

A. O. FISHER, PLAINTIFF AND APPELLEE, VS. JOHN C. ROBB, DEFENDANT AND APPELLANT.

G.R. No. 46274. November 02, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant John C. Robb appeals to this Court from the judgment of the Court of First Instance of Manila, the dispositive part of which reads:

"Judgment is hereby rendered in favor of the plaintiff and against the defendant, who is ordered to pay to the former the sum of P2,000, with interest at the legal rate from, March 11, 1938, until paid, plus costs."

The facts established at the trial without discussion are the following:

In September, 1935, the board of directors of the Philippine Greyhound Club, Inc., told the herein defendant-appellant John C. Robb, to make a business trip to Shanghai to study the operation of a dog racing course. In Shanghai, the defendant-appellant stayed at the American Club where he became acquainted with the plaintiff-appellee, A. O. Fisher, through their mutual friends. In the course of a conversation, the defendant-appellant came to know that the plaintiff-appellee was the manager of a dog racing course. Upon knowing the purpose of the defendant-appellant's trip, the plaintiff-appellee showed great interest and invited him to his establishment and for several days gave him information about the business. It seems that the plaintiff became interested in the Philippine Greyhound Club, Inc., and asked the defendant if he could have a part therein as a stockholder. As the defendant-appellant answered in the affirmative, the plaintiff-appellee thereupon filled a subscription blank and, through his bank in Shanghai, sent to the Philippine Greyhound Club, Inc., in Manila a telegraphic transfer for P3,000 in payment of the first installment of his subscription. Later on the defendant-appellant returned to Manila from Shanghai.

Some months thereafter, when the board of directors of the Philippine Greyhound Club, Inc., issued a call for the payment of the second installment of the subscriptions, the defendant-appellant sent a radiogram to the plaintiff-appellee in Shanghai, requesting him to send the amount of the second installment of his subscription. The plaintiff-appellee did so and sent P2,000 directly to the Philippine Greyhound Club, Inc., in payment of the said installment. Due to the manipulations of those who controlled the Philippine Greyhound Club, Inc., during the absence of the defendant in Manila, the enterprise failed. Upon his return to Manila, the defendant-appellant undertook the organization of a company called The Philippine Racing Club, which now manages the race track of the Santa Ana Park. The defendant immediately endeavored to save the investment of those who had subscribed to the Philippine Greyhound Club, Inc., by having the Philippine Racing Club acquire the remaining assets of the Philippine Greyhound Club, Inc. The defendant-appellant wrote a letter to the plaintiff-appellee in Shanghai explaining in detail the critical condition of the Philippine Greyhound Club, Inc., and outlining his plans to save the properties and assets of the plaintiff-appellee that he felt morally responsible to the stockholders who had paid their second installment (Exh. C). In answer to said letter, the plaintiff-appellee wrote the

defendant-appellant requiring him to return the entire amount paid by him to the Philippine Greyhound Club, Inc., (Exhibit E). Upon receiving this letter, the defendant-appellant answered the plaintiff-appellee on March 16, 1936, to the effect that it was not his duty under the law to reimburse the plaintiff-appellee for any loss which he might have suffered in connection with the Philippine Greyhound Club, Inc., in the same way that he could not expect anyone to reimburse him for his own losses which were much more than those of the plaintiff-appellee (Exh. B).

The principal question to be decided in this appeal is whether or not the trial court erred in holding that there was sufficient consideration to justify the promise made by the defendant-appellant in his letters Exhibits B and C.

In the fifth paragraph of the letter Exhibit B, dated March 16, 1936, addressed by the defendant-appellant to the plaintiff-appellee, the former said: "I feel a moral responsibility for these second payments, which were made in order to carry out my plan (not the first payments, as you have it in your letter), and Mr. Hilscher and I will see to it that stockholders who made second payments receive these amounts back as soon as possible, out of our own personal funds." And in the seventh paragraph of the same letter Exhibit B, same defendant-appellant states the following: "As it is, I have had to take my loss along with everyone else here, and so far as I can see that is what all of us must do. The corporation is finally flat, so it is out of the question to receive back any of your investment from that source; the only salvage will be the second payment that you made, and that will come from Hilscher and me personally, as I say, not because of any obligation, but simply because we have taken it on ourselves to do that. (And I wish I could find someone who would undertake to repay a part of my own losses in the enterprise!)" And in the seventh paragraph of the letter Exhibit C, dated February 21, 1936, addressed by the same defendant-appellant to the same plaintiff-appellee, the former said the following: "However, Mr. Hilscher and I feel a personal responsibility to those few stockholders who made their second payments, including yourself, and it is our intention to personally repay the amounts of the second payments made by those few.

* * *

And, finally, paragraph 8 of the same letter Exhibit C states: "We are to receive a certain share of the new Philippine Racing Club for our services as promoters of that organization, and as soon as this is received by us, we will be in a position to compensate you and the few others who made the second payment, for the amount of those second payments. That, as I have said, will come from us personally, in an effort to make things easier for those who were sportsmen enough to try to save the Greyhound organization by making second payments."

Article 1254 of the Civil Code provides as follows:

"A contract exists from the moment one or more persons consent to be bound with respect to another or others to deliver something or to render some services."

And article 1261 of the same Civil Code provides the following:

"Art. 1261. There is no contract unless the following requisites exist:

- "1. The consent of the contracting parties;
- "2. A definite object which is the subject-matter of the contract;
- "3. A consideration for the obligation established."

