

ESTRELLA ORIENTAL, PLAINTIFF AND APPELLEE, VS. MATSUNI NAKAMA, DEFENDANT AND APPELLANT.*G.R.No. 31432. January 24, 1930*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Davao by a corporation, the Estrella Oriental, for the purpose of recovering from Matsuni Nakama damages for breach of contract. The cause was first heard, in the Court of First Instance, upon demurrer and the demurrer was sustained; but, upon appeal to the Supreme Court, the judgment was reversed and the cause remanded for further proceedings.[1] Upon hearing the cause upon its merits, the Court of First Instance rendered judgment in favor of the plaintiff for the sum of P22,000, with costs, and the defendant appealed.

It appears that on May 7, 1919, the plaintiff corporation, through its president, Estanislao Loo Tan, sold to the defendant, Matsuni Nakama, a parcel of land, with an area of about twenty-seven hectares, located in the municipality of Davao, Province of Davao. At the time of the sale this land was planted with twenty-four thousand hills of hemp (abaca), which constituted of course the principal element of value in the property. It was stated in the deed that the land and the plants upon it were free from any lien or charge, and the vendor corporation obligated itself to defend the title against all claimants, except with respect to a portion set with approximately 2,500 plants of abaca, which was excluded as the property of one Tio Shiu. It was agreed that this parcel should be segregated later. The price agreed upon for the property sold was P24,000, to be paid to the vendor as follows, namely, P2,000 on June 1, 1919, P1,000 on the first of each month beginning with August, 1919, and continuing at the same rate until January of the succeeding year, and the balance at the rate of P700 per month beginning with February 1, 1920, until all should be paid. The vendee complied with the stipulation for the payment of P2,000 on June 1, 1919, but no other payment was ever made upon the purchase price.

The clause of the deed with which we are here chiefly concerned reads as follows:

"That in case the second party should fail to pay any of the instalments above-mentioned, the unpaid portion of the purchase price shall be considered due and payable, the party of the second part being entitled to an extension of thirty (30) days to make payment of said balance; and if the second party should still fail to pay the total G. R. No. 24934, promulgated March 10, 1926, wot reported. balance due, the present sale shall become rescinded, the second party returning the land and plantation without any obligation upon the first party, who shall further be able to require from the second party indemnization for the damages which may have been incurred by the first party by reason of the non-compliance of the conditions expressed in the next preceding clause."

On September 17, 1919, or three months and ten days after the conveyance above-mentioned had been executed, Nakama found himself in a position where he was unable or unwilling to continue the payments upon the purchase price of the land, and being desirous that a rescission of the contract should be effected, in conformity with the clause above quoted, he addressed a letter to Loo Tan, informing him that, as president of the Estrella

Oriental, he was authorized to take possession of the property.

Nakama explains his action in part by the fact that, after he took possession of the plantation, he was informed that his vendor, had been the owner of the abaca plants only and not of the land, which was the property of the Government. This statement seems credible enough in view of the fact that, in a cadastral proceeding instituted by the Director of Lands upon behalf of the Government, the land was adjudicated to another, presumably the Government of the Philippine Islands, without claim being made on behalf of Estrella Oriental, or anyone else. We may add that there is no proof in the record that Estrella Oriental ever had any title to the land, though an express warranty of title was inserted in its deed to Nakama.

It appears that on July 6, 1919, Nakama entered into a marriage contract with the father of a minor girl, named Eulogia Rosel, by which, in consideration of the marriage which had been agreed upon between Nakama and the girl, Nakama conveyed to her the hemp plantation which he had purchased in May from Estrella Oriental. The execution of this deed is relied upon by Estrella Oriental as a reason why the contract with Nakama could not be rescinded for non-payment of the purchase money. This contention we consider unfounded, for the reason that the rights of Eulogia Rosel were of a derivative character, and if the condition mentioned in the deed of May 7 as causing a rescission should become effective, her interest would naturally be destroyed. Moreover, it appears that the marriage intended between Nakama and Eulogia Rosel, if ever celebrated, was not successful, for the girl, so Nakama says, ran away from him and never returned. At any rate, when Nakama informed Loo Tan that he could take immediate possession of the land, it was in possession of Nakama, and if the vendor had desired to take possession there was nothing that would have prevented him from so doing.

The vital question in the case we take to be this, What are the damages which may be recovered by the plaintiff under that part of the quoted clause which reserves to the plaintiff, the vendor of the land, the right to indemnization for the damages which may have been incurred by reason of non-compliance by the second party? Upon this point it takes but little reflection to see that the damages intended do not include the payment of the purchase price. When a contract is rescinded the parties thereto are released from their reciprocal obligations; and in this case, upon rescission, the plaintiff was entitled to have back the land with the hemp plants thereon and the defendant was released from his obligation to pay so much of the purchase price as had not been paid. The indemnity intended in the clause mentioned was, in our opinion, intended to cover special damage which the plaintiff might prove that he had suffered by reason of the failure of the defendant to comply with the contract (See *Daywalt vs. Corporacion de PP. Agustinos Recoletos*, 39 Phil., 587, 605.) For instance, if it had been shown that the defendant negligently permitted the abaca plants on the place to be destroyed, the plaintiff would have been entitled to compensation for that item. But no such fact is proved. In this connection we note that the plaintiff's attorney, in a communication addressed to the attorney for the defendant under date of September 19, 1919, claims that Loo Tan had important obligations to meet and that he was expecting to use the money which Nakama should have paid him to meet said obligations. But no such damage is proved in this case. On the contrary the damages awarded by the trial court cover precisely the unpaid installments of the purchase price. But these installments cannot be recovered after the contract is rescinded.

The judgment appealed from will be reversed, and the defendant will be absolved from the complaint. It is so ordered. Without costs.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

[1] G. R. No. 24934, promulgated March 10, 1926, not reported.

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