

JOSE PALACIOS, MANAGER OF THE SOCIEDAD DE ELECTRICIDAD EN COMANDITA, PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF CAVITE, DEFENDANT AND APPELLANT.

G.R. No. 1598. November 30, 1908

Ponente: TORRES, J.

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TORRES, J.:

In the municipality of Cavite, and on the 11th day of November, 1901, Zacarias Fortich, as municipal president of the said municipality, and Jose Palacios, electrician and managing director of the company known as the Sociedad de Electricidad en Comandita executed a contract before a notary for the public lighting of the said town and the isthmus by means of electricity, upon the basis, terms, and conditions approved by the said municipality, which are of the following tenor:

"1. The Sociedad de Electricidad shall install two hundred incandescent lamps of sixteen candle power in the interior of this walled city or isthmus, at such points and distances as a special representative of the Ayuntamiento may designate in conjunction with the director of said company, and the said lamps shall be suspended from a cable which will be supported along the fronts of the houses at an approximate height of five meters from the ground.

"2. The Ayuntamiento shall pay to the Sociedad for the installation the sum of ten pesos for each incandescent lamp placed on the public street, and six pesos more for each street lamp (farol) as the purchase price of the same; payment to be made in three installments, one upon the signing of this contract, another at the commencement of the electric lighting, and the last thirty days thereafter.

"3. Upon completion of the payment for the installation, the incandescent lamps, street lamps, and wires placed in the principal streets for the public street lamps, shall become the property of the Ayuntamiento, but all other cables, wires, posts, and insulators shall, as previously, be the property of the Sociedad de Electricidad.

"4. The Ayuntamiento shall obtain from the residents and owners the necessary authority for the purpose of supporting, on such houses as may be required, the lamps and wires for public lighting, inasmuch as this service is considered by the law as of public utility, and will likewise permit the putting up of posts in all such public streets where they may be necessary; no tax of any kind shall be imposed thereon, and in case of damage to the buildings caused by the placing of the electric wires, the Sociedad de Electricidad shall be liable therefor.

"5. Every alteration, removal or repair to be made in connection with the public lighting shall be done solely and exclusively by the personnel of the Sociedad de Electricidad and for account of the Ayuntamiento, with the exception of such repairs as may be necessary by reason of the wear and tear which shall be borne by the company.

"6. The city lights shall burn from sunset to sunrise, and the Ayuntamiento shall pay monthly in advance to this company the sum of 3 (three pesos) for each lamp of sixteen candle power, less ten per cent discount when there shall be two hundred lamps of sixteen candle power burning all night, and fifteen per cent discount when

there shall be five hundred lamps of equal power.

"7. The replacing of lamps that may become useless, as well as the cleaning of the same, shall be for account of the Sociedad de Electricidad, and the company in return therefor may then cease to allow to the Ayuntamiento the ten per cent bonus stated in the foregoing paragraph.

"8. In the event of an involuntary interruption in the lighting, the company shall discount the value of the days during which such interruption may continue, and the Ayuntamiento shall not claim any further indemnity.

"9. In case the Ayuntamiento fails to settle the bills within thirty days after the presentation thereof, the company shall be entitled to suspend the lighting and to rescind this contract.

"10. The duration of this contract shall be two years, which period may be extended for two more if agreeable to both parties without right to annul the same for any cause except for the lack of payment as provided in the foregoing paragraph, or for legal reasons of force majeure, but in case the Ayuntamiento should be without sufficient funds to pay for the lighting, there may be a temporary reduction of from ten to twenty per cent in the number of lights; such reduction not to exceed three months, as otherwise a new contract may be required.

"11. In case the company fails to comply with this contract before the expiration of the term stipulated, the Sociedad de Electricidad shall pay to the Ayuntamiento an indemnity of three thousand two hundred pesos, the expense of installation of the electric lighting paid by the Ayuntamiento.

