

**ASTURIAS SUGAR CENTRAL, INC., PLAINTIFF AND APPELLANT, VS.
THE PURE CANE MOLASSES CO., INC., DEFENDANT AND APPELLEE.***G. R. No. 40709. August 01, 1934*

Ponente: AVANCEÑA, C.J.

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Prior to the month of January, 1931, the plaintiff Asturias Sugar Central, Inc., and the defendant Pure Cane Molasses Co., entered into a contract, Exhibit A, whereby the former bound itself to sell and the latter to buy all the molasses which the said plaintiff would produce at the prices and under the conditions specified therein, one of which was that the defendant deposit the sum of P6,000 in the Bank of the Philippine Islands as security for compliance with the terms of the contract, which the said defendant did. In an action which the plaintiff later brought against the defendant for the amendment of the contract Exhibit A, the latter, in its answer, filed on January 14, 1931, raised the Question relative to its right to cancel the contract upon payment of the sum of P6,000 in accordance with the terms thereof, alleging that it had made a demand on the plaintiff to accept the cancellation and to receive the sum of P6,000, which said plaintiff refused. Consequently, it prayed that the plaintiff be ordered to accept the said sum of P6,000 and that the contract Exhibit A be declared cancelled. The lower court rendered judgment therein holding, among other things, that the terms of the contract Exhibit A did not authorize the defendant to cancel it and, therefore, the cancellation was not in order. On appeal, this court reversed the judgment of the trial court and held that, under the terms of the contract, the defendant had the right to cancel it at any time upon payment of the sum of P6,000, which had been deposited in the Bank of the Philippine Islands for this and other purposes. Upon the filing of a motion for reconsideration the judgment of this court was ratified by resolution of this court of December 31, 1932, which further declared that the contract was deemed cancelled only on November 18, 1932, the date when the defendant deposited the sum of P6,000 with the clerk of the court and when the cancellation was consummated.[1]

After the former case was remanded to the lower court, the plaintiff brought another action against the defendant on February 3, 1933, for the recovery of the sum of P72,569.28. This sum represented the alleged damages suffered by the plaintiff by reason of the refusal of the defendant to purchase the molasses which it had produced from the month of January, 1931, to November 18, 1932. The trial court dismissed the complaint and absolved the defendant therefrom. From this judgment the plaintiff took the appeal now under consideration.

Although the judgment rendered by this court in the former case was not unanimous, it is now *res judicata* that the defendant had the option to cancel the contract at any time upon payment of the sum of P6,000, in accordance with the terms of the document Exhibit A. However, the judgment of this court in the sense that the contract was deemed cancelled on November 18, 1932, implies that the contract in question was in force prior to that date. Therefore, the whole question raised in this appeal hinges on whether or not the plaintiff has the right to demand from the defendant the payment of the amount claimed by it as damages resulting from the defendant's refusal to purchase the molasses it had produced from the month of January, 1931, to November, 1932, and which said defendant was bound to purchase under the contract which was in force during that period.

It is an established fact that the defendant demanded the cancellation of the contract and tendered payment of the sum of P6,000 in consideration thereof. The very answer of the defendant, which was filed in the former case on January 14, 1931, is an express demand for cancellation and a formal tender of the sum of P6,000. This demand and tender were all that the defendant needed to make in order that the plaintiff would be obliged to give its consent to the cancellation. It was not necessary for the defendant to deposit the sum of P6,000 with the clerk of the court merely because the plaintiff refused to accept it. The tender made by the defendant in good faith was sufficient. Article 1176 et seq. of the Civil Code requiring the deposit of the thing due with the clerk of the court, are not applicable to this case on the ground that they refer to the payment of a debt. In this case the defendant owed the plaintiff nothing. The said sum of P6,000 was not a debt of the defendant but merely a consideration for the cancellation of the contract previously agreed upon. The payment thereof constituted the obligation to be performed by the defendant, and the cancellation of the contract, the corresponding obligation to be performed by the plaintiff. The defendant was not obliged to pay the sum of P6,000 before the plaintiff cancelled the contract, just as the plaintiff was not obliged to cancel the contract before the defendant paid the sum of P6,000. Both are reciprocal obligations which should have been performed simultaneously. In principle, the defendant's obligation to pay the sum of P6,000 to the plaintiff for the cancellation of the contract is the same as that of the vendor in a contract of sale with the right of repurchase to refund the purchase price to the purchaser, for the purposes of the resale, in which case this court has held that deposit of the repurchase price is not necessary to compel the purchaser to make the resale, if he refuses to accept it. (*Villegas vs. Capistrano*, 9 Phil., 416.)

Furthermore, this court is of the opinion that the offer of the defendant to pay to the plaintiff the sum of P6,000 was made in good faith, taking into consideration, particularly, the fact that said sum had been deposited in a bank at the disposal of the plaintiff, for the purpose, among other things, of the cancellation of the contract.

