante, a pesar de los repetidos requerimientos de dicho demandante.

* * * * *

"POR TANTO, el demandante ruega al Hon. Juzgado se sirva dictar sentencia:

"(A) Ordenando a las demandadas CARRION que rindan cuenta completa y detallada de los ingresos y gastos de la finca mencionada en el exhibit 'A' desde el dia 28 de mayo de 1937 hasta fecha de la venta, entregando al demandante un veinte por ciento (20%) del producto liquido de dichas cuentas, en pago de los daños y perjuicios ya sufridos hasta la fecha;

"(B) Ordenando a las demandadas que vendan esa fincai descrita en el exhibit 'A', por un precio no menor de P1,455,900.00 en el plazo de tres (3) meses, o de lo contrario paguen al demandante la cantidad de P241,180.00, que representa el veinte por ciento (20%) de los beneficios obtenidos, con sus intereses legales desde esta fecha hasta su complete pago."

On February 2, 1957, defendants Emilia Carrion, Maria Carrion, Jose Falco, and Manuel Perez Guzman (the last two as husbands, respectively, of the first two), filed a motion to dismiss, on the grounds that (1) the complaint states no cause of action, and (2) the plaintiff's cause of action, if any, is barred by the Statute of Limitations (Sec. 1[e], Rule 8, Rules of Court). To this motion, plaintiff filed an opposition on March 16, 1957. On June 1, 1957, the court required plaintiff to amend his complaint, in an order which, in part, reads:

"* * * inasmuch as plaintiff concedes in his answer (opposition) to the motion to dismiss that '* * * por tratarse de una obligacion sin plazo fijo, este debe ser determinado por el Hon. Juzgado', it is plaintiff's duty to amend

his complaint to this effect, because there is nothing either in its allegations or in its prayer asking that this Court fix a reasonable period for the sale of the said property with a view to having defendants comply with their obligations under the parties' aforesaid agreement.

"* * * defendants' obligation has not even become demandable in view of the suspensive condition found in the parties' agreement.

"WHEREFORE, it is ordered that plaintiff amend his complaint within twenty (20) days from notice hereof, failing which the same will be dismissed."

Complying with the above order of the court, plaintiff, on June 15, 1957, filed an amended complaint which is identical to the original complaint, except that it contained the following new Paragraph 15 and a new prayer, to wit:

"15. Que el contrato exhibito 'A' no establece un plazo determinado para la venta de la finca descrita en el mismo contrato, aunque la intencion de que hubiera un plazo es evidente de la naturaleza, circunstancias y condiciones del mismo contrato; y el Hon. Juzgado debe señalar dicho plazo, de acuerdo con el articulo 1197 del nuevo Codigo Civil."

"POR tanto, el demandante ruega al Hon. Juzado se sirva dictar sentencia:

"(A) Señalando un plazo do tres (3) meses para que las demandadas CARRION vendan la finca descrita en el exhibito 'A' al precio mas alto en el mercado, pero no menos de la oferta actual de P1,456,900.00;

"(B) Ordenando a las demandadas CARRION que paguen al demandante el veinte por ciento (20%) de los beneficios obtenidos en la venta de dicha finca; * * *."

On July 18, 1957, defendants renewed their motion to dismiss, on the grounds that (1) the amended complaint states no cause of action, (2) the plaintiff's cause of action, if any, is barred by the Statute of Limitations (Sec. 1[e], Rule 8, Rules of Court), and (3) the plaintiff's original complaint being without cause of action, it cannot be amended and/or cured by said amended complaint which changes plaintiff's theory of the case. In connection with the second ground mentioned, defendants stated:

"Plaintiffs right of action accrued in the year 1937 when the first of plaintiffs alleged various offers to defendants to sell the property at the price offered by buyers was refused by defendants (Pars. 13 and 14 of Complaint). It is patent, therefore, that plaintiff's cause of action, if any, prescribed in the year 1947, that is, ten (10) years from the year 1937. Considering that plaintiff's complaint was filed on December 21, 1956, plaintiff's cause of action if any, is obviously unenforceable and barred by the Statute of Limitations."