"12. And in case of noncompliance with this contract by the Ayuntamiento before the expiration of the term of two years agreed upon, the Ayuntamiento shall indemnify the company by assigning to it all the materials used in the installation to the amount of three thousand two hundred pesos paid by the said Ayuntamiento as stated in the foregoing paragraph.

"13. If before the expiration of this contract for two years the Sociedad de Electricidad should fail to comply therewith, the Ayuntamiento shall enjoy the right of preference in the recovery of the indemnity stipulated, in relation to the other creditors of the company, and the company binds itself to respect the said lien in the event of transferring its rights to another person or company.

"14. In the event of a disagreement between the two parties to this contract by reason thereof, it shall be decided by arbitrators to be appointed by each of the parties, and if the arbitrators fail to reach an agreement they shall appoint a third person to decide."

By a written complaint presented by Jose Palacios on the 8th of October, 1902, as representative of the firm of Jose Palacios, Sociedad de Electricidad en Comandita, it was prayed that judgment be entered against the municipality of Cavite ordering the specific performance of the contract by the company; that the company be sentenced to pay monthly 400 pesos, from the 11th of November, 1901, and during the whole period in which the plaintiff shall continue to furnish electric current to the defendant, and to pay also the additional sum of 2,080 pesos, and all such, further reimbursement as the court may consider just and equitable with the costs; it was also alleged among other things that, under the agreement and prior to the 1st of February, 1902, the plaintiff company had acquired 200 lamps, cables, wires, machinery, and the necessary fittings for the installation of said lamps, as well as the necessary engine to furnish the current for the lighting of the said 200 lamps; that prior to the aforesaid 1st day of February, and after the contract was signed, the plaintiff company installed and furnished lamps to the municipality according to the conditions stipulated in the contract, and was further prepared to supply 130 more lamps of the same description, but that the municipality refused to appoint a representative to designate the location for the said lamps and the supply of the current for the same beyond the 70 lamps already mounted, notwithstanding the fact that the company is and was prepared to install the 200 lamps contracted for since December, 1901, in such localities within the town as the municipality would designate; that, by virtue of the contract, the plaintiff company constructed a plant with sufficient power, as had been stipulated, for the said

number of lamps, and consequently with power in excess of what was required for the 70 lamps put up; that it has been obliged to keep at work the machinery with its excessive power in order to furnish current for the said 70 lamps, thus being subjected to an enormous and useless expense to the extent of 400 pesos a month, to the prejudice of its interests, since the 11th of November, 1901, incurring an additional loss of 2,080 pesos, the value of the remaining 130 lamps at the rate of 16 pesos each, according to agreement, all of which amounts constituted an indebtedness which had not been paid, and which the defendant municipality refuses to pay.

After the demurrer of the defendant had been overruled, the plaintiff company asked in writing, on the 24th of July, 1903, to be allowed to amend its complaint by the addition of the following: That, in accordance with clause 14 of the contract, the plaintiff had attempted to settle the differences that existed between them by arbitration, and for such purpose, on its part appointed Leonardo Osorio, inviting the defendant municipality by letter to appoint another person on its behalf, but that the recommendation was not even answered by the defendant.

On the 11th of August, following, the representative of the municipality of Cavite answered the complaint, denying in general all the issues of the same and particularly those under paragraphs 6, 7, 8, and 9, and in defense alleged: That, under clause 10 of the contract, the municipality of Cavite reserved the right to reduce the lighting by reason of lack of sufficient funds, giving rise to a fresh contract if more than three months should elapse, with a reduction of the number as agreed to; that, by clause 12, it was stipulated that, as a penalty in case of noncompliance on the part of the municipality, the plaintiff could demand the cession to the company of all the materials used in the installation paid for by the municipality of Cavite, and that the reason for the refusal of said municipality to proceed with the installation of the number of lights agreed upon was the lack of funds to sustain the burden; therefore, it asked that the complaint be dismissed with costs.

