

ESTEBAN BARRETTO, PLAINTIFF AND APPELLEE, VS. THE MANILA RAILROAD CO., DEFENDANT AND APPELLANT.

G.R. No. 21313. March 29, 1924

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

The plaintiff alleges that on February 11, 1922, the defendant offered to purchase from him a strong material Promulgated September 4, 1922, not reported. house, No. 1210, Calle Dagupan, situated on the land of the defendant, for the sum of P3,700; that the plaintiff accepted the offer and in pursuance thereof executed a deed of sale of the house in favor of the defendant, but that upon the presentation of the deed to the defendant the latter refused, and still refuses, to pay the purchase price.

The defendant's answer denies generally the allegations of the complaint and sets up as a special defense that the agreement referred to by the plaintiff was not in writing and therefore is not enforceable under the Statute of Frauds.

It appears from the evidence that on February 2, 1922, the general manager of the defendant company addressed a communication to Mr. J. C. Miller, the right-of-way agent of the same company, asking for full information about two houses of strong material situated on Calle Dagupan and inquiring if the purchase of the houses would be advantageous for the purposes of the company.

On February 7th Miller returned the communication to the general manager with the following endorsement:

"Manila Railroad Company

"Manila, P. I.

"1st Indorsement

"Feb. 7, 1922.

"Respectfully returned to the General Manager, with the information that the property in question has cost the Company up to date P20,801 and is situated on Calle Dagupan forming a part of our main terminal property and has an area of 1,437.10 square meters. There is attached a blue print on which the property in question is bordered red; the numbers 10 and 11 on attached print represent the two (2) buildings proposed to be bought and their street numbers are 1200 and 1210, respectively. The building located at 1210 Calle Dagupan is now rented out for P70 a month, and is the building assessed at P3,700; the other building numbered 1200 is a similar structure and could be rented at about the same figure as the other.

"If these houses were not rented out, it is thought that they could be used advantageously for Company purpose.

(Sgd.)

"J. C. MILLER

"Right of Way Agent."

On February 9th the general manager endorsed the communication as follows:

"EXECUTIVE DEPARTMENT

"MANILA

"2d Indorsement

"February 9, 1922.

"Respectfully returned to the Right-of-Way Agent, authorizing the purchase of the two houses in question, at

the prices not to exceed those stated in the Memorandum to the General Manager dated January 31, 1922, attached hereto.

(Sgd.)

"H. B. MCCoy

"Acting General Manager"

On the strength of the last indorsement the plaintiff was informed that the defendant company was willing to buy his house for P3,700 and was instructed to go to Miller's office and there execute the deed for the house. The plaintiff did so, the deed was duly executed and he was told to come back to the office in the afternoon of the same day to receive the purchase price. He left the deed with Miller and later returned to the latter's office, as directed, but was then told that the general manager was absent and that the money could not be paid until the latter's return. Plaintiff made several other unsuccessful attempts to collect the purchase money and finally Miller handed him the deed to keep until arrangements could be made for the payment.

Upon the facts stated, the court below held, in effect, that there had been a sufficient part performance on the plaintiff's part to take the contract out of the Statute of Frauds and rendered judgment in favor of the plaintiff for the amount demanded in the complaint From this judgment the defendant appeals.

Though the failure of the Railroad Company to accept the deed after having offered to buy the house and having subjected the plaintiff to much trouble and annoyance may be subject to criticism, we are, nevertheless, constrained to hold that, as a matter of law, the plaintiff has established no cause of action. It may be observed that in addition to pleading the Statute of Frauds as a defense, the defendant, during the trial of the case, also made timely objections to the introduction of parol evidence to prove the contract of sale and took due exceptions to the adverse rulings of the court and that, therefore, articles 1278 and 1279 of the Civil Code do not apply. (See *Conlu vs. Araneta and Guanko*, 15 Phil., 387; *Gallemit vs. Tabiliran*, 20 Phil., 241; *Gomez vs. Salcedo*, 26 Phil., 485; *Gorospe and Gorospe vs. Ilayat*, 29 Phil., 21; *Santos vs. Rivera*, 33 Phil., 1; *Abrenica vs. Gonda and De Gracia*, 34 Phil., 739.)

It is well settled that the delivery of the deed to the agent of the vendee, with no intention to part with the title, does not take the case out of the Statute of Frauds. (*Commins vs. Perry*, 90 N. Y. Supp., 92; *Nye vs. Taggart*, 40 Vt., 295; *Luzader vs. Richmond*, 128 Ind., 344; *Freeland vs. Charnley*, 80 Ind., 132; *Townsend vs. Hawkins*, 45 Mo., 286.)

In the present case it is very clear that there was no delivery of the deed with the intention to part with the title until the purchase price was paid, and it is equally clear that there was no final acceptance of the deed; the fact that the deed was returned to the plaintiff and by him retained, is practically conclusive upon this point. What might have been the result had the defendant's agent retained the deed or had the defendant entered into actual possession of the property, we do not here decide.

The judgment appealed from is reversed without costs in either instance. So ordered.

Araullo, C. J., Johnson, Street, Avancena, Johns, and Romualdez, JJ., concur.

Judgment reversed.

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