

TANG AH CHAN AND HIS WIFE KWONG KAM KOON, PLAINTIFFS AND APPELLANTS, VS. EDUARDO B. GONZALEZ, HELEN DAHLKE AND HER HUSBAND A. H. DAHLKE, DEFENDANTS AND APPELLEES.*G.R. No. 28595. October 11, 1928*

Ponente: MALCOLM, J.

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This is an action for the rescission of a contract on the ground of deceit. The answer of the defendant Dahlke took the form of a general denial. The answer of the defendant Gonzalez alleged ratification as a special defense, while in a crosscomplaint he asked for the foreclosure of the mortgage on the properties in question. On these issues, following a prolonged trial, judgment was rendered, absolving the defendants from the complaint, sentencing the plaintiffs on the crosscomplaint to pay to the defendant Eduardo B. Gonzalez the sum of P124,750, with interest at 9 per cent per annum from the date of the judgment until payment, plus P12,475 equivalent to 10 per cent of the principal sum for the expenses of collection and attorney's fees, and concluding with the usual formula for the sale of the properties, with costs against the plaintiffs.

On July 28, 1924, Eduardo B. Gonzalez, as the result of negotiations conducted by the broker, Mrs. Helen Dahlke, conveyed to Tang Ah Chan and his wife Kwong Kam Koon three parcels of land contiguous to each other of an aggregate area of 5,635.40 square meters for the sum of P106,000. Of this amount, Tang Ah Chan paid P6,000 in cash. To secure the payment of the balance of P100,000, Tang Ah Chan mortgaged to Gonzalez the land thus conveyed and another property located on Calle Echague in the City of Manila. The interest on the mortgage was paid up to and including December, 1924, but since that time Tang Ah Chan has been in default.

The property sold by Gonzalez to Tang Ah Chan forms the extreme southern point of the tongue of land extending south of Fort San Antonio Abad located at the mouth of the Estero San Antonio Abad in the District of Malate, City of Manila. The said tract is bounded by Manila Bay, the Estero San Antonio Abad, and public land. It is registered under the Torrens system. The land is only partly covered with vegetation, the rest being sandy soil, which at high tide is under water. Before any permanent construction could be made on the property, a retaining wall would have to be erected. Just north of the property here described and between it and the old Fort San Antonio Abad is the tract of land which Tang Ah Chan claims was that which was pointed out to him by the broker, Mrs. Dahlke, and which he thought he was buying.

There can exist no dispute as to the correctness of the statements just made. Nor is it necessary for the disposition of the appeal to make pronouncements on every point which the ingenuity of counsel have led them to emphasize. On this basis, we can, for the purposes of this decision, disregard almost entirely the conflicting and uncorroborated testimony of Tang Ah Chan and Mrs. Dahlke. We can proceed without reference to the trade talk which may have been indulged in by the broker such as the possibility of the Governor-General's palace being erected in this locality, or of expropriation proceedings taking it for the extension of Cavite Boulevard, and we can discard all speculations as to the motives which are attributed to the Chinese plaintiff by counsel for the

defendants. The law is clear and the controlling facts are equally clear.

A study of the learned decision handed down by the trial judge discloses that it decided almost entirely questions of fact. As was stated by His Honor, a great array of evidence was offered during the trial by the plaintiffs and the defendants in support of their respective pretensions. There was then presented what, after a mature study, the court believed the aggregate of the evidence established. As addressed to this decision, there are thirteen errors assigned by the appellants, eleven of which have to do with findings of fact while the remaining two are formal in nature. The task of the court on appeal in a case of this character is, therefore, confined to an examination of the record to discover if the trial court erred in making its findings, and to this end to ascertain if there appears in the record any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. (*Lim Soco vs. Roxas* [1914], 26 Phil., 609; *U. S. vs. Remigio* [1918], 37 Phil., 599.)

There are present in the case a number of well authenticated facts and circumstances which singly and together demonstrate beyond civil negligence on the part of the vendee, a waiver of rights, and ratification of the sale. It is now proposed to make mention of them in the following manner:

(1) The broker Dahlke delivered to Tang Ah Chan at the beginning of the negotiations a blueprint plan of the land with the border cut off so that Tang Ah Chan would not know who the owner was, and this plan showed the property to be at the mouth of the Estero San Antonio Abad and some distance from Fort San Antonio Abad. This is admitted by all the parties and is inconsistent with the theory of fraud.

(2) The vendor Gonzalez, when placed in communication with the proposed purchaser Tang Ah Chan, also delivered to him another blueprint plan of the land containing the marginal information, and this plan was made use of by the Chinaman when after purchase he had it surveyed.

