

BASIC BOOKS (PHIL.), INC., PLAINTIFF AND APPELLEE, VS. EMILIO LOPEZ, ET AL., DEFENDANTS, ISIDRO C. KINTANAR, DEFENDANT AND APPELLANT.

G.R. No. 20753. February 28, 1966

Ponente: REGALA, J.

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REGALA, J.:

This case originated from a complaint filed in the Municipal Court of Manila by the Basic Books (Phil.), Inc. to recover from Emilio Lopez and Isidro C. Kintanar the sum of P1,548.70 plus attorney's fees. The complaint alleged—

"2. That in different months of 1957 the Defendant Emilio Lopez, as agent of the plaintiff corporation, received on consignment various books for sale on commission basis with a total value of P1,548.70 which he failed to account despite repeated demands.

"3. That on December 10, 1959, in order to secure the payment of the above-stated obligation, the defendants entered into an agreement with the plaintiff wherein they bound themselves, jointly and severally, to pay the aforesaid obligation in installments starting with the month of January, 1960, with interest thereon at six percent (6%) per annum until the obligation is fully paid, with an accelerating clause in case of default in payment of two successive monthly installments. A copy of said document is hereto attached as Annex "A" and made an integral part hereof.

"4. That no amount has been paid by either of the defendants upon the obligation aforestated and the said defendants continue to fail and refuse to pay the same despite repeated demands therefor by the plaintiff.

The agreement mentioned in paragraph 3 reads as follows:

"This Agreement entered into by and between the Basic Books (Phil.) Inc. (a corporation duly organized and existing under the laws of the Philippines with principal office at 450 Arquiza St., Ermita, Manila, represented by William E. Ghent, Comptroller of the said corporation, hereinafter referred to as the First Party; and Emilio Lopez of legal age, married and residing at 2517 Amatista, San Andres Manila, and Isidro C. Kintanar, also of legal age, married and a resident of Loyola Heights, Quezon City, hereinafter referred to, jointly as the Second Party,

WITNESSETH:

Whereas, the First Party has filed a criminal case for estafa against Emilio Lopez, which is docketed as Criminal Case No. 40771, now pending before Branch XVIII of the Court of First Instance of Manila;

Whereas, Emilio Lopez, in order to avoid any criminal liability resulting from a successful prosecution of the said case hereby binds himself to pay his obligation with the First Party in the total sum of one thousand five hundred forty eight & 70/100 (1,548.70) pesos monthly for fifteen (15) consecutive months, and the balance of forty eight pesos and seventy centavos (P48.70) to be paid on the 16th month starting on the month of January, 1960, with six per cent (6%) interest per annum;

Whereas, Isidro C. Kintanar, hereby binds himself jointly and severally liable with Emilio Lopez to the First Party for the full and complete payment of the said sum of one thousand five hundred forty eight pesos & seventy centavos (P1,548.70) as scheduled above, with interest of six (6%) per cent per annum;

Now therefore, for and in consideration of the foregoing premises, the parties herein bind themselves to comply with this agreement under the following terms and conditions:

1. That the Second Party shall, jointly and severally be liable to the First Party for the full and complete payment of the sum of one thousand five hundred forty eight pesos & seventy centavos (P1,548.70), as scheduled above, with interest of six (6%) per cent per annum;
2. That the Second Party will put up a surety bond to assure compliance with the terms of this agreement upon the signing of this agreement;
3. That upon submission of the surety bond by the Second Party, the First Party shall petition the Court for the absolute dismissal of the criminal case above-mentioned;
4. That failure on the part of the Second Party to pay any two successive installment will make the whole unpaid balance due and demandable.

In witness whereof, the parties hereto have set their hands this 10th day of December, 1959, at the City of Manila, Philippines."

Lopez confessed judgment, but Kintanar denied liability under the contract, which, he averred, was void because it was executed for the purpose of stifling Lopez' prosecution for estafa. The issue narrowed down to the legality of the contract as both parties agreed to submit their case on that issue alone. In its decision the Municipal Court ordered Lopez to pay the Basic Books, Inc. the amount of its claim but absolved Kintanar of liability on the ground that the agreement which he had signed was based on illegal consideration.

The Basic Books, Inc. appealed to the Court of First Instance where the case was again submitted for decision on the same issue. This time the validity of the contract was upheld on the court's finding that Lopez was indebted to

the said company and that Kintanar knew this to be the case. The court based his finding on a letter written by Kintanar to the Basic Books, proposing payment of Lopez' account by stated installments. According to the court, it was to secure payment of this obligation that Lopez and Kintanar bound themselves jointly and severally liable to the Basic Books. It, therefore, adjudged Kintanar liable for the amount of the claim, with interest at 6 per cent per annum and for P200 as attorney's fee and the costs of the suit.

Kintanar, in turn, appealed to the Court of Appeals which certified the case to this Court on the ground that the issues presented are questions of law.

