

THE MUNICIPALITY OF HAGONUY, PLAINTIFF AND APPELLANT, VS. TEOFIL E VANGELISTA, DEFENDANT AND APPELLEE.*G.R. No. 48289. June 01, 1942*

Ponente: BOCOBO, J.

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This case commenced with a complaint filed by the Municipality of Hagonoy to enforce against the defendant a penal clause which forms a part of each of four contracts of lease of fishponds belonging to the plaintiff. Said penal clause provided that in case of nonfulfillment by the lessee, the latter would pay a surcharge (recargo) of 20 per cent. These four leases were originally granted to Jose Evangelista as the best bidder, for ten years from July 1, 1925 to June 30, 1935. These leases were transferred by Jose Evangelista to Josefa Evangelista on February 1, 1926 and October 26, 1927. Neither the original leases nor the transfers thereof were submitted to the Provincial Governor. There is no record either that the leases and the transfers were approved by that provincial official. Toward the end of the 9th year of the leases, that is, on May 14, 1934, Josefa Evangelista died, but she was succeeded by the defendant Teofilo Evangelista. The next month, on June 30, 1934, Teofilo Evangelista presented a written petition to the Municipal Council of Hagonoy, through the Municipal President, asking for an extension of time for the payment of the rent, without surcharge, till September 1, 1934. By resolution No. 81, passed on July 15, 1934, the Municipal Council granted the defendant's request, and was permitted to pay the rent in two installments, thus: P5,000 on or before July 30, 1934, and the rest, P4,861.25 on August 20 of the same year, without surcharge. This resolution of the Municipal Council was approved by the Provincial Board of Bulacan on August 31, 1934. The defendant paid the entire sum of P9,861.25 within the periods specified in resolution No. 81 of the Municipal Council of Hagonoy.

The trial court dismissed the complaint on the ground that both the plaintiff and the defendant had acted in good faith on the erroneous belief that the Municipal Council had power to grant the extension of time for the payment of the rent. The court said:

"* * * In other words, it is manifest that both parties acted upon the erroneous assumption that the Municipal Council of Hagonoy could grant an extension of time for the payment of the rental and waive the penalty stipulated, even without substantial consideration therefor. The mistake was common and was committed in good faith. Under these circumstances the Municipality of Hagonoy should not be allowed to benefit itself at the expense of the defendant after the latter has complied strictly with the conditions laid in resolution No. 81. The defendant having applied in writing for an extension of time on June 30, 1934 (before the due date), the plaintiff should have acted upon it immediately; and after having granted the extension on July 30, 1934 the plaintiff should have notified the defendant of its intention to disregard resolution No. 81 because of its illegality, demanding at the same time the payment of the whole amount due within a reasonable time. Had this been done, and had the defendant failed to pay the rent due within the reasonable time granted to him, then it would not be unreasonable to compel him to pay the penalty." (Bill of Exceptions, pp. 43, 44.)

The plaintiff-appellant maintains that the Municipal Council had no power to extend the time for payment of the rent, without any valuable consideration, especially because these leases had been granted after public bidding.

It is unnecessary to pass upon this aspect of the case because we believe, and so hold, that these leases were void for lack of approval by the Provincial Governor as required by section 2196 of the Revised Administrative Code, and that the principal obligation being void, the accessory obligation, namely, the penal clause sought to be enforced by the plaintiff, is also void.

Said section 2196 of the Revised Administrative Code provides as follows:

"SEC. 2196. Execution of deeds.—When the government of a municipality is party to a deed or an instrument which conveys real property or any interest therein or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the provincial governor."

And even if the Provincial Governor had approved these leases, they would still be void after the first five years, because under sections 2323 and 2319 of the Revised Administrative Code, no municipality can enter into any lease of fishponds for more than five years. Said legal provisions read:

"SEC. 2323. Restriction upon letting of fishery to private party—When a fishery or fish-breeding ground is granted to a private party as hereinabove authorized, the same shall be let to the highest bidder in the manner and subject to the conditions prescribed in section two thousand three hundred and nineteen hereof."

* * * * *

"SEC. 2319. Letting of municipal ferry, market, or slaughterhouse to highest bidder.—When any ferry, market, or slaughterhouse belonging to a municipality is to be let to a private party, the same shall, unless otherwise directed by the Department Head, be let to the highest and best bidder for the period of one year or, upon the previous approval of the provincial board, for a longer period not exceeding five years, under such conditions as shall be prescribed by the Department Head."

And article 1155 of the Civil Code reads: "The nullity of the principal obligation carries with it that of the penal clause."

An important question arises at this juncture, and that is, whether the defendant, after he and his predecessors in interest have acted upon these leases for years, may set up their defectiveness to resist a demand based upon the penal clause. Is not the defendant estopped from so doing? Has not the course of conduct followed by him and his predecessors confirmed the leases?

These questions depend upon the nature of these leases, whether they were merely voidable or they were void. If the former, they could be ratified by the lessee; in the latter case, no act of the parties could confirm or validate these contracts. We believe these leases were void because section 2196 of the Revised Administrative Code in effect forbids all contracts affecting municipal real property which have not received the sanction of the Provincial Governor. And even if such approval of the Provincial Governor had been secured, these contracts would be void from the commencement of the sixth year, according to sections 2323 and 2319 of the Revised Administrative Code already quoted.

Article 42 of the Civil Code reads: "Son nulos los actos ejecutados contra lo dispuesto en la ley, salvo los casos en que la misma ley ordene su validez." ("Acts executed contrary to the provisions of the law are void, except in cases where the law itself orders their validity.") As these leases were contrary to law, they were void.

The penal clauses in question being void because of the invalidity of the principal contracts of lease, and considering that the defendant cannot be held to have confirmed these contracts because they were not susceptible of confirmation, it is clear that the parties should be left where they are. The courts will aid neither of them to enforce any stipulation in these contracts. The municipality seeks the fulfillment of the penal clause, whereby the

defendant promised to pay 20 per cent surcharge in case of noncompliance with the terms of the leases. The courts will not exercise their authority for the purpose of enforcing such penal clause.

Therefore, the judgment of the lower court dismissing the complaint should be and is hereby affirmed, with costs against the plaintiff. So ordered.

Yulo, C. J., Moran, Ozaeta, and Paras, JJ., concur.

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