In the present case, while the defendant-appellant told the plaintiff-appellee that he felt morally responsible for the second payments which had been made to carry out his plan, and that Mr. Hilscher and he would do everything possible so that the stockholders who had made second payments may receive the amount paid by them from their personal funds without delay, not because they were bound to do so, but because they voluntarily assumed the responsibility to make such payment as soon as they receive from the Philippine Racing Club certain shares for their services as promoters of said organization, nevertheless, it does not appear that the plaintiff-appellee had

consented to said form of reimbursement of the P2,000 which he had directly paid to the Philippine Greyhound Club, Inc., in satisfaction of the second installment.

The first essential requisite, therefore, required by the cited article 1261 of the Civil Code for the existence of a contract, does not exist. As to the third essential requisite, namely, "A consideration for the obligation established," article 1274 of the same Code provides:

"In onerous contracts the consideration as to each of the parties is the delivery or performance or the promise of delivery or performance of a thing or service by the other party; in remuneratory contracts the consideration is the service or benefit for which the remuneration is given, and in contracts of pure beneficence the consideration is the liberality of the benefactors."

And article 1275 of the same Code provides:

"Art. 1275. Contracts without consideration or with an illicit consideration produce no effect whatsoever. A consideration is illicit when it is contrary to law or morality."

Manresa, in volume 8, 4th edition, pages 618-619 of his Commentaries on the Civil Code, interpreting article 1274 to 1277 of the Civil Code, has this to say:

"Considering the concept of the consideration as the explanation and motive of the contract, it is related to the latter's object and even more to its motives with which it is often confused. It is differentiated from them, however, in that the former is the essential reason for the contract, while the latter are the particular reasons of a contracting party which do not affect the other party and which do not preclude the existence of a different consideration. To clarify by an example: A thing purchased constitutes the consideration for the purchaser and not the motives which have influenced his mind, like its usefulness, its perfection, its relation to another, the use thereof which he may have in mind, etc., a very important distinction, which precludes the annulment of the contract by the sole influence of the motives, unless the efficacy of the former had been subordinated to compliance with the latter as conditions.

"The jurisprudence shows some cases wherein this important distinction is established. The consideration of contracts, states the decision of February 24, 1904, is distinct from the motive which may prompt the parties in executing them. The inaccuracies committed in expressing its accidental or secondary details do not imply lack of consideration or false consideration, wherefore, they do not affect the essence and validity of the contract. In a loan the consideration in its essence is, for the borrower the acquisition of the amount, and for the lender the power to demand its return, whether the money be for the former or for another person and whether it be invested as stated or otherwise.

"The same distinction between the consideration and the motive is found in the decisions of November 23, 1920 and March 5, 1924."

The contract sought to be judicially enforced by the plaintiff-appellee against the defendant-appellant is onerous in character, because it supposes the deprivation of the latter of an amount of money which impairs his property, which is a burden, and for it to be legally valid it is necessary that it should have a consideration consisting in the lending or promise of a thing or service by such party. The defendant-appellant is required to give a thing, namely, the payment of the sum of P2,000, but the plaintiff-appellee has not given or promised anything or service to the former which may compel him to make such payment. The promise which said defendant-appellant has made to the plaintiff-appellee to return to him P2,000 which he had paid to the Philippine Greyhound Club, Inc., as second installment of the payment of the amount of the shares for which he had subscribed, was prompted by a feeling of pity which said defendant-appellant had for the plaintiff-appellee as a result of the loss which the latter had suffered because of the failure of the enterprise. The obligation which the said defendant-appellant had contracted with the plaintiff-appellee is, therefore, purely moral and, as such, is not demandable in law but only in

conscience, over which human judges have no jurisdiction.

As to whether a moral obligation is a sufficient consideration, read in volume 12 of the American Jurisprudence, pages 589-590, paragraphs 96, 67, the following:

"SEC. 96. Moral obligation.—Although there is authority in support of the broad proposition that a moral obligation is sufficient consideration, such proposition is usually denied. * * *.

"The case presenting the question whether a moral obligation will sustain an express executory promise may be divided into five classes: (1) Cases in which the moral obligation arose wholly from ethical considerations, unconnected with any legal obligations, perfect or imperfect, and without the receipt of actual pecuniary or material benefit by the promisor prior to the subsequent promise; (2) cases in which the moral obligation arose from a legal liability already performed or still enforceable; (3) cases in which the moral obligation arose out of, or was connected with, a previous request or promise creating originally an enforceable legal liability, which, however, at the time of the subsequent express promise had become discharged or barred by operation of a positive rule of law, so that at that time there was no enforceable legal liability; (4) cases in which the moral obligation arose from, or was connected with, a previous request or promise which, however, never created any enforceable legal liability, because of a rule of law which rendered the original agreement void, or at least unenforceable; and (5) cases in which the moral obligation arose out of, or was connected with, the receipt of actual material or pecuniary benefit by the promisor, without, however, any previous request or promise on his part, express or implied, and therefore, of course, without any original legal liability, perfect or imperfect.

"SEC. 97. Moral obligation unconnected with legal liability or legal benefit.—Although, as subsequently shown there was formerly some doubt as to the point, it is now well established that a mere moral obligation or conscientious duty arising wholly from ethical motives or a mere conscientious duty unconnected with any legal obligation, perfect or imperfect, or with the receipt of benefit by the promisor of a material or pecuniary nature will not furnish a consideration for an executory promise. * * *."

In view of the foregoing considerations, we are of the opinion and so hold, that the promise made by an organizer of a dog racing course to a stockholder to return to him certain amounts paid by the latter in satisfaction of his subscription upon the belief of said organizer that he was morally responsible because of the failure of the enterprise, is not the consideration required by article 1261 of the Civil Code as an essential element for the legal existence of an onerous contract which would bind the promisor to comply with his promise.

Wherefore, the appealed judgment is reversed and the defendant is absolved from the complaint, with the costs to the plaintiff.

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

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