Focusing discussion on the contract, Kintanar contends that he and Lopez signed it in consideration of the Basic Books' promise to "petition the Court for the absolute dismissal" of the estafa case against Lopez and that the contract thus executed is of the type declared to be against public policy in *Arroyo vs. Berwin*, 36 Phil. 386 (1917); *Velez vs. Ramas*, 40 Phil. 787 (1920) and *Monterey vs. Gomez*, G.R. No. L-11082, Oct. 31, 1958. He justifies the focus of the discussion of this case on the contract alone on the ground that no other evidence was submitted at the trial by the parties and disputes the lower court's use of his letter (in which he is said to have admitted the existence of Lopez' unpaid account) for the purpose of showing that the contract is based on a lawful cause.

On the other hand, the Basic Books argues that the agreement was executed in settlement of Lopez' account and not in consideration of the dismissal of the estafa case. It is claimed that, as commission agent of the Basic Books Lopez failed to account for P3.000 worth of books, resulting in the filing of the estafa charge against him and that while the criminal case was pending Kintanar sent the following letter to the Basic Books:

"December 8, 1959

Basic Books, Inc.
450 Arquiza St.
Ermita, Manila

(Attention: Mr. Robert P. Rowley, President)

Dear Mr. Rowley:

I have been requested by Mr. Emilio Lopez, a former employee of yours who had been criminally charged with estafa at your instance before Judge Ruperto Kapunan to help him in his case. He has expressed to me his desire to have the case settled amicably and has requested me to convey to you these propositions under which he intends to satisfy your firm.

I understand that the amount involved in the case is a little over a thousand pesos but the entire indebtedness of Mr. Lopez with your company is somewhere over three thousand pesos. On this assumption, Mr. Lopez will be willing to restitute the amount of over one thousand pesos, the amount actually involved in the case, provided that you would allow him to effect the payments in twelve (12) monthly installments.

Should this proposal be acceptable to you, kindly advice me.

Very truly yours,

(Sgd.) Isidro Kintanar
Isidro C. Kintanar

The Basic Books claims that this letter was actually-presented in evidence in the Municipal Court and attached to the records of the case in the Court of First Instance. It then concludes that "the consideration to the company was the promise on the part of defendant to pay at least a part of the preexisting, valid and subsisting civil obligation of defendant Lopez. The consideration for Mr. Lopez on the other hand, was the promise of the company, not only to reduce his obligation of more than P3,000 to P1,548.70, but also to novate their contract [so as to allow payment of the amount in 15 monthly installments]."

In denying liability under the agreement, the appellant Kintanar invokes the following provisions of the New Civil Code:

"Art. 1353. Contracts without cause, or with unlawful cause, produce no effect whatsoever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy."

"Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy.

We do not think Kintanar's obligation under the agreement under question is based on an illegal consideration. Paragraph 3 of the said agreement, which speaks of Kintanar's obligation, reads:

"Whereas, Isidro C. Kintanar, hereby binds himself jointly and severally liable with Emilio Lopez to the- First Party for the full and complete payment of the said sum of one thousand five hundred forty-eight pesos & seventy centavos (P1,548.70) as scheduled above. With interest of (6%) per centum per annum;"

A careful reading of the agreement will show that while in the second paragraph thereof, which speaks of Lopez' obligation, the avoidance of the criminal case appears to be the reason for the latter's entering into the agreement, note under the above-quoted paragraph that the herein appellant merely bound himself to pay, jointly and severally with Emilio Lopez the latter's accounts. It is thus seen that Kintanar's assumption of a joint and several liability cannot in any way be interpreted or based upon the so-called illegal consideration of "stifling a criminal prosecution" against Lopez.

While it may be inferred from Kintanar's letter to the Basic Books, dated December 8, 1959, that his motive in assuming obligation under the agreement was to help save Lopez from the criminal case, this, we believe would be no reason to declare the agreement void. Article 1351 of the New Civil Code states that "the particular motives of the parties in entering into a contract are different from the cause thereof."

"Cause" is "the essential reason which moves the contracting parties to enter into it." (General Enterprises, Inc. vs. Lianga Bay Logging Co., G. R. No. L-18487, August 31, 1964). In other words, the cause is the immediate, direct and proximate reason which justifies the creation of an obligation thru the will of the contracting parties. (3 Castan, 4th ed., p. 817). Applying this definition, the cause of the agreement would be the existing account of Lopez with the appellee. And for the appellant, it was mere liberality or gratuitousness on his part that moved him to oblige himself severally with Lopez.

It is noteworthy that so far it has not been shown that the criminal case had been dropped or dismissed, which only means that the civil liability of the parties created under the agreement in question had not affected the criminal case.

Premises considered, the decision appealed from is hereby affirmed, with costs against the appellant.

Bengzon, C. J., Barrera, Dizon, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

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