

RIO Y OLABARRIETA AND JUAN V. MOLINA, PLAINTIFFS AND APPELLANTS, VS. YU TEC & CO., INC., DEFENDANT AND APPELLANT.

G. R. No. 25462. August 28, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Plaintiff, Rio y Olabarrieta, is a copartnership organized and existing under the laws of the Philippine Islands, with its principal office in the City of Manila. The defendant, Yu Tec & Co., Inc., is a domestic corporation, with its office in the City of Manila, and the defendant Calvin is of age and a resident of Manila.

Plaintiff alleges that on December 5, 1923, the defendant company, which was then a limited partnership, authorized its agent, J. V. Molina, to find a purchaser or a lessee of a tract of land belonging to it, situate on Calle Velasquez, Tondo, City of Manila, which has an area of 20,000 square meters and which is particularly described in the complaint. That within the time granted its agent found a purchaser in the name of the plaintiff which offered to purchase the land for the sum of P40,000, and that Molina, as its agent, made known its offer to the defendant company which refused to accept it, but did offer to sell the land for P42,000, of which P7,000 was to be paid on the signing of the deed, and the balance within two years, with interest at the rate of 8 per cent per annum, P10,000 at the end of the first year, and the remaining P25,000 at the end of the second year, all to be secured by a first mortgage. That within the period fixed by the defendant company, the offer of P42,000 was accepted by the plaintiff which was then and there ready and willing to sign the necessary papers and to make the first payment of P7,000. That from one excuse or another, the defendant company refused to carry out the agreement. That the defendant Calvin, with full knowledge of all the facts and within the specified period, fraudulently conspiring with the defendant company, entered into a contract on June 9, 1924, by which he purchased the property from the company. That by reason thereof plaintiff was damaged in the sum of P12,000, and prays for a decree that the sale to Calvin be declared null and void, and ordering the defendant company to comply with the contract, and to execute a deed to the plaintiff, and ordering it to pay the sum of P12,000 as damages, together with costs.

For answer the defendant company denies all of the material allegations of the complaint, and as a further and separate answer alleges that the alleged agreement set out in the complaint was not made or created by any deed of conveyance or other instrument in writing subscribed by the defendant or its authorized agent.

For answer the defendant Calvin made a general and specific denial of all of the material allegations of the complaint.

After a trial upon such issues, the court rendered judgment in favor of the plaintiff and against the defendant corporation for P6,994.65, with legal interest from the filing of the complaint and costs, and denied the prayer of

the plaintiff for the execution to it of a deed of the property by the defendant corporation, and dismissed the action as to the defendant Calvin

From that judgment, the plaintiff appeals and makes the following assignment of error:

"The lower court erred in holding that had the plaintiff acquired the land in question, it would at all events have paid to the defendant interest on the remaining P35,000 for two years at the rate of 8 per cent per annum and that the amount of said interest must be deducted from the damages awarded the plaintiff."

The defendant Yu Tec appeals and contends that the court erred:

"(1) In denying the motion to strike out the testimony of Tan Lee Wan.

" (2) In denying the motion to strike out the testimony of Juan V. Molina.

"(3) In finding that three days before Molina's authority expired Molina had found a purchaser.

"(4) In finding that Exhibits C and D constitute a contract of sale within the Statute of Frauds.

"(5) In finding that all the requisites the law demands, consent, certain object, the matter of the contract and consideration were present.

"(6) In finding that the delivery of the Torrens Title Certificate was a fact from which necessarily must be inferred that Yu Tec had formerly accepted the offer of the plaintiff.

"(7) In taking the letter of Carlos Young as relevant to the measure of damages.

"(8) In giving damages of P6,994.65 to plaintiff.

"(9) In giving judgment for plaintiff."

