

FRANCISCO GUTIERREZ ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN CARPIO, DEFENDANT AND APPELLANT.

G.R. No. 31025. August 15, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The litigants herein compromised a civil case on July 13, 1928, agreeing that if within one month from the date thereof the plaintiffs failed to repurchase certain land, its ownership would vest in the defendant.

The question now raised is whether or not the plaintiffs duly tendered the amount of the reimbursement agreed upon in the proper form of money to the defendant.

The court below held in the affirmative, but the defendant, appealing from such judgment, maintains that on August 13, when the plaintiffs tendered it, the stipulated period had already elapsed; that the tender of reimbursement made by check is insufficient; and that the holding of the trial court that the land in question is valued at P27,000 is groundless.

When did the stipulated month terminate? This is the first point in controversy, the determination of which depends upon the kind of month agreed upon by the parties, and on the day from which it should be counted.

As to the kind of month, it is to be noted that, according to the ruling in the case of *Guzman vs. Lichauco* (42 Phil., 291), article 7 of the Civil Code has been modified by section 13 of the Administrative Code, according to which "month" now means the civil or calendar month and not the regular thirty-day month.

And the civil or calendar month is defined as follows:

"The civil or solar month is that which agrees with the Gregorian calendar; and these months are known by the names of January, February, March, etc. They are composed of unequal portions of time * * *." (Bouvier's Law Dictionary.)

"A calendar month is a month as designated in the calendar, without regard to the number of days it may contain. In commercial transactions it means a month ending on the day in the succeeding month corresponding to the day in the preceding month from which the computation began, and if the last month have not so many days, then on the last day of that month. *Daley vs. Anderson*, 48 Pac, 839, 840; 7 Wyo., 1; 75 Am. St. Rep., 870 (citing *Migotti vs. Colvill*, 4 C. P. Div., 233)." (1 Words and Phrases, 943.)

Hence, this court held in the case of *Villegas vs. Capistrano* (9 Phil., 416), that the period of three months counted from February 13 did not expire on the 12th of the following May.

As to when said month began, said section 13 of the Administrative Code provides as follows:

"In computing any fixed period of time, with reference to the performance of an act required by law or contract to be done at a certain time or within a certain limit of time, the day of date, or day from which the time is reckoned, is to be excluded and the date of performance included, unless otherwise provided." (Italics ours.)

Similar provisions may be found in article 1130 of the Civil Code, and in section 4 of the Code of Civil Procedure.

There is nothing in the agreement under discussion providing otherwise, and according to the phrase therein contained, "one month from this date," said date, which was July 13, 1928, is exactly the date which must be excluded being the "day from which the time is reckoned," according to the words of the aforementioned section 13 of the Administrative Code, which we have italicized above.

Wherefore, that civil month of thirty-one days began on July 14 and terminated with the end of the thirteenth day of the following August. And as it has been proved without discussion that the plaintiffs offered to repurchase the land from the defendant on August 13th, it follows that such offer was made within the period stipulated.

But the defendant alleges that the offer to repurchase made by check was legally insufficient. We agree that the payment by check does not per se have the effect of such payment. (Section 189, Act No. 2031, on Negotiable Instruments; article 1170, Civil Code; *Bryan, Landon Co. vs. American Bank*, 7 Phil., 255; and *Tan Sunco vs. Santos*, 9 Phil., 44; 21 R. C. L., 60, 61.) But it appears from Felipe Gutierrez's testimony that the defendant told him on August 12th that he would accept the repurchase by check. Felipe Gutierrez is not very explicit about it, but we deem this to be the drift of his testimony. The defendant must have so understood it, seeing that he thought it necessary to rebut said detail in his testimony which, notwithstanding the defendant's denial, we hold to be established by a preponderance of evidence, considering all the circumstances of the case. The defendant having thus consented to the repurchase by check and having signified that by reason of such repurchase the plaintiffs could return to their home, said defendant was in estoppel, and could not, on the following day, refuse to accept such payment by check, because he induced the plaintiffs to act upon the belief that he had consented to said manner of payment.

From this it follows that by virtue of the defendant's having consented to that payment by check, which was neither alleged nor proved to be in any way defective, that offer to repurchase was legally effective and sufficient to compel the defendant to accept it.

We conclude that the offer to repurchase was made within the stipulated period and in the form of money accepted by the defendant, from whose refusal to allow the repurchase in such terms originates the plaintiffs' right of action herein.

The last assignment of error touching the value of the land, cannot be a cause for the reversal of the judgment appealed from for under the circumstances of the case, it has no bearing on the decision of the case nor affects the result thereof.

The judgment appealed from is modified, and it is hereby ordered that the plaintiffs may, within ten days from the date on which this judgment becomes final, repurchase the land, the subject matter of these proceedings, through the delivery to the defendant at the latter's residence in the municipality of Santa Rita, Pampanga, of the sum of fourteen thousand six hundred forty three pesos and forty-three centavos (P14,643.43), Philippine currency (in coin or paper money). The judgment appealed from is affirmed in all other respects, with costs against the appellant. So ordered.

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

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