

KABANKALAN SUGAR CO., INC., PLAINTIFF AND APPELLANT, VS. JOSEFA PACHECO, DEFENDANT AND APPELLEE.

G.R. No. 33654. December 29, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff, the Kabankalan Sugar Co., Inc., from the decision of the Court of First Instance of Occidental Negros, the dispositive part of which is as follows:

"In view of the facts established, the court hereby absolves the defendant from the complaint herein, declaring that the contract executed on September 29, 1922, novated the contract of November 1, 1920, both executed by the Kabankalan Sugar Co., Inc., and Da. Josef a Pacheco; with costs against the plaintiff. So ordered."

In support of its appeal, the appellant assigned the following alleged errors as committed by the trial court in its decision, to wit:

"1. The trial court erred in upholding the defense of novation, and in absolving the defendant from the complaint.

"2. The trial court erred in denying the appellant's motion for a new trial."

The instant case originated from a complaint filed by the corporate entity, the Kabankalan Sugar Co., Inc., against Josefa Pacheco to compel her to execute and acknowledge before a notary public an instrument in proper form containing all the conditions stipulated in the contract entered into by and between the parties on November 1, 1920, for inscription in the registry of deeds, with costs against said defendant.

In answer to said complaint, the defendant after entering a general denial of each and every allegation contained therein, with the exception of those expressly admitted, set up a special defense to the effect that the contract referred to as signed on November 1, 1920, had been substituted, modified and novated by another public instrument executed on September 29, 1922, and prayed that she be absolved from said complaint, with costs against the plaintiff.

The relevant facts necessary to decide the questions raised by this appeal, either admitted without contradiction or established by a preponderance of the evidence, are those found by the court below, as follows:

"On November 1, 1920, the Kabankalan Sugar Co., Inc., a domestic corporation, organized and existing under the laws in force in these Islands, represented by its manager, Guillermo Lizarraga, on the one hand, and Josefa Pacheco on the other, freely and voluntarily executed the contract quoted in the complaint.

"That contract was drafted by the plaintiff, and one original and one copy were made, which were forwarded by the plaintiff to the defendant at her home for her signature, and after signing them, the plaintiff's messenger took them with him saying that they had to be signed by the manager of the plaintiff company, the latter retaining both copies of the contract.

"During the year 1922, the defendant had to pay the firm Ledesma Hermanos and the Philippine National Bank the installment on her indebtedness to them, and she went to the plaintiff suggesting that it assume the obligation of making those annual payments, as well as the land tax upon the Hilabañgan estate, which belonged to her, in return for which she would bind herself to deliver to the plaintiff every year fifteen per centum (15%) of all the sugar obtained from the Hilabañgan estate.

"Guillermo Lizarraga, manager of the plaintiff company, told the defendant that the company would accept her proposition provided she made out a new contract in a public instrument granting the plaintiff a right of way in and through the Hilabañgan estate for a railway, for a period of twenty years (20) from November 1, 1920, that is, from the date of the execution of the contract quoted in the complaint, and would, in addition, bind herself for a like period to deliver all the sugar cane produced in the Hilabañgan estate to the plaintiff's sugar mill known as Bearin, for milling into centrifugal sugar; the defendant insisted that the new contract, both with regard to the easement and to the milling of the sugar cane, should not be for the same period as that stipulated between" the parties in the contract of November 1, 1920, that is twenty (20) years from 1920, but only seven (7) years or crops of sugar cane, beginning with the harvest of 1922-1923; and finally, the parties agreed to these last-mentioned conditions, that is, that the new contract should be for seven (7) years or crops beginning with the 1922-1923 crop, both with regard to the easement and with regard to the milling of the sugar cane, and to that end they executed the deed Exhibit 4 on September 29, 1922.

"In the execution of the deed Exhibit 4, the plaintiff was represented by another manager named Benito Belzunce, successor to Guillermo Lizarraga, and after Exhibit 4 had been signed and ratified, he gave the defendant the original copy of the contract entered into on November 1, 1920 (Exhibit 6), the same contract directly referred to in the interview had between Guillermo Lizarraga, then manager of the plaintiff, and the defendant, before they agreed to the conditions of the contract Exhibit 4, which is one of the two copies retained, as above stated, by the plaintiff after the defendant had signed it

"In or about the month of October, 1924, when Ignacio B. Huarte was manager of the plaintiff company, he had the company's notary, Jose Peralta, draw up a document (Exhibits 17 and 17-A) in order to convert the contract of November 1, 1920, into a public instrument, and when it was prepared, the notary took it to the defendant's house, asking her to sign and ratify it; she declined to do so, saying that the document executed on November 1, 1920, had been superseded by the public instrument executed between the company and herself on September 29, 1922. (Exhibit 4)."

