

LORENZO ZAYCO, PLAINTIFF AND APPELLANT, VS. SALVADOR SERRA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 23018. December 14, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

It appears from the evidence that on February 2, 1919, Salvador Serra, Juan J. Vidauzarraga, Felix Vidauzarraga, Dionisio Vidauzarraga, and Lazaro Mota, as parties of the first part, and Severo Alejano, the Estate of Hilario Cordova, Lorenzo Zayco, the Estate of Tomasa Gemora, Rogaciano Albayda, and Josefa Pacheco, as parties of the second part, entered into a contract in writing whereby the parties of the first part, referred to in the contract as the "Palma and San Isidro Centrals," in consideration of the covenants and agreements of the parties of the second part, referred to in the contract as the "Planters," obligated themselves under paragraphs 1 and 2 of the contract as follows:

"PARAGRAPH 1. That on or before the 1st of November, 1919, the Palma Central will construct a mill of a capacity of not less than 500 tons of cane, each twenty-four hours, composed of two mills of three rollers each, and a crushing mill of two rollers.

"PAR. 2. That they will construct, maintain, and operate during the term of the contract, free of charge to the Planters, a railroad, propelled by motor or steam, or by both, for the use of the Planters, for the transportation of sugar cane, sugar and fertilizers, which they shall endeavor to run through the cane fields of the Planters or as near them as the position of the lands and plantations shall permit and the amount of cane to be transported shall require, etc."

Under the heading of "Obligations of the Planters," the contract further provides that:

"In consideration of the agreement and covenants with the Palma and San Isidro Centrals, hereinabove mentioned, and of the sum of one peso (P1) paid to each one of the Planters by the Palma and San Isidro Centrals, receipt of which sum is hereby acknowledged, the Planters, individually and separately, for themselves, their heirs, executors, administrators, and assigns, do hereby covenant, stipulate and agree:

"1. That each one of them will deliver to the said Palma and San Isidro Centrals, for a period of twenty (20) years, beginning from the date on which they are notified by the master of transportation that they are ready to commence the milling of all the sugar cane, planted by them on their lands, situated in the municipality of Kabankalan, Province of Occidental Negros, P. I., which lands of the parties of the second part are situated in said municipality and are generally designated and described as follows:

"1. Haciendas 'Nandong,' 'Pansod,' 'Lupni,' 'Ayucutan,' Lorenzo Zayco, owner.

"2. Hacienda 'Gilabangan,' Josefa Pacheco, owner.

"3. Hacienda 'Balas-Balas,' Rogaciano Albayda, owner.

"4. Rogaciano Albayda, as judicial administrator of the Estate of Doña Tomasa Gemora, Hacienda,

'Gilabangan.'

"5. Gregorio Cordova on behalf of the Estate of Hilario Cordova, lands 'Hilamonan' and 'Nandong.'

"6. Gregorio Cordova on behalf of the Hacienda 'Lapnis' of Severo Alejano.

"3. That for a reasonable compensation, they will give and cede upon demand by the Palma and San Isidro Centrals, for a period of thirty (30) years, beginning from the completion of the construction of the railroad line, the necessary right of way for the construction of a telephone system for the Palma and San Isidro Centrals, and in like manner, upon demand, they will also give the necessary right of way for the railroad line for a period of thirty (30) years * * *.

"9. That they shall appoint a committee or agents among those forming the parties of the second part, which committee or agents shall inspect the extension of the sugar plantings, in order to see to it that no less than 2/3 of the area of the lands owned by them are planted and harvested, unless prevented by force majeure, after the first year of this contract, and they shall be cultivated subject to the inspection of said committee or agents, and in all matters affecting those of the parties of the second part, said committee or agents shall represent them in their relations with the parties of the first part, and shall also represent them in all other matters hereinabove specified in the obligations of the Palma and San Isidro Centrals.

"10. That they will submit any and all differences which might arise between the parties of the first part and the parties of the second part to the decision of referees, two of whom shall be selected by the first part and two by the second part, who, in case of disagreement, shall select a fifth referee, and they shall respect and abide by the decision of said referees or of three of them, as the case may be.

"14. This agreement as well as all the provisions, covenants and stipulations shall constitute a lien on said lands, and shall be binding upon the planter's heirs, administrators, assigns and grantees."

The mill referred to in paragraph 1 of the contract was not constructed and the railroad line mentioned in paragraph 2 did not reach the "Nandong" and "Pansod" plantations, belonging to Lorenzo Zayco, until March, 1920, over a year after the contract was entered into, and Zayco therefore brought the present action against all the parties of the first part of the contract, alleging that said parties had not complied with the terms of the contract and that he, by reason thereof, had suffered damages upon various counts in the total amount of P1,016,000, for which he asks judgment against the defendants. He further prays that the contract in question be declared rescinded.