To this motion, plaintiff filed his opposition on August 2, 1957, to which defendants filed a rejoinder on August 8, 1957. To this rejoinder, plaintiff filed a counter-reply on August 12, 1957.

On August 21, 1957, the court issued an order denying defendants' motion to dismiss. From this order, defendants filed a motion for reconsideration on August 27, 1957, which was duly opposed by plaintiff on September 7, 1957. On September 16, 1957, defendants filed a rejoinder to said opposition.

On October 1, 1957, the court issued an order dismissing plaintiff's complaint on the ground of prescription, as follows:

"ORDER

"This Court has before it (1) defendants' motion for RECONSIDERATION of the order of this Court dated August 21, 1957, (2) CONTESTACION DEL DEMANDANTE A LA MOCION DE RECONSIDERACION, and (3) defendants' rejoinder to CONTESTACION DEL DEMANDANTE A LA MOCION DE

RECONSIDERACION.'

"It is true that heretofore this Court did not entertain 'defendants' motion to dismiss plaintiff's original complaint; that on June 1, 1957, plaintiff was given twenty (20) days to amend his complaint; that on June 15, 1957, the amended complaint was filed; that on July 22, 1957, defendants again put in a motion to dismiss the said amended complaint, and that on August 21, 1957, this Court also denied this latter motion to dismiss. Defendants, however, have filed a motion for reconsideration of the order just mentioned on the ground that plaintiff's action under his amended complaint has already prescribed, and this Court has to pass upon the said motion for reconsideration.

"Concretely, defendants now contend that, plaintiff's action asking this Court to fix the period for the fulfillment of defendants obligation, which is the subject matter of his amended complaint, has already prescribed under the law and the applicable authorities. While this Court in conscience believes that defendants have search obligation to plaintiff under the express terms and conditions of the parties' agreement Exhibit A, nevertheless it cannot ignore defendants' aforesaid contention that plaintiff's action asking this Court to fix a period for the fulfillment of the said obligation has in fact already prescribed. For one thing, this action which may be brought under Article 1197 of the New Civil Code cannot by said to be imprescriptible. For another, as pointed out by defendants, in the case of *Gonzales vs. Jose*, 66 Phil., 369, among others, it was pertinently held that 'The action to ask the court to fix the period has already prescribed in accordance with section 43 (1) of the Code of Civil Procedure. This period of prescription is ten years, which has already elapsed from the execution of the promissory notes until the filing of the action on June 1, 1934.' Inasmuch as in the instant case, the parties' agreement Exhibit A was executed on May 28, 1937, plaintiff's action to fix the period for the fulfillment of defendants' obligation thereunder should have been filed within ten (10) years from the date just mentioned, following the said decision based on Section 43 (1) of the Code of Civil Procedure, its relation to Article 1116 of the New Civil Code. It is plain to see therefore that plaintiff's present action commenced only on December 21, 1956, is already long barred by prescription.

"At page 2 of plaintiff's CONTESTACION DEL DEMANDANTE A LA MOCION DE RECONSIDERACION, the position is taken that 'En este asunto el plazo de prescripcion comienza cuando nace el derecho de accion. Plaintiff's cause of action in the present case is to have this Court fix the period which the parties had left to conjecture in their agreement Exhibit A, and the said cause Of action arose right after the execution of said agreement on May 28, 1937, and lapsed ten (10) years after said date. Plaintiff further state that 'ademas, en nuestro asunto actual este Hon. Juzgado ya ha resuelto que el derecho de accion ni siquiera habia comenzado'. What this Court really said on this point in its order of June 1, 1957 is the following: 'As just intimated, defendants obligation has not even become demandable in view of the suspensive condition found in the parties' agreement'. Reference therefore is clearly made to defendants' obligation to plaintiff under Exhibit A, and not to plaintiff's right to ask for the fixing of the period contemplated by the parties in the said agreement. Plaintiff finally submits that 'para que se acepte una mocion de sobreseimiento, el fundamento debe ser indubitable, (Seccion 3, Regla 8 del Reglamento de los Tribunales.)' and that 'El hecho de que este Hon. Juzgado haya denegado ya dos mociones de sobreseimientos, es la mejor prueba de que su fundamento es—por lo menos muy dudoso'. It may be gathered from the record of this case that this Court has all along been inclined to try it on the merits with a view to getting at the truth and rendering judgment accordingly. However, it now finds itself, faced with a defense, namely, prescription, so clear and unanswerable that, to overlook the same, would be to disregard legal as well as judicial precepts.