JOHNS, J.:

It will be noted that, although the complaint alleges that the defendant company authorized Molina as its agent "to look for purchasers or lessees of a piece of land" in question, it does not allege how such authority was created or whether it was oral or in writing. In the further answer of the defendant company, it is specifically alleged that the agreement for the sale in question was not made in writing. Upon such issues, plaintiff produced some oral evidence tending to show that it had accepted the proposition to purchase the property at an agreed price of P42,000, and upon the terms and conditions alleged in the complaint, all of which testimony was received without objection on the part of the defendant.

The question as to whether the plaintiff relied upon a written contract did not appear during the trial until at the close of the testimony of Tan Lee Wan, at which time the defendant promptly, filed motions to strike out the depositions of Molina and Tan Lee Wan. The only written documents material to this opinion are Exhibits B and C, which are as follows:

"Exhibit B

"March 3, 1924

"To whom it may concern:

"Dear Sir: With respect to the authority conferred on me by the organizers of this firm Yu Tec, S. en C. (Yu Tec & Co., Ltd.) as general manager, I now authorize Mr. Juan Molina of this city to sell our land containing 20,000 square meters approximately situated on Calle Velasquez, District of Tondo, City of Manila, at the rate of P2.25 a

square meter, which option shall be valid for fifteen days from this date, that is, up to March 18, 1924.

"If Mr. Molina should not have taken advantage of selling it during this time, this authority shall stand cancelled upon the day fixed.

"Respectfully,

"YU TEC S. EN C.

(Sgd.) "YU MING GUAT

"General Manager"

"EXHIBIT C

"I agree that the sale be effected of our land on Calle Velasquez, District of Tondo, for the sum of P42,000, the sum of P7,000 to be paid on account. The same property shall be mortgaged to us in the sum of P35,000, with interest at 8 per cent per annum. The sum of P10,000 shall be amortized during the first year of the mortgage and the balance of P25,000 shall be paid in the second year of the mortgage at the maturity thereof.

"At the signing of the deeds and upon receiving the P7,000, one thousand pesos shall be paid in cash to the broker Mr. Juan V. Molina who has effected the sale

"MANILA, March 15, 1924.

(Sgd.) "Y M GUAT"

It will thus be seen that if Exhibits B and C had been followed with a document of sale by Molina, which satisfied the requirement of the Statute of Frauds, and which was made within the term and scope of his authority, plaintiff would have had a good cause of action. It will be noted that Exhibit B is dated March 3, 1924, and among other things recites:

" * * * which option shall be valid for fifteen days from this date, that is, up to March 18, 1924.

"If Mr. Molina should not have taken advantage of selling it during this time, this authority shall stand cancelled upon the day fixed."

Exhibit C, which fixes the price of the property at P42,000, and the terms and conditions of the sale, is dated March 15, 1924. By the terms and provisions of Exhibit B, time is made the essence of the contract, which, in the absence of renewal or extension, would expire on March 18, 1924. Without a renewal or extension after that date, Molina's authority to sell the property expired by its own terms on that date, and ceased to exist.

If such written authority did exist, the testimony for the plaintiff, which went in without objection, would be competent and material. If it did not exist, it would be incompetent and immaterial. For such reasons, the failure of the defendant to object to the oral testimony at the time of its introduction was not a waiver of its legal right to make such objection at the time when it did appear that plaintiff was not relying on a written contract. Defendant's motions to strike were timely made and should have been sustained.

In *Gard vs. Ramos*, (138 Pac, 108), the Supreme Court of California says:

"Counsel for appellant, however, contends that during the trial the defendant waived the issue as to the statute of frauds by his failure to object to the oral evidence offered in proof of the agreement to purchase the goods at the time of the offer of such evidence. This contention cannot be sustained, for the reason that the oral evidence offered in proof of the agreement in question, while not of itself sufficient to establish it, was one of the steps in the order of proof required by the statute of frauds, and was still admissible when followed by the

other evidence required by the Code in order to take the agreement out of the statute."

That is good law and applies with peculiar force to the facts shown in this record.

