

H. E. HEACOCK COMPANY, PLAINTIFF AND APPELLEE, VS. BUNTAL MANUFACTURING COMPANY, GREGORIO NIEVA, AND MARIA A. DE NIEVA, DEFENDANTS AND APPELLANTS.

G.R. No. 44471. September 26, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The main, if not the sole, question raised by the appeal taken by defendants from the judgment of the lower court is the following:

Is the document Exhibit A which plaintiff and the first two defendants executed on May 12, 1931 a contract for the lease of an adding and calculating machine therein described, with option to purchase by defendants; or is it, on the contrary, a contract of purchase and sale on installments in which said defendants were vendees and plaintiff, vendor?

The lower court held that it was one of lease and mere after decided that since defendants failed to pay plaintiff the rents which they had bound themselves to pay it, at the rate of P35 a month from August, 1931, and which then amounted to P555, they should deliver to plaintiff the aforesaid sum with costs. This it resolved notwithstanding that it had been shown at the trial that upon plaintiff's demand in its complaint for preliminary attachment, defendants had to return to it the said machine which it accepted to its satisfaction, without the necessity of making use of the writ of attachment. Said acts of defendants constituted compliance with the prayer in plaintiff's complaint that one of these things, and not both at the same time, be done: "The delivery of said personal property, and if delivery cannot be effected then judgment for the rents in arrears." Defendants chose to make delivery so as to dispose of the question in this manner.

Defendants maintain that in deciding the case in the way it has done, the lower court erred in the following respects:

- In granting plaintiffs petition that it be allowed to file an amended complaint after defendants had been declared in default with respect to the original complaint.
- In granting plaintiff the two alternative remedies for which it had prayed in its original complaint upon its asking for both in the amended complaint.
- In not holding that the contract entered into between the parties was one of purchase and sale on installments and that once the same was rescinded by plaintiff upon its taking the machine which is the subject matter thereof, it lost all right to recover from them the balance of its price.
- Two hearings were held in the case: The first took place in the absence and default of defendants, and the second after the original complaint had been amended and the answer of defendants filed. Upon the objection of the latter's attorney, who appeared in the first trial, upon the ground that plaintiff could have no other relief than the confirmation of its possession of the machine in question after it had taken and received the same from defendants

for the reason that the prayer for relief in the complaint did not ask for more than "the delivery of said personal property" (referring to the machine in question), or for "judgment for the rents in arrears," "if delivery cannot be effected then," plaintiff decided to ask for, which it did and obtained, leave from the lower court to amend its complaint in the sense of eliminating from the prayer thereof the phrase "if delivery cannot be effected then." This it did, no doubt, so as to be able to secure two things at the same time: The return of its machine and the amount it claimed as rents. After amendment of the complaint a second hearing was held in which the lower court rendered the judgment appealed from. We find no error in the act of the lower court granting leave to plaintiff to amend its complaint, which error may be considered prejudicial to defendants. There was no attempt to amend an essential part of the complaint, but only a part of its prayer for relief; and it is known that the prayer for relief is not the complaint itself nor is it a part of the allegations which state the cause or causes of action submitted to the consideration of the court for its resolution. (Aguilar vs. Rubiato and Gonzalez Vila, 40 Phil., 570; Campomanes vs. Bartolome and Germann & Co., 38 Phil., 808; Rosales vs. Reyes and Ordoveza, 25 Phil., 495.) Moreover, the amendment was made substantially in accordance with the provisions of sections 109 and 110 of Act No. 190. The first error attributed to the lower court, is therefore, without merit.

- The determination of the other errors alleged to have been committed by the lower court depends upon our consideration of the nature of the contract Exhibit A and upon the conclusion which we may reach with respect thereto. If it is a lease, then said errors can not exist.

Among the clauses appearing in the contract in question, there are several showing that it is not really a contract of lease but of purchase and sale on installments. Said clauses are the following:

"That the owner hereby leases unto the hirer and the hirer hereby hires from the owner one Dalton adding, calculating and posting machine, Multiplex Model 490-180 Serial No. 4-103493
.....

P860.00

"To credit one Dalton adding machine S. H. Serial No. 116182 for P110 and by cash P50. Initial payment
.....

160.00

"Balance due

700.00

which the hirer acknowledges having, received in good state and condition, for the term of 20 calendar months from the date hereof at the rental of P35 per calendar month, and * * * calendar months at the rental * * * subject to the following terms and conditions:

"1. The hirer agrees with the owner as follows:

"(a) To pay the owner at its office at 122 Escolta, the said hire monthly on the 12th day of every month within three days thereafter.