"Finding defendants' MOTION FOR RECONSIDERATION of the order of this Court dated August 21, 1957 to be meritorious, the said reconsideration is hereby granted, and plaintiff's amended complaint is hereby dismissed, with costs against him.

"SO ORDERED."

From the above-quoted order, plaintiff filed a motion for reconsideration on October 3, 1957, which was duly

opposed by defendants on October 18, 1957. On October 23, 1957, the court denied said motion. Hence, this appeal.

Plaintiff claims that the lower court erred in dismissing his complaint, contending: that (a) the agreement Exhibit A. attached to the amended complaint and made an integral part thereof, created "un fideicomiso implicito" or an implied trust, which is not subject to prescription, and (b) that even admitting the obligation is subject to a suspensive undetermined period (not condition), the action to have such period fixed by the court has not yet prescribed.' In support of his submission that the agreement created an implied trust, plaintiff-appellant cites the provisions of Articles 1452 and 1453 of the new Civil Code which read as follows:

"ART. 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each,"

"ART. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated."

The contention is without merit, Article 1452 above-quoted is inapplicable to this case for the reason that there is absolutely no stipulation in the contract, Exhibit A, that there would be a joint purchase of the property and that the legal title thereto was to be placed in the name of the defendants for the benefit of themselves and herein plaintiff. The recitals in the contracts preceding the paragraph containing the obligation assumed by the defendants, merely refer to the services rendered by the plaintiff as broker who negotiated the sale of the property to the defendants and which the defendants agreed to compensate. Nothing contained therein would indicate that the property was being purchased for the benefit of the plaintiff and the defendants. The obligation assumed by the defendants is clear and unequivocal in that:

"por y en consideracion, a los trabajos, sugeriones, concejos y ayuda hasta ahora prestados por Don Federico Calero en relacion con la compra de los bienes vendidos a las Sras. EMILIA CARRION Y STA. MARINA Y MARIA DE LAS MERCEDES CARRION Y SANTA MARINA y a los trabajos y concejos que dicho señor promete seguir dando a los apoderados de las mismas en relacion con la venta, arriendo, administracion y mejoramiento de los mencionados bienes, por la presente, libre y voluntariamente, Don Santiago Carrion, en su capacidad de apoderado de las mencionadas Da. EMILIA CARRION Y STA. MARINA y Da. MARIA DE LAS MERCEDES CARRION Y SANTA MARINA y de la manera mas solemne como sea necesario y eficaz en derecho, promete pagar a don Federico Calero sus sucesores y cesionarios, una cantidad equivalente a UN VEINTE POR CIENTO (20%) de cualquier cantidad que se obtenga de la venta de los mencionadas edificios y terrenos, despues de descontar el importe total pagado por las Sras. EMILIA CARRION Y STA. MARINA Y MARIA DE LAS MERCEDES CARRION Y SANTA MARINA a la dueña de los mismos El Hogar Filipino, entendiendose ademas que este veinte por ciento sera tomado de la ganancia liquida que les represente a las nuevas dueñas la venta de los bienes mencionados ya sea por mediacion del Sr. Calero o sin ella." (par. 5 of Exh. A). (Italics supplied.)