(3) During the negotiations and at the consummation of the sale, Tang Ah Chan had the plan of the property with him. Attorney P. A. Remigio, the notary public before whom the deed of sale and the mortgage were ratified, testified as follows:

"Q. Do you remember if there was a plan of the property during those negotiations and meetings?—A. The purchaser himself had the plan on the first day that I came to know him; and if I remember well the title of this land was received by me from him, or it was he who delivered it to me, if not Mrs. Dahlke, at least the purchaser.

"Q. Do you remember who brought the plan to your office, the plan of the land?—A. The purchaser Tang Ah Chan brought it.

"Q. Do you remember whether or not there was any discussion in your presence about the situation of the land sold?—A. There was no discussion as to the situation of the land sold. All the discussion referred to the terms and conditions of the contract."

(4) Tang Ah Chan applied to the City Government on September 16, 1924, for a building permit. This application described the buildings of strong materials which it was proposed to construct as "situated at Cavite Boulevard and Canal San Antonio Abad, Maytubig."

(5) When Tang Ah Chan had become the owner of the land, he began negotiations with a representative of the Atlantic, Gulf & Pacific Co. for the construction of a sea wall for the purpose of reclaiming the land. This attitude of the purchaser is entirely consistent with the condition of the land situated at the estero, for it is admitted that to make the land useful it would necessarily have to be protected from the action of the sea. Mr. H. M. Foy, the superintendent of the Atlantic, Gulf & Pacific Co., testified that "When I saw the Chinaman, the latter told me that he wanted to construct a wall there to reclaim land. * * * He asked me at what price I could construct it, and I told

him that I could not give him an answer without seeing the land."

(6) Tang Ah Chan took surveyor Bartolome Reyes and the chief surveyor of the General Land Registration Office, Francisco Alzua, out to the land bought from Gonzalez, and with a plan thereof before them, inspected the same in order that Reyes might name his fees for the survey of the land. Surveyor Reyes testified: "He (referring to Tang Ah Chan) showed me the land, he opened the plan for me and told me that I had to monument the points which are not monumented and to survey that exterior part. Q. Please state to the court if he showed you some monuments there?—A. Yes, sir, there were two monuments there, point 1 and point 2 of lot No. 1." This testimony is corroborated by Mr. Alzua.

Subsequently, in October, 1924, surveyor Emilio Pacheco surveyed and staked the land in the presence of Tang Ah Chan. As the testimony of this witness is important and virtually decisive of the case, a considerable portion of it will be transcribed:

"Q. Do you know the plaintiff Mr. Tang Ah Chan?— A. Yes, sir.

"Q. Since when did you know him?—A. In the early part of October, 1924, Mr. Tang Ah Chan came to my office in the Bureau of Lands looking for me and soliciting my services as surveyor to locate a certain parcel of land situated at the end of Malate near Pasay.

"Q. State what happened between you and the plaintiff?—A. When he told me that he wanted to localize the vertices of a parcel of land, I asked him if he had the title of the land or, if not, a copy of the plan of the land by which I could guide myself in the work of localization; and Mr. Tang Ah Chan told me that at that moment he did not bring anything and that he would come back on another day to bring me the title or plan of the land, as in fact he did after a week or so, when he came again to my office bringing me a blueprint of a plan of a land and presented it to me, saying that it was the land that he wanted to locate.

"Q. I call your attention to this Exhibit U and state if it is the same plan or if it was another duplicate of this?—A. This is the plan of the land which he showed me but it is not the same paper, because what Mr. Tang Ah Chan brought to me had a heading, that is to say, the other piece here.

"Q. The other which he brought to you showed the name of the owner and other data on the margin, did it not?—A. Yes, sir.

"Q. Well, go ahead?—A. Then I told him that I had no objection to making the localization, and we agreed as to the price, and once agreed he asked me on what day we could go and do the work, and I fixed a day on which he said he could not go because his desire was to be present when I made the localization and then he fixed the 19th of October, 1924, in the morning. We agreed that on that date between 8 and 9 we would go to the land to do the work; and so, shortly before 9 o'clock I went to the land and after ten or fifteen minutes Mr. Tang Ah Chan appeared and we began there the work of localizing the surveys, and after staking the points of the land marked in this plan Exhibit U, all the points 2, 3, 4, 5, 6 and 13 of lot 3, and 3 of lot 1, Mr. Tang Ah Chan asked me why I did not prolong the line which is marked by point 2 that is to say, the monument No. 2 of the land and line 3 of lot 1, why it was not prolonged parallel to the water of the sea. I told him that that portion enclosed by that line of the points 3 of lot 1, 13 of lot 3, and 5 of lot 3, the portion between those points and the sea was not included in his property and for that reason I could not include it in that location.

"Q. Indicate in red pencil with the letters Est. the places in which you placed the stakes for the plaintiff?—A. Points Nos. 2, 3, 4, 5 and 13 of lot No. 3 which I mark in this plan Exhibit U, and point No. 3 of lot No. 1 of this same plan (witness marked them).

