

JULIO C. ABELLA, PLAINTIFF AND APPELLANT, VS. GUILLERMO B. FRANCISCO, DEFENDANT AND APPELLEE.*G.R. No. 32336. December 20, 1930*

Ponente: AVANCEÑA, C.J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

Defendant Guillermo B. Francisco purchased from the Government on installments, lots 937 to 945 of the Tala Estate in Novaliches, Caloocan, Rizal. He was in arrears for some of these installments. On the 31st of October, 1928, he signed the following document:

"Manila, October 31, 1928

"Received from Mr. Julio C. Abella the amount of five hundred pesos (P500), payment on account of lots Nos. 937, 938, 939, 940, 941, 942, 943, 944, and 945 of the Tala Estate, barrio of Novaliches, Caloocan, Rizal, containing an area of about 221 hectares, at the rate of one hundred pesos (P100) per hectare, the balance being due on or before the fifteenth day of December, 1928, extendible fifteen days thereafter. (Sgd.) G. B. Francisco—P500—Phone 67125."

After having made this agreement, the plaintiff proposed the sale of these lots at a higher price to George C. Sellner, collecting P10,000 on account thereof on December 29, 1928.

Besides the P500 which, according to the instrument quoted above, the plaintiff paid, he made another payment of P415.31 on November 13, 1928, upon demand made by the defendant. On December 27th of the same year, the defendant, being in the Province of Cebu, wrote to Roman Mabanta of this City of Manila, attaching a power of attorney authorizing him to sign in behalf of the defendant all the documents required by the Bureau of Lands for the transfer of the lots to the plaintiff. In that letter the defendant instructed Roman Mabanta, in the event that the plaintiff failed to pay the remainder of the selling price, to inform him that the option would be considered cancelled, and to return to him the amount of P915.31 already delivered. On January 3, 1929, Mabanta notified the plaintiff that he had received the power of attorney to sign the deed of conveyance of the lots to him, and that he was willing to execute the proper deed of sale upon payment of the balance due. The plaintiff asked for a few days' time, but Mabanta, following the instructions he had received from the defendant, only gave him until the 5th of that month. The plaintiff did not pay the rest of the price on the 5th of January, but on the 9th of the month attempted to do so; Mabanta, however, refused to accept it, and gave him to understand that he regarded the contract as rescinded. On the same day, Mabanta returned by check the sum of P915.31 which the plaintiff had paid.

The plaintiff brought this action to compel the defendant to execute the deed of sale of the lots in question, upon

receipt of the balance of the price, and asks that he be judicially declared the owner of said lots and that the defendant be ordered to deliver them to him.

The court below absolved the defendant from the complaint, and the plaintiff appealed.

In rendering that judgment, the court relied on the fact that the plaintiff had failed to pay the price of the lots within the stipulated time; and that since the contract between plaintiff and defendant was an option for the purchase of the lots, time was an essential element in it.

It is to be noted that in the document signed by the defendant, the 15th of December was fixed as the date, extendible for fifteen days, for the payment by the plaintiff of the balance of the selling price. It has been admitted that the plaintiff did not offer to complete the payment until January 9, 1929. He contends that Mabanta, as attorney-in-fact for the defendant in this transaction, granted him an extension of time until the 9th of January. But Mabanta has stated that he only extended the time until the 5th of that month. Mabanta's testimony on this point is corroborated by that of Paz Vicente and by the plaintiff's own admission to Narciso Javier that his option to purchase those lots expired on January 5, 1929.

In holding that the period was an essential element of the transaction between plaintiff and defendant, the trial court considered that the contract in question was an option for the purchase of the lots, and that in an agreement of this nature the period is deemed essential. The opinion of the court is divided upon the question of whether the agreement was an option or a sale, but even supposing it was a sale, the court holds that time was an essential element in the transaction. The defendant wanted to sell those lots to the plaintiff in order to pay off certain obligations which fell due in the month of December, 1928. The time fixed for the payment of the price was therefore essential for the defendant, and this view is borne out by his letter to his representative Mabanta instructing him to consider the contract rescinded if the price was not completed in time. In accordance with article 1124 of the Civil Code, the defendant is entitled to resolve the contract for failure to pay the price within the time specified.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

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