"6. In consideration of the sum of P160 to it in hand paid by the hirer, the owner hereby grants to the hirer the option to purchase, while the present lease is in force and effect, the property made the subject of this agreement, at the purchase price of P860. In the event of the exercise of said option, the hirer shall be entitled to a credit on the purchase price for an amount equal to the rentals actually paid hereunder and the payment

made under this paragraph; it being expressly understood and agreed, however, that the said chattel shall remain the property of the owner until after the complete exercise of such option, and the payment in full of the purchase price agreed upon, and, until such time the hirer shall not have any property right in said chattel or be deemed to have purchased or obligated to purchase the same. Should the hirer not exercise the option herein granted, the amount paid by him for said option under this paragraph shall become forfeited to the owner."

In the first clause above-quoted it appears that defendants paid the amount of P160 on account of the price of the machine which was fixed at P860. It is therein stated that said amount was delivered to plaintiff as "initial payment." It was for this reason that upon the signing of the contract care was taken to express therein that the balance which defendants were bound to pay to plaintiff for the machine was only P700. So as to facilitate the payment of this amount by defendants, it was agreed between them and plaintiff that the former would complete the same in twenty monthly installments of P35. Dividing P700 by 20, the resulting amount is exactly P35.

It is true that in the contract it is often stated that plaintiff leased the machine to defendants, giving them the option to buy it upon their paying it the sum of P860 and crediting them with so much as they might be able to pay as rents at the above rate of P35 a month. It should be noted, however, that in the clause aforementioned, it is clearly stated that defendant paid the sum of P160 on account of the price of the machine. This payment shows that the real contract between the parties was that of purchase and sale on installments and not a lease. In spite of any effort to prove the contrary, the aforesaid amount of P160 can not be understood to constitute payment in advance of the rents agreed upon for there is nothing in the contract to indicate that it was and because, according to the contract itself, the rents could not be more nor less than P35 a month, payable monthly. Following the theory of plaintiff and in accordance with the sound principles of accounting, the amount of P160 can not be considered as payment of rents in advance; otherwise we would reach the conclusion that defendants, without being bound to do so and in violation of the terms of the contract, paid plaintiff rents not monthly but from day to day inasmuch as said sum corresponds to four months and twenty days. Furthermore, it must be borne in mind that the mention in the aforesaid contract of the fact that the sum of P160 constituted an "initial payment" on account of the price of the machine in question can have no other effect than to contradict and nullify that stated in clause 6, which is one of those above-quoted, to the effect that the same is the consideration by virtue of which plaintiff granted defendants the option to buy the machine. Defendants did not have to pay anything for the option for the reason that they made the payment of P160 to buy the machine on installments, binding themselves to pay the balance by delivering to plaintiff the sum of P35 a month. It should be stated, moreover, that the fact that the price of the machine was fixed in the contract makes the latter not a lease but a purchase and sale because in contracts of lease, as distinguished from those of purchase and sale, it is plain redundancy to fix or make any mention of the price of the thing given in lease (articles 1445, 1543, Civil Code). When the terms of a contract are not clear or conflict with each other, as those appearing in Exhibit A, effect must be given to the intention of the parties (article 1281, Civil Code); and the intention of plaintiff and defendants in this case as we gather it from Exhibit A, considered in connection with all its terms and clauses, is that the contract entered into between them is one of purchase and sale on installments and not a lease.

Accordingly, the act of plaintiff in requiring, as it did, the return of the machine in question, receiving and accepting the same thereafter from defendants when the latter voluntarily returned it, shows that plaintiff not only consented to, but desired the rescission of the contract it had entered with defendants, specially when it is taken into consideration that it thus expressed itself in its original complaint wherein it prayed not for the return of the machine and payment of supposed rents due at the same time, but only for one of these things. Upon taking the machine under such circumstances plaintiff performed a positive act indicating its intention to rescind the contract, and having done so and retained what defendants had up to then paid to it, amounting to P205 without any objection on their part, it can not and must not have any right to anything more. Its right was reduced to

demanding compliance with the terms of Exhibit A as contract of purchase and sale or to rescind the same, and it chose the latter alternative and to retain the aforesaid sum of P305 (articles 1506 and 1124, Civil Code).

In conclusion we hold that the contract Exhibit A is that of purchase and sale on installments; that said contract was rescinded without objection on the part of defendants; and that the appeal of the latter is well taken.

Wherefore, declaring Exhibit A rescinded, the judgment appealed from is reversed, absolving defendants from the complaint and sentencing plaintiff to pay the costs in both instances. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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