

**CESARIO V. INDUCIL, PETITIONER VS. VICTOR DE LOS SANTOS, RESPONDENT.***G.R. No. 21060. May 30, 1966*

Ponente: BENGZON, J.P., J.

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Petitioner, Cesario V. Inducil, appeals from a decision of the Court of Appeals in CA-G.R. No. 22326-R, promulgated January 31, 1963.

Said petitioner and the respondent, Victor de los Santos, entered into a contract of services on October 12, 1956. It provided that: (1) De los Santos, the PROPRIETOR of a transportation business called "Ricalinda Bus," hired the services of Inducil, the REPAIRER, for a period of three (3) years from October 1, 1956 to October 31, 1959; (2) the PROPRIETOR shall pay to the REPAIRER in compensation for the services to be rendered, P325 for the first month; P350 for the second month; P375 for the third month; and P400 a month thereafter until the expiration of the contract; (3) the REPAIRER shall be obliged to render to the PROPRIETOR the services of repairing, reconditioning and/or mending any defect in any or all of the thirty (30) buses of the PROPRIETOR; (4) the PROPRIETOR shall provide and supply to the REPAIRER the parts necessary for the repair; (5) the repairs, reconditioning or mending shall be done at the REPAIRER'S shop in 1434 Andalucia, Manila, and for this purpose, the PROPRIETOR shall send the units, parts or items to be repaired to the shop of the REPAIRER, and, after the repairs are made, shall remove them from the shop; (6) the services to be rendered shall be limited to the existing thirty (30) buses of the PROPRIETOR; (7) for the true and faithful performance of each and every covenant and stipulation above-stated, the parties bind themselves, each unto the other, in the penal sum of FIVE HUNDRED PESOS (P500), Philippine currency, as liquidated damages [1] to be paid by the failing party; and (8) the REPAIRER shall do the works specified with reasonable dispatch and guarantee to avoid dislocation on the proper functioning of the PROPRIETOR'S business.

From the date of the contract up to April of 1957, a total of twenty-six (26) buses of said PROPRIETOR were repaired or overhauled by the REPAIRER under the contract. In his turn, the PROPRIETOR paid to the REPAIRER P325 for the first month (October 1956), P350 for the second month (November 1956), P375 for the third month (December 1956), and P400 monthly thereafter (January to April 1957). In regard to the months of March and April 1957, said payments were delayed, and when finally made, after written demand, the PROPRIETOR served notice that, notwithstanding their previous agreement, starting May 1957 he would pay only on piece-work basis, alleging, as reason therefor, unsatisfactory service by the REPAIRER. The REPAIRER objected thereto. From May of 1957, the PROPRIETOR did not send to said REPAIRER any engine for repair or other works.

As a result, Inducil, the REPAIRER, filed suit on June 26, 1957 in the Court of First Instance of Manila against De los Santos, the PROPRIETOR, for specific performance of their contract, praying that defendant be ordered to pay him P400 a month from May 1957 until the contract expires, plus P1,000 attorney's fees.

In his answer filed on July 11, 1957, De los Santos averred that the services of the plaintiff were unsatisfactory, as complained of by him in his letters to said REPAIRER of April 26 and 30, 1957.[2] And he counter-claimed for rescission of the contract with damages of P7,500 and attorney's fees of P1,000.

After joinder of issues, stipulation of some facts, and trial, the Court of First Instance rendered judgment on November 19, 1957, thus:

"WHEEFORE, judgment is hereby rendered In favor of the plaintiff and against the defendant, ordering; the latter to comply with his contract of October 12, 1956 by paying the monthly compensation of P400.00 a month beginning May 1, 1957, up to the present, with legal interest hereon from June 26, 1957, until fully paid, to pay the plaintiff attorney's fees in the sum of P1,000.00, and to pay the costs of this suit.

"SO ORDERED,"

From said judgment, De los Santos appealed to the Court of Appeals. Said Court, on January 31, 1963, rendered its decision, modifying- the judgment of the trial Court, by ordering the defendant to pay the plaintiff only the sum of P500—the amount stipulated in the contract as liquidated damages—without costs in the instance of. the appeal therein.

