

AGUSTIN P. SEVA, PLAINTIFF AND APPELLEE, VS. ALFRED BERWIN & CO., INC., AND EUSEBIA MEDEL, DEFENDANTS. ALFRED BERWIN & CO., INC., APPELLANT.

G.R. No. 24321. January 11, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

October 23, 1921, the municipal council of Bacolod granted a franchise to the defendant Alfred Berwin & Company, which is a corporation, to operate an electric light plant within the limits of that municipality.

November 12, 1921, the franchise was approved by the provincial board of Occidental Negros, and later, it was approved by the Public Utility Commission. After such approval, and on November 29, 1921, plaintiff and the defendant corporation entered into a written contract, known in the record as Exhibit 0, in and by which, and upon the terms and conditions therein stated, the plaintiff agreed to purchase and the defendant corporation agreed to sell its complete electric light plant, as described in the complaint. The contract was prepared and signed in Iloilo, where the corporation had its main office and kept its books and records and accounts, and a portion of its supplies. There was no stipulated price for the sale and purchase of the property. That point was covered by paragraph 2 of the contract, which is as follows:

"The price of everything herein specified, including the franchise of the company for the installation of electric lighting, heating and motive power for the purpose of exploiting which the setting and installation of everything specified in the foregoing paragraph is carried into effect, shall be fixed on the day when the same is finished and in perfect operation; and this price shall be the cost price after the installation in Bacolod of everything enumerated in the preceding first paragraph, plus reasonable profit in favor of the company."

The terms and conditions of the purchase are covered by paragraph 3, which is as follows:

"The purchaser agrees to pay for the aforesaid plant in three installments. The first payment, which must be 50 per cent of the total value, 12 months from the satisfactory and uninterrupted operation of the plant. The second payment, which shall be 25 per cent of the total value, 15 months from the due operation; and the third and last payment, which shall be the remaining 25 per cent, 18 months from due operation. Provided that the installments herein stipulated shall not be extended unless the operation is interrupted for a total period longer than 15 days, and the cause is deficiency or defects in the machinery."

Under paragraph 7, the purchaser was to execute a first mortgage on all of the property conveyed to him as a security for the fulfillment of his obligations. It was further agreed that he should appoint, the corporation as administrator "(manager) of the plant so long as he shall have not satisfied in full the total value," and that "the net profits that may be obtained from the exploitation of the plant shall be credited monthly to the purchaser, the total amount thereof to be deducted from the entire value of the plant, and to draw reciprocal interests from the dates of

their respective receipts."

The remaining provisions of the contract are not material to this opinion.

For an alleged failure of the corporation to convey the property to the plaintiff, under the terms and provisions of the contract, the plaintiff brought this action, alleging a breach by the corporation, and for a specific performance of the contract.

The defendant corporation demurred to the complaint on the ground that it does not state a cause of action. The demurrer was overruled, an exception was taken, and the corporation filed an answer, in which it admits all of the allegations of fact made in the complaint, except those which may hereafter be specifically denied or qualified, and as an affirmative defense, alleges that the contract, known in the record as Exhibit O, is null and void, for the reason that it was not approved by the Public Utility Commission, as provided in section 16 of subsection (h) of Act No. 3108. That, notwithstanding the fact that the contract was null and void, the defendant corporation has complied with all of its terms and provisions. The allegations of fact made in paragraphs 5, 6 and 7 are denied, and as an affirmative defense, the corporation alleges that it has furnished the plaintiff with a statement of the cost of the electric light plant, and has notified him of the amount which he is to pay for the property, and that it also notified him that all of the necessary documents to verify the actual cost of the electric light plant are and have been at his disposal for his inspection and verification, and that it has furnished him with a report showing that such accounts are correct. That, notwithstanding that fact "the plaintiff has failed and refused to comply with his obligations set out in said contract" The corporation admits that it has obtained an option from the defendant Eusebia Medel on the lot upon which the electric light plant is situated, but denies that it has done so for the purpose of preventing the plaintiff from complying with his contract. Defendant also admits that the plaintiff has constructed the camarin on lot 300, cadastral survey of Bacolod, as alleged in the complaint. It is then alleged that as a result of plaintiff's failure to comply with the contract, the corporation has been unable to comply with the demand made upon it by the Public Utility Commission, to install additional equipment, and has been unable to extend the electric light service throughout the municipality of Bacolod to meet the requirements of its inhabitants, and as a result, its franchise is in imminent danger of being annulled, and it has been damaged to the extent of 50,000. That the Public Utility Commission has refused to approve the contract unless the additional required equipment shall be installed, and that the conduct of the plaintiff "has made it impossible for the corporation to meet that requirement. That the corporation tendered to its codefendant Eusebia Medel the full amount of the purchase price of the lot mentioned in the complaint in full accord with the terms of the option to purchase, but that she refused to accept it or to convey the property to the corporation. As a result of such failure, the corporation has been further damaged in the sum of P5,000. Wherefore, the corporation prays that the contract be declared null and void, and for corresponding damages.

