

HARRY IVES SHOEMAKER, PLAINTIFF AND APPELLANT, VS. LA TONDEÑA, INC., DEFENDANT AND APPELLEE.

G.R. No. 45667. May 19, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On January 19, 1937 plaintiff Harry Ives Shoemaker filed a second amended complaint against La Tondena, Inc., in which, on the facts therein alleged, he prayed that judgment be rendered against said defendant, sentencing it to pay him the sum of P11,000 with legal interest from the date of the filing of the complaint, plus the costs.

To said amended complaint the defendant company, La Tondena, Inc., interposed a demurrer based on the ground that the facts therein alleged do not constitute a cause of action, since it is not averred that the alleged mutual agreement modifying the contract of lease of services, Exhibit A, has been put in writing, whereas it states that its terms and conditions may only be modified upon the written consent of both interested parties.

After hearing on the demurrer and plaintiff's answer thereto, as well as the reply of the defendant company to said answer, the court a quo, in an order dated February 11, 1937, sustained the demurrer and ordered plaintiff to amend his second amended complaint dated January 19, 1937 within a period of fifteen days. When plaintiff excepted to the order sustaining the demurrer and to that denying his motion for reconsideration of said order and chose not to amend his second amended complaint in so far as it referred to his claim of P11,000, the lower court issued on March 19, 1937 an order dismissing the aforesaid claim, with costs against plaintiff.

To the foregoing order plaintiff excepted and filed a motion for reconsideration, upon the denial of which he took an appeal by bill of exceptions.

The main question to be decided in the instant appeal, which is that raised by the first assignment of alleged error, is whether or not the court a quo erred in sustaining the demurrer interposed by the defendant company, La Tondena, Inc., to the second amended complaint filed by plaintiff, on the ground that the facts alleged therein do not constitute a cause of action.

As constituting a cause of action, the following facts are alleged in the complaint: That on March 30, 1929, the defendant company, La Tondena, Inc., through its president and principal stockholder, Carlos Palanea, entered into a written contract with plaintiff whereby said defendant company, La Tondena, Inc., employed plaintiff, Harry Ives Shoemaker, as technical manager of its factories, La Tondena, Inc., Philippine Motor Alcohol Corporation, and the Bais Distilleries, Inc., for a period of five years from January 1, 1929 with a compensation consisting of 8 per cent of the net earnings which might be obtained by the defendant company, La Tondena, Inc., during each year that the contract was in force, with the express understanding and agreement that plaintiff would receive monthly during the period of the contract the sum of P1,500 or P18,000 per annum as minimum compensation for his services, if 8 per cent of the net earnings of the aforementioned business would not reach that amount, and with the additional understanding and agreement that during 1933, the last year of the contract, the defendant company, La Tondena, Inc., would grant to said plaintiff a leave or vacation of six months which he

might enjoy either in the Islands or outside thereof, with full compensation or salary, as provided in said contract, during such leave or vacation.

It is also alleged in the complaint that sometime in March, 1933, upon the urgent request of the defendant corporation, through its president and stockholder, Carlos Palanca, who represents the majority of the stock thereof, and for its sole benefit, the aforementioned written contract, Exhibit A, was modified upon a mutual understanding and agreement between the parties in the following manner: (a) That a temporary deduction of P200 would be made each month from the salary of plaintiff under said contract from March 1, 1933 until its termination on December 31, 1933, with the clear understanding and agreement that said sum of P200, which would be deducted from his monthly salary, would be credited to him on the books of the defendant corporation the same to be paid to him should the conditions of the business improve or upon the termination of his contract of employment; (b) that "plaintiff would not take his six months leave or vacation during the year 1933 with full pay to which he is entitled during said year under his contract, in view of the bad condition of the business of the defendant and the imperative need for plaintiff's continued services not only to discharge his regular duties without any additional expense on the part of the corporation, but also to assume and perform the principal duties of A. B. Powell, assistant general manager of the corporation, who definitely left his post in the corporation referred to for the United States on July 27, 1933, and that the aforementioned six months leave or vacation with full pay, which is given him in said contract, would be postponed until its termination, without prejudice to his right to said vacation under the terms of the aforesaid contract, and the defendant company would then either give plaintiff his six months leave or vacation with full compensation or pay him a compensation corresponding to said leave.

It is likewise alleged in the second amended complaint that defendant corporation actually deducted and retained monthly the sum of P200 from the salary of plaintiff from March to December 31, 1933, or the total sum of P2,000, and obtained all the benefit under said contract as modified. And plaintiff acting in good faith and trusting in the understanding and agreement had between the parties, continued to render during the entire year the services required of him under the original contract, and performed furthermore the additional duties imposed on him by said defendant.

In the second amended complaint it is also averred that upon the termination of said contract, plaintiff requested the defendant company to pay him the amount deducted from his salary and to grant him the leave or vacation of six months with full pay at the rate of P1,500 per month or give him compensation equivalent to said sum, and that said defendant corporation assured the plaintiff that it would look into the matter in due time and that he would receive the amount deducted from his salary and his leave or vacation of six months with full pay as well, or the compensation equivalent thereto.