Plaintiff Inducil, as stated, appealed to this Court.

From the language of the dispositive portion of the decision of the Court of First Instance, the Court of Appeals concluded that the same practically decreed a rescission of the contract between the parties. As reasons for this view, it stated that said judgment ordered the payment of P400 monthly compensation from May 1957 up to the date of said judgment (November 19, 1957) ; that it made no pronouncement as to the rights and obligations of the parties, or as to the payment of P400 monthly, after the date of the judgment; since the contract was supposed to expire on October 31, 1959 yet, said lack of pronouncement in the judgment ;is to the remaining term of said contract was deemed to have amounted to a rescission of the contract. And on the basis of a rescission, the Court of Appeals, viewing the contract as one for a piece of work, falling under Article 1721 of the Civil Code, ruled that since plaintiff did no work after May of 1957, the defendant was obliged to pay him only the amount provided for in the penal clause, namely, the sum of P500 as liquidated damages, adding that said penalty substitutes the indemnity for damages suffered by plaintiff (Art. 1226, Civil Code).

From the dispositive portion of the trial court's decision, above-quoted, we find no rescission being practically, or in effect, decreed. Said judgment, on the contrary expressly ordered the defendant "to comply with his contract of October 12, 1956 \* \* \*." Anent the monthly payments of P400, it ordered the same to be made "beginning May 1, 1957, up to the present." The reason for this is because as regards the remaining term of the contract, there was then as yet no failure to perform on the part of defendant, so that it was unnecessary to specifically and expressly order him to make said monthly payments as to the future term of the contract then remaining. Said trial court limited its order of specific payments to sums in arrears. In ordering defendant to comply with his contract, however, it just as effectively ordered him to make the stipulated payments in the future until the expiration of the contract.

It is clear that plaintiff's suit was for specific performance. It is likewise clear that the trial court in its judgment ordered specific performance, not rescission. It in fact granted in full the relief prayed for in the complaint: specific performance, plus P1,000 attorney's fees, plus costs. From such a judgment plaintiff cannot be expected to appeal. And we cannot sustain the conclusion—reached by the Court of Appeals—that by not appealing from such a judgment, plaintiff acceded to a rescission of the contract.

Anent the rights and obligations of the parties after the date of the decision, the same are governed and covered by

the contract. Since the judgment of the court a quo provided for specific performance of the contract, it thereby provided for said rights and obligations to remain in force.

From the above considerations, it follows that, there having been no rescission or conversion of the present suit for specific performance to one of rescission with damages, the Court of Appeals erred in awarding damages by applying Article 1721 of the Civil Code in relation to the penalty clause of the contract in question.

As to the matter of attorney's fees in plaintiff's favor, we deem it reasonable to sustain the award of P1,000 made by the trial court, in view of the fact that defendant acted in evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim (Art. 2208, No. 5, Civil Code).

As of now the contract has already expired. Defendant should therefore be ordered, by way of specific performance to pay to the plaintiff the monthly payments of P400 for the period from May of 1957 up to the expiration of the contract, on October 31, 1959, plus the interest due on each payment.

Wherefore, the decision of the Court of Appeals is hereby reversed and set aside and another one is rendered ordering defendant to comply with his contract of October 12, 1956 by paying the monthly compensation of P400 a month beginning May 1, 1957, up to October 31, 1959, the date of expiration of said contract. Defendant is further ordered to pay the plaintiff interest, at the legal rate, on each of the said monthly payments, from the time each respectively fell due, until fully paid, and attorney's fees in the sum of P1,000 plus the costs. So ordered.

Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Decision reversed.

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[1] Italics supplied.

[2] Exhs, "2" & "4"; Stipulation of Facts, Record on Appeal, pp. 22-23; Plaintiff's Memorandum, Annexes A and B, Record on Appeal, pp. 40-42.

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