If, according to the judgment of this court in the former case, Exhibit A grants the defendant the option to cancel the contract at any time, upon payment of the sum of P6,000, and if the defendant demanded such cancellation offering to pay said sum in good faith, the plaintiff in refusing to consent to such cancellation, violated the contract. Such being the case, the plaintiff has no cause of action against the defendant because it is based on the alleged obligation of the said defendant to purchase its molasses during the period in which such obligation would not have existed, had not the plaintiff, in violation of the contract, refused the cancellation thereof. In such case, the plaintiff derives its cause of action from its own violation thereof. To recognize the validity of such cause of action would be to sanction and legalize such breach. On the other hand, such breach of contract cannot be the source of rights. Had the contract been cancelled in January, 1931, when the defendant demanded its cancellation, as it had a right to do, there would have been no contract to be complied with by the defendant from that date and the plaintiff's cause of action could not have been based on the cancelled contract. Plaintiff's violation of that contract by refusing to cancel the same cannot now be the basis of its cause of action.

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

Street, Hull, Vickers, Butte, and Goddard, JJ., concur.

[1] 57 Phil., 519, 534.

IMPERIAL, J., with whom concur MALCOLM, VILLA-REAL, and ABAD SANTOS, JJ., dissenting:

On March 21, 1929, the plaintiff entered into a written contract with the defendant whereby the latter bound itself to purchase from 200,000 to 400,000 gallons of molasses from the former at the rate of four (4) centavos a gallon,

for five consecutive agricultural years, beginning with the year 1929-1930. It was also stipulated, among other things, that the plaintiff bound itself to sell all the molasses produced annually in its sugar central, with the exception of 15 per cent thereof, and that the defendant had the option to cancel the contract upon notice and payment of the sum of P6,000, which was likewise fixed as a security or bond to be given by the defendant for the faithful compliance with its obligations under the contract.

The plaintiff instituted civil case No. 8436 in the Court of First Instance of Iloilo wherein it is prayed that the terms of the contract be clarified in the sense that the sum of P6,000 which had been offered by the defendant be considered as a bond or security for the faithful compliance with its obligations and not as a consideration for its option to cancel the contract, and that the quantity of molasses which it was obliged to deliver to said defendant should be only one-half of the central's production, in addition to other quantities belonging to the planters the ownership of which had passed to it for failure of the said owners to have the molasses removed within 48 hours in accordance with the existing milling contracts. At first the defendant was in accord with the allegations of the complaint, but in its supplementary answer, and by way of a cross-complaint, it prayed that the contract of sale of molasses be cancelled, on the ground that under its terms it was given the option to cancel it upon payment of the sum of P6,000 which it tendered and placed at plaintiffs disposal.

The trial court sustained the plaintiff's allegations and rendered judgment in accordance with the prayer of the complaint. On appeal (G. R. No. 36026),^[1] this court reversed the appealed judgment and declared the contract cancelled, and in its resolution on the motion for reconsideration held further that the contract was deemed cancelled on November 18, 1932, when the defendant deposited the sum of P6,000 with the clerk of the court.

Subsequently, the plaintiff instituted this action (civil case No. 9384 of the Court of First Instance of Iloilo) to recover the sum of P72,569.28 from the defendant. According to the complaint, this sum represents the stipulated cost of the molasses produced during the agricultural years 1930-1931, 1931-1932, 1932-1933, which the defendant unjustifiably refused to purchase and accept with the exception of a small quantity thereof sold to La Jarolena of La Paz, Iloilo, to minimize the damages which the plaintiff suffered.

In its second amended answer, the defendant set up the following special defenses: that the judgment rendered by this court in civil case No. 8436 (G. R. No. 36026), definitely decided all the questions which the plaintiff raises again in its second complaint and that its claim is now *res judicata*; that in the aforesaid civil case plaintiff did not claim the damages which it now seeks to recover from the defendant for which reason plaintiff lost whatever right it might have had therein; that in its motion for reconsideration of the judgment rendered by this court, the plaintiff asked, among other things, that the contract be not cancelled, but in the event that cancellation lies, the same should not be decreed until the defendant has paid for all the molasses which it refused to accept, and that according to the judgment of this court the sum of P6,000, which the defendant was bound to pay to the plaintiff, also represented whatever damages may be due the latter resulting from the cancellation of the contract.

When the case was submitted, the trial court upheld the defendant's contention that the sum of P6,000, now deposited with the clerk of the court and at the plaintiff's disposal, likewise represented the damages now claimed by the plaintiff due to defendant's refusal to receive the molasses in question, and rendered judgment absolving the defendant from the complaint, without costs. Appealing from this judgment plaintiff here vigorously contends that it is entitled to the damages, which it has undisputably proven.