"Q. State to the court whether or not the plaintiff was present at the time those stakes were placed?—A. Yes, sir, he was present.

"Q. You said that you made an agreement as to the price of your work. What was the agreed price?—A. At first I asked him P50, but he requested me to reduce it to , and I accepted the work for P30.

"Q. Did you collect that amount, or not?—A. Yes, sir, on the following day I sent him the bill.

"Q. When did you finish the work of placing those stakes?—A. That same day; one day of work.

"Q. Did you have laborers helping you?—A. Yes, sir, I had my chain carriers and laborers.

"Q. How many?—A. Two.

"Q. Did you issue a receipt when you collected that sum?—A. Yes, sir.

"Q. Do you know the date of the receipt?—A. October 20, 1924.

"Q. Have you a copy of that receipt?—A. Yes, sir, I have a carbon copy.

"Q. The first work that you made in October, placing the stakes as you have mentioned, did Mr. Tang Ah Chan say anything about any mistake as to the situation of the land which you were surveying?—A. He did not tell me anything about it.

"Q. During the occasions that you dealt with Tang Ah Chan about that land, did he say anything about sea walls?—A. He told me that he was trying * * *

"A. Precisely, when he ordered the localization made, he told me that he wanted to construct a sea wall, and that inasmuch as he did not know the vertices he wanted my services to localize them on the land in order to put in its right place the wall that he was going to construct."

There is no reason to doubt the testimony of surveyors Reyes, Alzua, and Pacheco particularly as the statements of the latter are fortified by a receipt in payment of his services made out in favor of Tang Ah Chan.

(7) The sale was consummated on July 28, 1924. Thereafter, Tang Ah Chan paid Eduardo B. Gonzalez the interest on the debt corresponding to the months of August, September, October, November, and December, 1924, without protest. The present action was begun on December 19, 1924, after the aforementioned payments had been made.

It may well be doubted if at the price of P18.75 per square meter Tang Ah Chan got the worst of the bargain. The property is strategically situated on the bay front. With the extension of Dewey Boulevard, a part of the land in question would be included. Also in accordance with the plans of Harrison Park, one side of the park faces this land.

Conceding without deciding that the broker falsely pointed out the land to be sold to Tang Ah Chan, there is no ground for rescission of the contract in view of the facts and circumstances which are here outlined. The case does not call for the application of the articles of the Civil Code concerning consent given by reason of deceit. (Articles 1265, 1269, 1270.) On the contrary, the case comes squarely within the purview of the provisions of the Civil Code under the subject of Nullity of Contracts which pertain to ratification. Codal article 1309 provides: "The action of nullity is extinguished from the moment the contract may have been validly ratified." Article 1311 following provides: "Ratification may be either express or implied. It shall be deemed that there is an implied ratification when a person entitled to avail himself of any ground for the annulment of the contract should, with knowledge of its existence and after it has ceased, do anything which necessarily implies an intention to waive such right." Finally comes article 1313 which provides: "Ratification purges the contract of all defects to which it may have been subject as from the moment it was entered into." It results, therefore, that after a contract is validly ratified, no action to annul the same can be maintained based upon defects relating to its original validity.

(Gutierrez Hermanos vs. Orense [1914], 28 Phil., 571; Vales vs. Villa [1916], 35 Phil., 769.) With this the state of the facts and the law, the case is essentially different from Gomez Marino vs. Linton ([1924], 45 Phil., 652), for while in the latter case the defendants were deceived as to the true boundaries of the land, it also appeared that the plaintiff could not make a good title to all of the land within the proposed boundaries, while the defendants never ratified the sale. The present case is more nearly akin in principle to Tacalinar vs. Corro ([1916], 34 Phil., 898), and Ruhl vs. Mott ([1898], 120 Cal., 668).

Before the sale was made, the purchaser had every opportunity to inform himself as to the true location of the property. But with the plan of the land in his possession, the purchaser was content to accept this information as sufficient. His failure to check the truth of the manifestations made by the broker and the vendor which might readily have been ascertained by ordinary care and attention, discloses either acquiescence or negligence. Any acts evincive of an intent to abide by the contract, and in this instance there are a number of such acts, are evidence of the affirmance of the contract and of a waiver of the right of rescission. There is ratification of the contract where, with the knowledge of the true nature of the transaction before him or with means available to obtain that knowledge, the party alleged to be defrauded performs his part of the contract. That terminates the right to rescind.

We have given this matter close attention. Yet fundamentally, it is a simple case requiring the application of specific legal provisions to proven facts regarding which there can be no real dispute. The decision of Judge Diaz was well conceived from all points of view and should be sustained.

Judgment is affirmed, but without express pronouncement as to costs in either instance.

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

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