The relevant portions of the contract privately entered into on November 1, 1920 (Exhibits 1 and 6) by and between Josefa Pacheco and the Kabankalan Sugar Co., Inc., represented by its manager Guillermo Lizarraga, which the contracting parties bound themselves to convert into a public instrument later on, are as follows:

* * * * *

Josefa Pacheco permits the Kabankalan Sugar Co., Inc./ to construct a railway which, starting from the company's lands bounded by the aforesaid Hilabañgan estate and passing through the part called Sasa, will cross the said estate at places to be designated by both parties.

"This permission is for the term of twenty years from the date of the execution of this contract.

* * * * *

"The Kabankalan Sugar Co., Inc., shall pay Josefa Pacheco for the lease of the ground to be occupied by the railroad at the rate of seven centavos per square meter, the strip of land to be used being four meters wide, and payment being per annum.

* * * * *

"Josefa Pacheco shall be entitled, whenever she should require it, to have the whole or a portion of her

sugar-cane crop from the Hilabañgan estate milled by the Central Bearin belonging to the Kabankalan Sugar Co., Inc., in which case the latter' shall deliver to her fifty-five per cent of the sugar produced, and fifty-five per cent of the molasses with respect to the other conditions of the milling, they shall be the same as those existing between said central and other plantations adjacent thereto and not belonging to the Kabankalan Sugar Co., Inc., but Josefa Pacheco shall give reasonable notice to said central as to when she desires some milling done, in order that it may augment its capacity if need be.

"It is further stipulated that should the Kabankalan Sugar Co., Inc., mill in any one year over one-half of the crop produced on the Hilabañgan estate, said Central Bearin shall be exempt from the payment of the lease on the land occupied by the railroad."

The relevant portions of the public document executed on September 29, 1922, by the defendant Josefa Pacheco and the plaintiff Kabankalan Sugar Co., Inc., through its manager, Benito Belzunce, are as follows:

* * * * *

"II. That in consideration of said loan and the mutual agreements and stipulations in this contract, the party of the first part binds herself to mill in the central known as 'Bearin' belonging to the party of the second part, all the sugar cane produced on the Hilabañgan estate, belonging to the party of the first part which is evidenced by certificate of title No. 452, for the period of seven consecutive crops of sugar cane counted from the 1922-1923 crop.

* * * * *

"VIII. That the party of the first part binds herself, her heirs, executors, administrators, and assigns to acknowledge in favor of the party of the second part the rights of way which may be deemed necessary and desirable upon the Hilabañgan estate for the construction of railways during the term of this contract; and to sign, upon demand of the party of the second part, the necessary documents for registration in the registry of deeds of said easement of rights of way and other rights and privileges belonging to the party of the second part.

"IX. The party of the first part shall also cede and grant to the party of the second part, upon demand, all the necessary easements of right of way for telephone lines, poles, tubes, water pipes, aqueducts, and other conduits for conducting the water to the mill, with ground for the necessary cisterns; and she shall likewise, upon demand, grant the right of way needed for the railroad, for the period set forth in this contract, upon an adequate piece of land for the operation of the railway, on and through the land of the party of the first part.

"X. The party of the first part also binds herself to plant the Hilabañgan estate with sugar cane during the period of this contract, delivering the sugar cane so produced to the Bearin Central owned by the party of the second part, in accordance with the conditions specified in the contract; the aforesaid easement and this obligation are binding on said estate so that all the obligations contracted by the party of the first part in this instrument are enforceable upon and directly affect said land as voluntary easement, and any subsequent possessor thereof shall be subject to all the obligations and rights of the party of the first part especially the voluntary easement herein mentioned and said party of the first part further binds herself to cause her successors, vendees or assigns to abide by each and every one of the obligations contracted by her: Provided that failure to comply with this requirement shall cause the annulment or rescission of any contract that may be entered into by said party of the first part or her heirs or assigns, said contract being considered as having been made in fraud of the party of the second part, which shall then be entitled to indemnity for damages.

"XI. That the period of this contract, as aforesaid, shall be seven consecutive sugar-cane crops beginning with the harvest of 1922-1923."