Upon such issues, the lower court rendered judgment for the specific performance of the contract, and directed the corporation to render an accounting to the plaintiff at Bacolod as to the true cost of the plant, and to furnish plaintiff with certified copies of all the invoices and vouchers regarding the equipment and materials used, and enjoined the defendant Eusebia Medel from carrying out her contract with the corporation. To rendition of such judgment, the corporation duly excepted, and appealed to this court, assigning the following errors:

"I. The lower court erred in overruling the demurrer of appellant.

"II. The lower court erred in not declaring the contract of plaintiff and appellant void for the reason that the approval of the Public Utility Commission was not first had as provided for in section 16, subsection (k) of Act No. 3108.

"III. The lower court erred in not finding that the appellant has complied with all of its obligations as set out in

the void contract between plaintiff and appellant.

"IV. The lower court erred in not finding that the appellant has no obligation under its void contract with plaintiff to deliver to plaintiff at Bacolod any comprobantes or other documents regarding the cost price of the electric light plant installed by appellant at Bacolod.

"V. The lower court erred in not finding that plaintiff has failed and refused to comply with his obligations under the void contract.

"VI. The lower court erred in not finding that the appellant has been, and is still being, damaged by the acts of plaintiff.

"VII. The lower court erred in not finding that the defendant, Eusebia Medel, is bound by the option contract which she made with appellant.

"VIII. The lower court erred in not ordering the defendant, Eusebia Medel, to comply with her obligations under the option contract which she made with appellant.

"IX. The lower court erred in not finding that the appellant has been, and is still being, damaged by the acts of the defendant, Eusebia Medel.

"X. The lower court erred in issuing an injunction for-bidding the defendant, Eusebia Medel, from carrying out her contract of sale in favor of Alfred Berwin & Co., Inc."

JOHNS, J.:

This is an equitable proceeding for the specific performance of a contract.

The property involved is an electric light plant owned and operated by the defendant corporation under a franchise in its name granted by the municipality of Bacolod, and approved by the provincial board of Occidental Negros and the Public Utility Commission. The contract is for the sale and purchase of the plant operated under that franchise.

Section 16 of Act No. 3108, among other things, provides:

"No public utility as herein defined shall: *****

"(h) Without the approval of the Public Utility Commission first had, sell, alienate, mortgage, encumber, or lease its property franchises, privileges or rights, or any part thereof. * * * Any sale, alienation, mortgage or encumbrance, lease, fusion or consolidation made without the approval herein required shall be null and void *
* *"

There is no claim or pretense that the contract was ever approved by the Public Utility Commission, or that any application was ever made to have it approved. The language of the Act is plain, clear and explicit, and it means what it says. That is to say, that without the approval of the Public Utility Commission, no public utility has the power to sell, alienate, mortgage, encumber or lease its property, franchise, privileges or rights or any part thereof. That language is definite and certain, and within itself might be construed as an express prohibition against the sale or transfer of a public utility without the permission of the Public Utility Commission having been first had and obtained. But the section further provides that any such sale, alienation, mortgage, etc., without the approval of the Public Utility Commission, shall be null and void. There is no claim that the section is unconstitutional, and the courts by construction ought not to nullify its plain and express provisions. Even though the plaintiff was the owner of the property in question, he could not operate it without a franchise, and he cannot secure a franchise without the express approval of the Public Utility Commission.

