

REYNALDO LABAYEN ET AL., PLAINTIFFS. REYNALDO LABAYEN, APPELLANT, VS. TALISAY-SILAY MILLING CO., INC., DEFENDANT AND APPELLEE.

G.R. No. 29298, December 15, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an action for damages in the amount of P28,620 for the alleged breach of a contract to grind sugar cane in 1920-1921. After a rehearing, the defendant was absolved from the complaint, and the plaintiff was condemned, on the cross-complaint, to pay the defendant the sum of P12,114, without special pronouncement as to costs.

An examination of the record on appeal discloses that the exhibits are missing. Still this is not in this instance of great importance. The facts as found by the trial judge are not seriously disputed. It is only the deductions which should be drawn from the facts which worry the parties.

The plaintiff, along with another, possesses the hacienda known as Dos Hermanos of Talisay, Occidental Negros. The defendant is a corporation dedicated to the milling of sugar cane. On August 27, 1919, the plaintiff and the defendant entered into a contract similar to contracts entered into by the defendant and other planters. It is this contract which is the basis of plaintiff's cause of action. Among the clauses in the contract are the following:

"COVENANTS OF 'LA CENTRAL'

"Third: That it shall build and after building it shall do or cause to be done all that is necessary for its preservation in good condition, and shall, during the period of this agreement, without charge to the Producer or Producers, operate a permanent railroad run by steam or motor, or both, for the use of the plantation or plantations in the transportation of sugar cane, sugar, fertilizer, and all such articles as the producer may need for his estate, his use and that of his family and employees, and shall cause the main line or a branch thereof, as the case may be, to reach the point of the plantation to be hereafter described not farther than one mile from any of the boundaries of said plantation, whenever the contour of the land, the curves, and elevations permit the same; it shall provide said railroad with locomotives or motors and wagons in a number sufficient to make efficient the transportation of sugar cane, sugar, fertilizer, and the above mentioned articles, and shall likewise build a branch of said railroad in such a way that from the main line, mill, and warehouses, it shall reach the wharf above mentioned, and it shall also cause the yard of the factory near the sugar mill to be available for use with switches or otherwise. All the steam locomotives shall be provided with safety spark devices. The railroad shall consist of a road or path conveniently and duly designated so that, so far as possible, all the producers may derive equal benefit from said railroad. The right-of-way for the main line of the railroad shall be three and a half (3-1/2) meters wide measured from the center of the: road to each side, and the branches, switches, or curves shall have more if necessary.

"OBLIGATIONS OF THE PRODUCER

"Fifth: That he shall accept the provisions of clauses 7, 8, and 19 of the covenants of 'La Central' and shall deliver the cane as therein provided; hereby binding himself to plant each year according to the usage and custom of a good agriculturist not less than one-half of his own lands devoted to sugar cane subject to the approval of the Committee of Producers leaving the remainder uncultivated.

"MUTUAL OBLIGATIONS

"10. In case of * * * inability to secure, under reasonable conditions such rights-of-way as 'La Central' may require, * * * 'La Central' shall notify the Committee of Producers and without incurring any liability for the non-fulfillment of the terms of this contract, its effects shall be suspended in part or in whole during such period of incapacity. * * *." (*Italics inserted.*)

With particular reference to the third paragraph of the clauses obligating the central, it is admitted that the central has not continued its railroad through to the Hacienda Dos Hermanos. The railroad comes to the Hacienda Esmeralda No. 2 and there stops. For the railroad to extend to the Hacienda Dos Hermanos, a distance of four kilometers would require a gradual elevation of 4.84 per cent to 7 per cent, would make necessary the providing of twenty-six curves, and would cost about P80,000. The witness H. W. Corp, a civil engineer employed in the construction work of the Manila Railroad Company, the Pampanga Sugar Milling Co., and the Binalbagan Central, testified that it was possible to construct a railroad to the Hacienda Dos Hermanos but that to do so would be very dangerous.

Recalling that the contract provided for the construction of a railroad "whenever the contour of the land, the curves, and elevations permit the same," and that such construction is possible but very dangerous, the question then arises if the defendant can excuse itself on this ground, or if the plaintiff can recover from the defendant for damages for breach of contract, through inability to mill cane.

It is elemental that the law requires parties to do what they have agreed to do. If a party charges himself with an obligation possible to be performed, he must abide by it unless performance is rendered impossible by the act of God, the law, or the other party. A showing of mere inconvenience, unexpected impediments, or increased expenses is not enough. Equity cannot relieve from bad bargains simply because they are such. So one must answer in damages where the impossibility is only so in fact. (*Thornborow vs. Whitacre*, 2 Ld. Raym. [1164], 92 E. R., 270; *Reid vs. Alaska Packing Co.* [1903], 43 Or., 429; *Columbus Ry. & Power Co. vs. Columbus* [1919], 249 U. S., 399.)

The foregoing are familiar principles to be found in the American and English law of contracts. The civil law on the subject of obligations is not essentially different. Article 1272 of the Civil Code provides: "Impossible things or services cannot be the subject-matter of contracts." And article 1184 of the same Code provides: "The debtor shall also be relieved from obligations which consist in the performance of an act if fulfillment of the undertaking becomes legally or physically impossible."

May one obligate himself to do something which, when accomplished, will prove to be dangerous to life and property? We doubt it. Take the contract in question as an example. It was a general contract of the form used by the central and various proprietors of sugar-cane fields. It was intended to be limited in particular application to haciendas where not impeded by physical impossibility. The contract was qualified by an implied condition which, if given practical effect, results in absolving the central from its promise. Not to sanction an exception to the general rule would run counter to public policy and the law by forcing the performance of a contract undesirable and harmful. (8 *Manresa's Código Civil Español*, p. 355.)

There is another aspect to the case which has to do with the tenth paragraph of the mutual obligations of the contract and which concerned the securing of the right-of-way for the proposed railroad. To get from the Hacienda Esmeralda No. 2 to the Hacienda Dos Hermanos, the railroad would have to pass through the haciendas of Esteban de la Rama. But he would not grant permission to use his land for this purpose in 1920, and only consented to do so in 1924. Here then was a clear case of such a condition of affairs as was contemplated by the contract.

The foregoing points being admitted, it logically follows that the defendant can recover on its cross-complaint. The defense to the cross-complaint is identical with the theory of the complaint. For the same reasons that the plaintiff cannot recover must he make good for his debt to the defendant.

Accepting, therefore, the facts as found by the trial judge, and noting no reversible error on any legal question, the judgment appealed from must be as it is hereby affirmed, with the costs of this instance against the appellant.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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