The terms of the contract admit no doubt that the 20% to be paid the plaintiff is of any amount which may be obtained by the sale of the property after deducting the purchase price thereof, which shall be taken from the liquidated benefit obtained by the owners out of the sale of the said property.

Neither is Article 1453 applicable, because there is absolutely nothing in the agreement which even remotely indicates that the property was conveyed to the defendants in reliance upon their declared intention to hold it for, or transfer it to, another or the grantor.

Even the very allegations of plaintiff's complaint clearly reflect the true nature of the agreement. It appears

therefrom that although the original proposal was for the parties to purchase the property jointly (plaintiff to contribute P10,000.00 and the defendants to put up P15,000.00 on account of the down payment of P25,000.00), the same was abandoned and the parties subsequently agreed that the defendants would buy the property exclusively in their name and for their own account because "era muy complicado constituir una comunidad de bienes en esa finca, pues habria necesidad de rendir cuentas mensuales, y consultares en caso de reparaciones, mejoras, etc." and that the plaintiff "acepto esa proposicion, en el bien entendido de que la finca seria vendida tan pronto como se encontrara un comprador por una cantidad no menor de P300,000.00" "con la obligacion (on the part of the defendants) de pagar al demandante el veinte por ciento (20%) de los beneficios, cuando se vendiera la finca", and that, lastly, "el demandado acepto esa proposicion, como ya se ha dicho, y las partes otorgaron el dia 28 de marzo de 1937, un contrato formal en el cual se hizo constar el ultimo convenio celebrado por las partes, es decir, que a la venta de la finca situada en la Plaza Santa Cruz, las demandadas pagarian al demandante,

'una cantidad equivalente a un Veinte Por Ciento (20%) de cualquier cantidad que se obtenga de la venta de los mencionados edificios y terrenos, despufts de descontar el importe total pagado por dichas demandadas.'" (See paragraphs 3, 6, 7, 8 and 9) of the amended complaint.)

Plaintiff-appellant next contends that the lower court also erred in dismissing his complaint on the finding that plaintiff's right of action to have the period fixed for the sale of the property had already prescribed. It is urged that the time for enforcing their right of action to have the period judicially determined did not begin to run until the defendants had been formally demanded and they refused to sell the property. It was only then, it is argued, that the period of prescription started to run. This seems to be illogical. Before the period is fixed, the defendants' obligation to sell is suspended and they, therefore, can not be compelled to act. For this reason, a complaint to enforce immediately the principal obligation subject to the suspensive period before this is fixed, will not prosper. But this is not to say that the plaintiff has no cause of action. His cause of action under the agreement is to have the court fix the period and after the expiration of that period, to compel the performance of the principal obligation to sell. And this right to have the period judicially fixed is born from the date of the agreement itself which contains the undetermined period. Extrajudicial demand is not essential for the creation of this cause of action to have the period fixed.[1] It exists by operation of law from the moment such an agreement subject to an undetermined period is entered into, whether the period depends upon the will of the debtor alone, or of the parties themselves, or where from the nature and the circumstances of the obligation it can be inferred that a period was intended.

This is the dear intendment of Article 1197 of the New Civil Code as well as Article 1128 of the Spanish Civil Code and the applicable doctrine laid down by this Court.[2] And since the agreement was executed on May 28, 1937 and the complaint to have the period fixed was filed on December 21, 1956 or after almost 20 years, plaintiff's action is clearly and indisputably barred under the Statute of Limitations.

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

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., and Gutierrez David, JJ., concur. Concepcion, J., took no part.

[1] Plaintiff, in paragraphs 13 and 14 of his amended complaint alleges that since 1937 he had requested (made offers to) defendants to sell the property, but they refused. Based on plaintiff's theory, prescription started to run from said year, 1937.

[2] Gonzales vs. De Jose, 66 Phil., 369; Osorio vs. Tan, 98 Phil., 65, 51 Off. Gaz., 6221; Seone vs. Franco, 24

Phil., 309.

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