The real question involved in this case is the legal construction to be placed upon section 335 of the Code of Civil Procedure, known as the Statute of Frauds, which reads as follows:

"Agreements Invalid Unless Made in Writing.—In the following cases an agreement hereafter made shall be unenforceable by action unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

"5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein, and such agreement, if made by the agent of the party sought to be charged, is invalid unless the authority of the agent be in writing and subscribed by the party sought to be charged; "

It must be conceded that if, on or before the 18th of March, 1924, Molina had made a legal tender of the P7,000 and declared himself ready and willing to execute a first mortgage lien upon the property for the remaining P35,000, upon the terms and conditions stated in Exhibit C, he would then have been in a position to enforce the specific performance of the contract. That was not done by either Molina or the plaintiff. Neither is there any evidence of any kind of a written contract between the plaintiff and the defendant company.

Before you can enforce the specific performance of a contract or recover damages for its non-performance, there must be a valid contract to enforce, and there must be two parties to the contract, and it must be mutual.

The question involved in this case is the purchase and sale of real property, and the law specifically provides that a contract therefor is void "unless the authority of the agent be in writing and subscribed by the party sought to be charged."

The only written authority of the agent to sell and dispose of the property on any terms and conditions is Exhibits B and C, and by the express terms of Exhibit B, time is made the essence of the contract. After the 18th of March, 1924, Molina himself could not enforce the specific performance of Exhibit B. How then and upon what legal principle can it be enforced by the plaintiff? Section 335 of the Code of Civil Procedure is clear and explicit and means what it says. There is no evidence in the record of any written contract between the plaintiff and the defendant corporation for the sale and purchase of the real property in question.

Again, under all of the authorities, any renewal or extension of a written contract, which the law requires to be in writing, must also be in writing, and upon that point, there is also a failure of proof.

The record is conclusive that the name of the plaintiff as purchaser was not disclosed or made known to the defendant until long after the 18th of March, 1924, and some time after the return of Judge Camus. In that situation and upon the facts shown in the record, how could the defendant corporation enforce a specific performance of the contract against the plaintiff? If the defendant could not enforce the specific performance against the plaintiff, how and upon what legal principle can the plaintiff enforce a specific performance against the defendant corporation? In the very nature of things, their respective legal rights must be mutual and reciprocal.

There is no rule of law by which Exhibit B could be construed as a contract for the sale of the property. Under its most liberal construction, it is nothing more than an authority to sell, between which there is an important legal distinction. While Exhibit B might be construed as fixing the price, it does not specify the terms and conditions upon which the sale was to be made. Hence, the necessity of Exhibit C. But, here, again, it will be noted that

Exhibit C is not addressed or directed to any one, and that the only person mentioned in Exhibit C is that of Molina as broker.

Again, we repeat that the only writing ever signed by the defendant is Exhibit B, which gives Molina authority to sell, and which, by its own terms, is confined and limited to March 18, 1924, and Exhibit C, which does nothing more than to specify and define the terms and conditions of any sale made by Molina. Hence, it must follow that if Exhibit B expired on March 18, 1924, that fact would destroy the legal force and effect of Exhibit C. That is to say, that, in the absence of a renewal or extension in writing signed by the party to be charged or its agent, Molina had no authority to sell the property upon any terms or conditions after March 18, 1924. There is no written evidence of any renewal or extension, or any written contract thereafter to make the sale between either Molina and the corporation or the plaintiff and the corporation. It may be that after March 18, 1924, there were verbal negotiations between the parties with that end in view, but the stubborn fact remains that, legally speaking, no sale of the property was consummated on or before March 18, and that thereafter Molina had no authority to sell the land.

The plaintiff contends that this court has placed a more liberal construction upon the Statute of Frauds than the courts of the United States. That is not tenable. For many and different reasons, the Statute of Frauds has been more or less criticised, but it has become almost an universal statute, and is upheld and sustained by all the courts, the reasons for which are very apparent.

From what has been said, it follows that there is no merit in plaintiff's appeal, and that the judgment of the lower court in favor of the plaintiff is reversed, and the complaint dismissed, with costs for the defendant-appellant against the plaintiff. So ordered.

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

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