It is finally alleged in the second amended complaint aforesaid that the defendant corporation referred to, in violation of said contract and without just cause, has not paid and refuses to pay plaintiff the sum of P2,000 which was deducted from his salary and to grant him six months leave or vacation with full pay at the rate of P1,500 per month, and to give him the compensation equivalent to his salary corresponding to six months, namely, the sum of P9,000, in accordance with the terms and conditions of the contract.

In sustaining the demurrer interposed to the second amended complaint dated January 19, 1937, the court a quo based its action on the ground that the facts alleged in said amended complaint do not constitute a cause of action for the reason that plaintiff's action rests on an oral contract which, by its nature, is unenforceable by action as it is included within the statute of frauds.

Section 335, paragraph 1, of the Code of Civil Procedure, provides that an agreement that by its terms is not to be

performed within a year from the making thereof is unenforceable by action, and evidence thereof cannot be received without the writing or secondary evidence of its contents unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent.

In interposing its demurrer to the second amended complaint, the defendant corporation, La Tondena, Inc., hypothetically admitted the truth of the facts therein alleged. According to the facts referred to, there was full compliance on the part of plaintiff with the additional obligations imposed on him under the modified oral contract, and the defendant company acted in accordance with the terms and conditions of said contract.

The object of the statute of frauds is denned in section 1, page 123, of volume 27 of Corpus Juris, as follows:

"The purpose of the statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence upon the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged."

In section 426, page 341 of the same work, it is said:

"SEC. 426. (L) Equitable relief.—The statute of frauds is no less binding in a court of equity than in a court of law. But fraud is a well recognized ground of equitable jurisdiction, and equity will not hesitate to enforce an oral contract falling within the provisions of the statute where the circumstances are such that the refusal to execute it would amount to a fraud. As is frequently said, equity will not permit the statute to be used as an instrument or means of effecting that which it was designed to prevent."

And in section 427, page 343, the following is found:

"SEC. 427. (M) Part performance. 1. Doctrine of part performance.— (a) In General. Where one party to an oral contract has, in reliance thereon, so far performed his part of the agreement that it would be perpetuating a fraud upon him to allow the other party to repudiate the contract and to set up the statute of frauds in justification thereof, equity will regard the case as being removed from the operation of the statute and will enforce the contract by decreeing specific performance of it, or by granting other appropriate relief, such as quieting title, establishing a resulting or a constructive trust, enjoining interference with the possession of property, or enjoining a conveyance of property."

And finally, section 436, page 356, says:

"SEC. 436. (D) Contracts not to be performed within one year.—Contracts which by their terms are not to be performed within one year may be taken out of the statute through performance by one party thereto. All that is required in such case is complete performance within the year by one party, however many years may have to elapse before the agreement is performed by the other party. But nothing less than full performance by one party will suffice, and it has been held that, if anything remains to be done after the expiration of the year besides the mere payment of money, the statute will apply. But when a contract has been so far performed that nothing remains to be done but the payment of the consideration for the performance, the fact that the contract does not require the payment within a year furnishes no defense to an action for the price."

This court, in the case of National Bank vs. Philippine Vegetable Oil Co. (49 Phil., 857), said:

"5. PLEADING AND PRACTICE; STATUTE OF FRAUDS; SECTION 335 OF CODE OF CIVIL PROCEDURE CONSTRUED.—The broad view is that the Statute of Frauds applies only to agreements not to be performed on either side within a year from the making thereof. Agreements to be fully performed on one side within the year are taken out of the operation of the statute,

"6. ID. ; ID. ; ID.—The Statute of Frauds was enacted for the purpose of preventing frauds. It should not be made the instrument to further them."

We have seen that in the present case it is hypothetically admitted that plaintiff complied, within the year, that is, from March 1 to December 31, 1933, with all the obligations he had bound himself to fulfill under the modified oral contract. It is also hypothetically admitted that the defendant corporation benefited from the fulfillment of said obligations by the plaintiff; hence, it cannot, in equity and justice, avoid its own obligations assumed under the same modified oral contract, for to allow it to do so under the protection of the statute of frauds would make of the latter a shield of and not a protection against frauds.

For the foregoing considerations, we are of the opinion and so hold that when, in an oral contract which, by its terms, is not to be performed within one year from the execution thereof, one of the contracting parties has complied within the year with the obligations imposed on him by said contract, the other party cannot avoid the fulfillment of those incumbent on him under the same contract by invoking the statute of frauds, because the latter aims to prevent and not to protect fraud.

Hence, the facts alleged in the second amended complaint constitute a cause of action.

Wherefore, the order appealed from is reversed and it is ordered that the case be remanded to the court of origin so that the same may overrule the demurrer interposed by the defendant company, La Tondena, Inc., and the latter may be required to answer the second amended Complaint. with costs against the appellee.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran. JJ., concur.

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