The defendants Juan Vidauzarraga and Dionisio Vidauzarraga did not answer the complaint and judgment was rendered against them by default. The defendants Anastasia Echevarria and Felix Vidauzarraga answered by general denial. The defendant Salvador Serra sets up as special defenses that he did not enter into the contract with the plaintiff individually, but that the contract was between all of the defendants on one side and the plaintiff and many others on the other side, and that there, therefore, was a defect in the parties plaintiff in the case; that the parties of the second part in said contract had violated their agreement by not appointing the committee referred to in paragraph 9 of the contract and by failing to plant a sufficient quantity of sugar cane; that ample facilities were at all events furnished the plaintiff Zayco for milling his cane, and that he therefore had suffered no damages.

After trial, the court below rendered judgment dismissing the complaint with the costs against the plaintiff. The plaintiff appeals to this court and makes the following assignments of error:

"1. The court a quo erred in holding that Exhibit A, the basis of the action brought by the herein plaintiff in this case, is without value as it never existed.

"2. The court a quo erred in holding that there is no evidence in the present case constituting estoppel as

against the defendants.

"3. The court a quo erred in holding that the defendant Salvador Serra was not bound to construct the mill mentioned in Exhibit A capable of crushing 500 tons of sugar cane during each twenty-four hours, for the reason that the planters did not perform their part of the contract since some of them failed to plant the quantity of sugar cane agreed upon.

"4. The court a quo erred in holding that the defendant was justified in not constructing the railroad connecting the Palma and San Isidro Centrals with the haciendas belonging to the plaintiff.

"5. The court a quo erred in relieving the defendant Salvador Serra from the obligation of paying damages to the plaintiff from January 29, 1920.

"6. The court a quo erred in holding that plaintiff's claim for damages was not sufficiently established by the evidence."

The first and second assignments of error have reference to the contention of the defendant Serra that the contract in question was null and void because the persons who signed it on behalf of the estates of Tomasa Gemora and Hilario Cordova were not duly authorized to represent said estates.

There is some merit in these assignments. It appears that Rogaciano Albayda who represented the Gemora estate was its judicial administrator and Gregorio Cordova who signed the contract on behalf of the Cordova estate was the de facto administrator of that estate. Assuming that these persons exceeded their authority, the contract would nevertheless not be an absolute nullity, but simply voidable at the instance of the parties who had been improperly represented. It follows that under the circumstances of this case, the defendant Serra is hardly in position to assert that the entire contract here in question was null and void ab initio.

The third and fourth assignments of error are not well taken. The defendant's contract was not with the plaintiff individually and alone; it was with all of the individuals designated as "the Planters" in a body and consequently a breach of the contract by any one of these individuals would in effect constitute a breach of it by all. The evidence is conclusive that none of the parties who signed the contract as planters lived up to their agreement. By paragraph 9 of the portion of the contract which relates to the obligation of the planters, the latter bound themselves to appoint a committee or agents to supervise the planting of cane and to settle disputes. The functions of the committee were of importance to the orderly fulfillment of the milling contract, but there is no pretense that such a committee was formed or that agents were appointed.

The same paragraph also placed upon the planters the obligation, after the first year of the contract, to plant not less than 2/3 of the area of their plantations to sugar cane. The plaintiff planted less than half of his land and the other planters made practically no new plantings. As the proposed increase in cane production must have been the principal inducement for the defendants' undertaking to construct an additional mill, and undoubtedly also one of the reasons for their promise to construct a railroad and operate it during the term of the contract, it would be more than unfair to the defendants to require them to proceed with the construction of the mill in the face of the failure of the planters to make provisions for an adequate supply of cane. When in addition to this it is considered that the weight of the evidence shows that the existing milling facilities were more than sufficient for the grinding of the cane produced by the planters, we are clearly of the opinion that the trial court did not err in holding that through the fault of the planters, the defendants were justified in delaying the construction of the mill.

As to the construction of the railroad, the evidence shows that the defendants exercised due diligence and that the delay in its completion was due to circumstances beyond their control.

The fifth and sixth assignments of error relate to the plaintiff's claim for damages. In view of what has already

been said, it is unnecessary to discuss this question. We may say however that we agree with the trial court that the plaintiff's claim is not sufficiently supported by the evidence.

The judgment appealed from is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Johns, and Villa-Real, JJ., concur.

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