

C. N. HODGES, PLAINTIFF AND APPELLEE, VS. ALBERTO GRANADA, DEFENDANT AND APPELLANT.

G. R. No. 39496. January 30, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Alberto Granada from the judgment rendered by the Court of First Instance of Occidental Negros, the dispositive part of which reads as follows:

"In view of the foregoing facts and considerations, the court hereby renders judgment in this case:

" (a) Declaring the rescission of the contract Exhibit A, which was entered into by the plaintiff and the defendant on April 24, 1929;

" (b) Ordering the plaintiff to return to the defendant the sum of P1,800, which the latter had paid to the former as advance interest on the sum of P15,000, at the rate of 12 per cent per annum, and the further sum of P236.21, which the defendant had likewise paid to the plaintiff for the insurance of the buildings which were the subject matter of the contract, according to Exhibit A, and which had never been in the defendant's possession;

" (c) Disallowing the damages prayed for by the defendant by way of counterclaim, for lack of evidence, without costs. So ordered."

In support of his appeal, the appellant assigns four alleged errors as committed by the court a quo in its decision appealed from, which we shall discuss in the course of this decision.

The following undisputed facts are stated in the decision appealed from, to wit:

"The evidence shows conclusively that on April 24, 1929, the plaintiff C. N. Hodges sold all his rights, title and interest in the parcels of land and building described in the contract of purchase and sale, Exhibit A, to the defendant Alberto Granada, for the sum of P15,000 payable in ten (10) years from the date of the contract, with interest thereon at the rate of 1 per cent per month, payable annually in advance. On the said date of the contract, the defendant paid to the plaintiff the sum of P1,800 representing the advance interest on the aforesaid sum of P15,000 at 1 per cent per month, in accordance with the stipulation of the contract in question. The defendant likewise paid to the plaintiff the sum of PP236.21 as premium on the insurance of the buildings on lots Nos. 1599 and 1205 of the cadastre of Bacolod, which were sold by the plaintiff.

"Upon execution of the contract Exhibit A, the defendant tried and resorted to every means in his power to take possession of the lots and buildings sold to him under the contract Exhibit A, but failed in his attempt in view of the stubborn opposition thereto of Leopoldo Escalante, Cristeta Ibanez and Esteban Vasquez, who alleged that they held an adverse claim against the improvements on lot No. 1599, and the opposition of Jose Benares and Jose Benares Fernandez, who likewise, alleged that they held an adverse claim against the house and garage built on lot No. 1205 and against every right, title and interest in the lease of lot No. 1205, which was executed by Jose Benares in favor of Cristeta Ibanez."

At the time of the execution of the deed of sale Exhibit A, civil case No. 4656 of the Court of First Instance of Occidental Negros, wherein Leopoldo Escalante and others were plaintiffs and C. N. Hodges was defendant, and in which the same properties which were the subject matter of the contract of purchase and sale Exhibit A, now under consideration, was pending.

The defendant-appellant claims that inasmuch as the plaintiff-appellee C. N. Hodges had not informed him of the pendency of the aforesaid suit, the latter committed fraud by leading him to believe that the properties, which were sold to him, were free from all liens and charges. However, the plaintiff-appellee, testifying in his favor, stated that the defendant-appellant Alberto Granada was aware of the existence of the aforesaid suit at the time of the execution of the deed of sale Exhibit A.

We agree with the trial court that there was no fraud in the transaction in question but rather a non-fulfillment by the plaintiff-appellee C. N. Hodges of his obligation, as vendor, to deliver the things, which were the subject matter of the contract, to the defendant-appellant Alberto Granada, as purchaser thereof (article 1461, Civil Code), and place them in the latter's control and possession (article 1462, Civil Code) which was not done. Inasmuch as the obligations arising from the contract of purchase and sale, Exhibit A, which was entered into by the plaintiff-appellee and the defendant-appellant, are reciprocal, and the former had failed to comply with that which was incumbent upon him, the latter has the implied right to resolve them, and he may choose between exacting from the vendor the fulfillment of the obligation or its resolution with indemnity for damages and payment of interest in either case (article 1124, Civil Code). Inasmuch as the defendant-appellant had chosen to rescind the aforesaid contract of purchase and sale in his cross-complaint, there arose the necessity, on the part of the plaintiff-appellee, to return the purchase price with interest thereon, and on the part of the defendant-appellant, to restore the things which were the subject matter thereof, in case he had received them (article 1295, Civil Code). As the plaintiff-appellee received the sum of P1,800 as interest on the price of P15,000, for one year at the rate of 1 per cent a month, payable annually in advance, he is bound to return said sum to the defendant-appellant, with the legal interest of 6 per cent per annum thereon, from April 24, 1929, the date on which he received it. The said plaintiff-appellee is further required to return to the defendant-appellant the sum of P236.21, which the latter had paid to him for the insurance of the buildings sold, for the reason that, inasmuch as said buildings had not been delivered to him, he did not acquire any real right over them (article 1095, Civil Code).

With respect to the damages claimed by the defendant-appellant by reason of the non-delivery to him of the buildings sold, inasmuch as he had chosen to rescind the contract instead of exacting the fulfillment thereof, he is entitled only to the damages provided in the above-cited article 1295 of the Civil Code, and not to the fruits thereof from the date on which the contract was executed which takes place only when delivery of the thing sold has been made (article 1468, Civil Code).

Inasmuch as the payment of the premium on the insurance policy by the defendant-appellant corresponded to the plaintiff-appellee, for the reason that the latter did not deliver the buildings sold and which were insured against fire, the return thereof to the former becomes one of the consequences of the rescission.

In view of the foregoing considerations, we are of the opinion and so hold that judgment should be, as it is hereby, rendered modifying the judgment appealed from to the effect that the plaintiff-appellee should pay legal interest on the sum of P1,800 from April 24, 1929, and on the sum of P236.21 from the year 1929, and affirming it in all other respects, without special pronouncement as to costs. So ordered.

Malcolm, Hull, Imperial, and Goddard, JJ., concur.

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