* * * * *

Placing the two contracts side by side, it will be seen that in both, the defendant, Josefa Pacheco, binds herself to acknowledge in favor of the Kabankalan Sugar Co., Inc., all the easements which the latter may consider convenient and necessary for its railroad on the Hilabañgan estate belonging to the former; the only differences being that the term of the contract of November 1, 1920, is twenty years, while that of the contract entered into on September 29, 1922, is seven crops; that under the first contract the plaintiff binds itself to pay the defendant an annual rental of 7 centavos a square meter of the land subject to the easement, with 4 meters in width, while in the second contract no stipulation is made as to the payment of rent for said right of way; that under the first contract it is within the defendant Josefa Pacheco's discretion to mill or not to mill all or any part of the sugar cane produced on the Hilabañgan estate, in the Bearin Central belonging to the plaintiff Kabankalan Sugar Co., Inc., while under the second, she binds herself to mill in said central all the sugar cane produced on her aforesaid estate for seven consecutive harvests; that according to the contract of November 1, 1920, the defendant is not bound to grant the plaintiff any right of way for telephone lines, poles, tubes, water pipes, aqueduct and other conduits for conducting water to the mill, with ground for the cisterns and for the railway, while in the contract of September 29, 1922, this obligation is imposed upon her; in the second contract the plaintiff granted the defendant a loan of P17,247.30 secured by a mortgage, while said defendant was not granted such a loan in the first contract.

The question to decide in this appeal is whether the contract of September 29, 1922, has extinguished the contract of November 1, 1920, by novation.

The pertinent provision of article 1156 of the Civil Code is the following:

"ART. 1156. Obligations are extinguished:

"By novation."

Article 1203 of said Code provides:

"ART. 1203. Obligations may be modified—

"1. By the change of their object or principal conditions;

"2. By substituting another in place of the debtor;

"3. By subrogating a third person in the rights of the creditor."

And article 1204 of the same Code reads:

"Art. 1204. In order that an obligation may be extinguished by another which substitutes it, it shall be necessary that it be so declared expressly, or that the old and new obligations be incompatible in every respect."

Let us now see if the contract of November 1, 1920, was novated by that of September 29, 1922, and the obligations contracted therein were extinguished.

Of course, the debtor has not been substituted nor has a third party been subrogated to the creditor's rights. Therefore we need only concern ourselves with the first ground of novation, that is, if the principal conditions of the first contract have been altered in such a way and to such an extent that the two contracts are incompatible with each other.

As stated above, in the contract of November 1, 1920, the duration of the right of way which the defendant bound herself to impose upon her estate in favor of the plaintiff was twenty years, while in the contract of September 29,

1922, that period was reduced to seven crops which is equivalent to seven years. There can be no doubt that these two contracts, in so far as the duration of the right of way is concerned, are incompatible with each other, for the second contract reduces the period agreed upon in the first contract, and so both contracts cannot subsist at the same time. The term stipulated in the second contract cannot be added to that of the first, because, the period would then be twenty-seven instead of twenty years, which is greater than the period specified in the first contract. The duration of the right of way is one of the principal conditions of the first as well as of the second contract, and inasmuch as said principal condition has been modified, the contract has been novated, in accordance with the provision quoted above.

The plaintiff-appellant contends that the parties did not intend to novate the first contract when the second was executed, there being no reason for doing so, nor was the second any advantage to it, but, on the contrary, imposed an obligation not contained in the first contract.

While it is true that the Kabankalan Sugar Co., Inc., assumed the responsibility of guarantor of the defendant for certain obligations contracted by the latter with Ledesma Hermanos, and that in consideration of said assumption the defendant granted the plaintiff the right of way through her land, it is likewise true that Josefa Pacheco bound herself to mill her sugar cane in the Bearin Central, belonging to the plaintiff corporation, which obligation had not been imposed in the first contract, and said corporation was benefited thereby, for it is well known that the life of a central depends upon a constant supply of sugar cane during the milling season; besides which, under the second contract, the plaintiff is not required to pay for the easement, and is granted an additional easement for its telephone lines and posts, and other things. The reduction of the period for the right of way, and the plaintiff's guarantee to Ledesma Hermanos of the defendant's debt are counterbalanced by the latter's assumed obligation to mill her sugar cane in the Bearin Central, to grant the plaintiff additional easements, and tacitly to relieve it from the payment of rent for the easements.

For the foregoing considerations, we are of opinion and so hold that when an easement of right of way is one of the principal conditions of a contract, and the duration of said easement is specified, the reduction of said period in a subsequent contract, wherein the same obligation is one of the principal conditions, constitutes a novation and to that extent extinguishes the former contractual obligation.

Wherefore, finding no error in the judgment appealed from, the same is affirmed in its entirety, with costs against the appellant. So ordered.

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

JOHNS, J.:

I dissent.

Judgment affirmed.

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