It is very apparent that the Legislature intended to prohibit, without the approval of the Public Utility Commission, the doing of the very thing which plaintiff now seeks to have done.

We are clearly of the opinion that the statute is valid and means what it says, and that in legal effect no sale or transfer of a public utility can be consummated without the approval of the Public Utility Commission being first had and obtained, and that for want thereof, the contract, which the plaintiff seeks to enforce, is null and void.

Again, it will be noted that no price for the property was agreed upon by the parties, and that the second clause of the contract provides how and in what manner the price shall be obtained. That is a condition precedent which involves an invoice of the cost price of the property after its installation, together with "a reasonable profit in favor of the company." There is no definition in the contract as to what is a reasonable profit. That could only be ascertained by an agreement between the parties, or, for failure to agree by a decree of the court, and there is no claim that anything of that kind has ever been done.

As stated, the contract was signed in Iloilo where the company kept its books and vouchers and some of its supplies.

November 14, 1922, the defendant corporation wrote the plaintiff the following letter:

"We take pleasure in advising you that the franchise .granted by the municipality of Bacolod has been approved by the Public Utility Commissioner and confirmed by the Governor-General.

"We request you to kindly let us know by what date you wish to receive the plant.

"We deem it advisable that a conference be held in this office about a fortnight prior to the date set by you." December 29, 1922, it wrote him as follows:

"We hereby request you to kindly call at this office for the purpose of arranging the price of the plant and to prepare the necessary documents as provided for by our agreement.

"The plant will then be immediately transferred to you and the sale considered as having taken place on January 1, 1923, from which day on we shall act as administrator of the plant."

It is not denied by the plaintiff that he was in the store of the company in Iloilo, and that while there, he was requested to go into the company's office to see and inspect the vouchers, books, statements and records of the company, with the end in view of trying to arrive at the cost of the electric light plant, and that he refused to do so. It also appears that the corporation employed a competent accountant to render a statement from the corporate books,. and that such a statement was furnished and delivered to the plaintiff. Of course, he was not bound to accept that statement. But it was his duty to meet the corporation at least halfway and to make an amicable effort to arrive at the cost of the plant, and to be fair and reasonable with the company. The record shows that the conduct of the plaintiff was arbitrary and more or less autocratic, and it is very apparent that if he had been a little more fair and reasonable, that the parties would have arrived at an amicable agreement as to the cost, and that the contract would have been consummated.

Although the electric light plant itself was in Bacolod, yet all of the corporate records, account books and vouchers, from which the cost price of the property could be ascertained, were in Iloilo, and the contract was executed there, and it was only from such records made and kept in Iloilo, that the cost price could be obtained, and that was the logical and natural place to obtain the required information. Under the contract, all that the defendant was required to do was to give the plaintiff free access to all of its original records, and with that as a basis, the parties could then make a reasonable effort to arrive at an amicable agreement as to the price of the property.

Plaintiff now invokes the equitable jurisdiction of this court for the specific performance of a contract where it appears that the failure to perform is more of his own fault than it is that of the appellant.

We are clearly of the opinion that the contract in question is null and void for want of the approval of the Public Utility Commission. We are also of the opinion that by his own actions and conduct, the plaintiff is not entitled to a specific performance of the contract.

The judgment of the lower court is reversed, and the complaint dismissed and the injunction issued against the defendant, Eusebia Medel, is dissolved, with costs in favor of the appellant. So ordered.

Avancena, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

Johnson, J., did not take part.

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