In affirming the appealed judgment the majority of the members of this court rely on the general principle that when a contract is decreed cancelled, its legal effects should retroact to the date the right thereto commenced, which, in this case, was January 14, 1931, when the defendant notified the plaintiff of its option to cancel the contract and offered to pay the sum of P6,000.

There is an apparent confusion of terms herein. There is an attempt to apply the same principle both to a case wherein a contract is rescinded or annulled and that wherein a contract is cancelled by the parties. When a contract is rescinded or annulled on any of the grounds specified by the law, the parties are undoubtedly entitled only to the remedies expressly reserved for them in articles 1295, 1303, 1304, 1305, 1306, 1307 and 1308 of the Civil Code and they may not demand performance of any obligation arising from the rescinded or annulled contract. Neither can they maintain an action for damages based on a breach of contract save the cases excepted by articles 1295 and 1307. The reason for this is obvious: when a contract is rescinded or annulled, it ceases to exist and the contracting parties are entitled to have the subject matter thereof restored to its original status quo.

"Where a contract has been rescinded by mutual consent, the parties are as a general rule restored to their original rights with relation to the subject matter, and no action for breach can be maintained thereafter, nor are the parties bound by the contract with reference to their subsequent actions." (13 C. J., pp. 602, 603.)

However, when the contract is merely cancelled or terminated by express agreement of the parties, as in this case, such cancellation does not affect nor annul already existing obligations.

"Ordinarily any claim in respect of performance and of what has been paid or received on the contract will be referred to the agreement of rescission, where the contract is rescinded while in the course of performance, and as a general rule no such claim may be made unless it has been expressly or impliedly reserved; but there are cases which hold that the fact that the parties agree to terminate the contract does not in itself show that they agree to release all rights of action for breach which may have arisen up to that time, it being held that the mere fact that parties make use of the terms 'rescind' or 'cancel' does not show that they intend their acts to have such legal effect." (13 C. J., p. 603.)

"Where under the contract a party may terminate 'it at his option, he is not liable after termination for further transactions thereunder, but obligations which have already accrued are not affected. * * *'" (13 C. J., p. 608.)

The right to cancel the contract was reserved to the defendant upon payment of the sum of P6,000. Under this option, it could terminate the contract but the obligations arising therefrom were enforceable while it was in existence and until its cancellation has been agreed upon by the parties or decreed by the court. To wipe out already existing and enforceable obligations before the termination of the contract would be to annul completely the agreement and obligations voluntarily stipulated by the parties.

Anticipating the commencement of this action by the plaintiff, it was stated in the resolution upon the motion for reconsideration that the contract should not be deemed cancelled except from November 18, 1932, when the defendant deposited the sum of P6,000 with the clerk of the court. To hold now that such cancellation commenced on January 14, 1931, would be to ignore a settled question.

As to the amount of damages, the sum claimed by the plaintiff should be reduced to P35,000 because the defendant was only bound to purchase molasses up to November 18, 1932. It is difficult to establish a correct and clear basis for this sum in round numbers, but at least it represents the approximate value of the molasses which the defendant was bound to receive and pay for under the terms of the contract.

Some of the members of the court have taken the view that the aforesaid sum should be deemed to include the P6,000 deposited with the clerk of court. This latter sum was awarded to the plaintiff, and the defendant bound itself to pay it, by way of consideration or price of the option to cancel. The amount having been given for a different purpose, it should not be confused with, or deducted from the damages.

The appealed judgment should be reversed and damages in the sum of P35,000 awarded to the plaintiff, with costs in both instances.

[1] 57 Phil., 519, 534.

DISSENTING

DIAZ, J.,

It is with regret that I have to dissent from the majority opinion. Inasmuch as it has already been held in the decision rendered in case G. R. No. 36026 that the cancellation of the contract Exhibit A, entered into by the parties, should be understood as having taken effect on November 18, 1932, when the defendant had ceased purchasing the molasses which the plaintiff had been placing at its disposal since the agricultural year 1930-1931, in violation of the terms of said contract, it is my opinion that said defendant is obliged to indemnify the plaintiff for the damages it suffered by reason of such breach, but certainly not in the amount of P72,569.28, which it claims in the complaint. It may be true that the plaintiff suffered the damages in question but, from the communications exchanged between the parties,, which form part of the documentary evidence presented during the hearing, it may be inferred that, having foreseen the possibility of a disagreement similar to the one which gave rise to this suit between them, they had fixed the indemnity which said defendant should pay the plaintiff at P6,000. Therefore, the question raised by the parties should be decided by awarding the plaintiff an indemnity in the sum of P6,000, notwithstanding the fact that it had already been allowed a like sum in the aforesaid case G. R. No. 36026, on the ground that the former was for a different cause or purpose.

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