In view of the result of the proceedings, the court below rendered judgment on the 5th of September, 1903, sentencing the defendant to pay to the plaintiff the sum of 2,132 pesos, the amount of the two installments unpaid by the defendant municipality, and that the latter deliver to the plaintiff the materials for the installations, and declared the contract rescinded, with the costs against the defendant. The representative of the municipality, upon being informed of the above judgment, moved for a new trial; the motion was overruled, to which the petitioner excepted, and, in opposition to this decision and to the judgment, the corresponding bill of exceptions was presented.

As may be seen from the complaint, the claim of the plaintiff is based on the failure to comply with the contract hereinbefore inserted, and the municipality's answer rests principally on the lack of funds to meet the total cost of the lights, and for this reason refused to permit the installation of the greater part of the lamps for the lighting of the city of Cavite.

It is an unquestionable fact that the municipality of Cavite, by objecting to the installation of 130 lamps for the lighting of the city, the balance of the 200 lamps agreed upon, violated the contract above referred to; the lack of funds was no excuse for the failure to comply with the agreement; therefore, it has incurred the penalty prescribed by clause 12 of said contract, in accordance with the provisions of article 1152 of the Civil Code which provides that—

"In obligations with a penal clause the penalty shall substitute indemnity for damages and the payment of interest in case of nonfulfillment, should there be no agreement to the contrary."

* * * * *

In view of the fact that the representative of the municipality of Cavite has admitted that, with the exception of the 70 lamps, he did not permit the installation of the 130 amps, the remainder of the 200 agreed upon, the nonfulfillment of the contract is apparent and undeniable, and the contractor for the service, the plaintiff herein, is

clearly relieved from having to prove that the said municipality violated the contract in order to be entitled to demand the enforcement of the penal clause therein agreed upon, which, in the present case, rather than a guaranty and a penalty for a violation of the agreement, is the means of reparation allowed by law for loss and damages. Moreover, neither is the plaintiff obliged to prove that he was subjected to losses and damages and the extent thereof, inasmuch as the contracting parties, in order to avoid controversy, the necessity of adducing evidence, and other difficulties involved in litigations, agreed to a penal clause as a proviso to the main contract, and established an exception to the ordinary and general clause of indemnity for losses and damages in performance of the right granted by article 1255 of the Civil Code.

There can be no doubt that, in lieu of the said general clause covering indemnity for losses and damages, the contending parties agreed to substitute the penalty agreed upon in place of the indemnity for losses and damages prescribed by article 1152 inserted above, without having stipulated any other obligation. By this statement of facts, it is shown that the first error assigned to the judgment appealed from is inadmissible.

With regard to the second error assigned to the judgment, the terms of the clauses 11 and 12 of the contract entered into between the plaintiff company and the municipality of Cavite, sustain the opinion of the trial judge in considering that the stoppage of the installation of the remaining 130 lamps is one of the cases of violation of the contract as defined in clause 12, because the general terms employed therein, and in clause 11, prove beyond all doubt that the nonfulfillment stipulated refers to everything that has been set forth and to all matters agreed upon. If the appellant's affirmation that the said clause 12 refers solely to the default in the monthly payment for the lighting of the city were true, it would have been clearly so stated. The words "in case of nonfulfillment of the contract by either the company or by the Ayuntamiento" were inserted because it was the intent and purpose of the contracting parties to refer to the whole contract or to any of its clauses or conditions.

Article 1281 of the Civil Code prescribes that—

"If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed.

"If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail."

According to the terms of the foregoing article, as the provisions of the said contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its clauses must prevail, especially when the words contained in the two clauses above referred to are not opposed to the evident intention of the contracting parties.

As the plaintiff has made no appeal with respect to his other claims, which were omitted in the judgment of the court below, the same can not now be considered.

For the reasons hereinbefore set forth, it is our opinion that the judgment appealed from should be affirmed with costs, provided that the municipality of Cavite shall deliver to the plaintiff all the materials for the lighting of the city installed by the contractor. So ordered.

Johnson, Carson, and Willard, JJ., concur.

Mapa and Tracey, JJ., dissent.

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