

**INSULAR FINANCING &#038; BUSINESS CORPORATION,  
PLAINTIFF-APPELLEE, VS. BENEDICTO A. IMPERIAL,  
DEFENDANT-APPELLANT.**

*G.R. No. 48774. August 31, 1943*

Ponente: OZAETA, J.

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**OZAETA, J.:**

Appeal from a judgment of the Court of First Instance of Manila upon a stipulation of facts.

This case is an aftermath of the mining-stock-speculation craze that swept the country in the latter part of the thirties.

On March 16, 1937, appellant agreed to buy from appellee 5,000 shares of stock of the Suyoc Consolidated Mining Co. at P0.403836 per share or a total of P2,019.18, to be delivered and paid for on or about June 14, 1937 (exhibit A). Two days later, or on March 18, the same parties agreed to the purchase and sale of 20,000 shares of stock of the Santa Rosa Mining Co. at P0.067357 per share, or a total of P1,347.14, to be delivered and paid for on or about June 16, 1937 (exhibit B). Four days thereafter, that is to say, on March 22, the same parties entered into a third contract of purchase and sale of 5,000 shares of stock of the Masbate Consolidated Mining Co. at P0.378036 per share or a total of P1,890.18, to be delivered and paid for on or about June 20, 1937 (exhibit C). Upon the signing of each of said contracts the buyer paid to the seller 25% of the agreed purchase price—P504.80, P336.78, and P472.54, respectively— as consideration for the agreement and with fche express stipulation that "upon final accomplishment of the above undertaking (the same) shall be considered and applied as part of the purchase price \* \* \* ; " but should the buyer fail to pay to the seller the purchase price on or before the date agreed upon, said sum shall be forfeited to the seller as liquidated damages.

On June 14,1937, the term for the fulfilment of each of the three contracts was extended to July 14, 1937, by agreement of both parties, the buyer agreeing to pay 12% annual interest on the total balance of the purchase price (exhibit D). On the 14th day of each month thereafter up to December 14, 1937, a similar renewal agreement was signed by both parties. The last agreement, couched in similar terms as the previous ones, reads as follows:

"Manila, 14 de Diciembre de 1937.

"Sr. B. M. Imperial  
Manila

"Muy Sr. nuestro:

"Su proposicion de que se le conceda prorroga hasta el 14 de Enero de 1938 por su contrato sobre 5000 acciones de Suyoc Consolidated, 20000 acciones de Sta. Rosa y 5000 acciones de Masbate Consolidated, no tenemos inconveniente de concederle dicha prorroga, pero Vd. pagara el 12% de interes anual sobre el saldo de su cuenta pendiente.

"Le rogamos se sirva firmar el duplicado de esta carta y devolvernoslo despues juntamente con la cantidad de

P39.42 por intereses vencidos hasta la fecha.

"Atentamente,

"INSULAR FINANCING & BUSINESS CORPORATION

Por (Fdo.) "R. Corpus  
Presidente

"Conforme:  
(Fdo.) B, M. IMPERIAL"

(Exhibit J.)

Thus the last extension of the term for the fulfilment of the three contracts expired on January 14, 1938. The said contracts were not fulfilled on or after the expiration of said date. On March 1, 1940, the seller instituted this action for specific performance with forfeiture and interest.

The trial court ordered the defendant to pay to the plaintiff the full amount of the purchase price agreed upon, with interest thereon at 12% per annum from the respective dates of the contracts exhibits A, B, and C to December 31, 1938, and 8 % per annum thereafter until paid; and declared forfeited in favor of the plaintiff the advance payments made by the defendant on the purchase price, aggregating P1,314. 12, as well as of the sum of P200 representing the dividends on the 5,000 shares of stock of the Suyoc Consolidated Mining Co., with costs against the defendant.

1. Under the first assignment of error appellant contends in substance that he should be relieved of all liability to appellee because the latter was negligent in not disposing of the shares of stock in question at the best prices obtainable on the stock exchange after the expiration of the last extension, by virtue of the stipulations contained in paragraphs 4 and 5 of each of the contracts, which read as follows:

"4. It is agreed that both the terms fixed for the accomplishment of the same and the consideration paid therefor are based on the conditions that within such term the value of the shares purchased as well as any of those given as security shall not suffer in the market a decline of 25% or more per share computed at the price above given. Should such a contingency arise, the Seller shall have the right to require the Buyer to make (take) delivery of the shares purchased and make payment within twenty-four hours of the full purchase price thereof at the price hereinabove agreed, unless the Buyer should pay to the Seller within said period as additional consideration or give additional security satisfactory to the seller, under the same conditions stipulated in paragraphs 2 and 3 hereof, a sum equal to the difference between P0.302877 per share and the market price thereof.

"5. Failure on the part of the Buyer to comply with the terms agreed upon in paragraph 4 hereof shall give the Seller the right to dispose of the shares purchased immediately at the prevailing market price on the Manila Stock Exchange, and if there is no Buyer at the said price, the Seller shall have the option to dispose of the shares at the best price obtainable on the date of sale, and the Buyer shall be responsible to the Seller for any loss sustained thereby by the latter, the shares given as security to be retained by the Seller to answer for such damages." (Exhibit A.) In this connection it was stipulated by the parties "that the prices in the Manila Stock Exchange for the shares of stock, subject matter of the contracts, \* \* \* are as set forth in Exhibit '1' hereto attached, for the period therein comprised." It appears from said exhibit that during the months of January, February, and March, 1938, the prices of the Suyoc Consolidated stock ranged from P0.15 to P0.225 per share; those of the Masbate Consolidated, from P0.145 to P0.245; and those of the Santa Rosa, from P0.023 to P0.041. Appellant contends that the contracts in question constituted what were called "margin transactions," with the appellee acting as stockbroker for the appellant; that it was appellee's duty as stockbroker to protect the interest of its client by acting promptly and selling the stocks when the margin was exhausted and when the

client failed to put up additional securities; and that had appellee sold the stocks in question at the highest price obtainable during the said period of three months, appellant's liability to appellee would have been reduced to only P662.38, after crediting him with the advance payments on the purchase price together with the P200 dividend on the Suyoc Consolidated stock.

There is no question but that appellee could have sold the shares of stock in question at any time after January 14, 1938, to protect its own interest; but in the absence of an express instruction or request from appellant to sell said shares of stock, appellee was not under any legal obligation to do so. It was appellant's privilege to gamble or speculate, as he apparently did by asking for extensions of time and refraining from giving orders to his broker to sell, in the hope that the prices would rise. To sustain his contention now would be to relieve him of the risk and consequences of his, own speculation and to saddle them on the appellee after the result was known to be unfavorable. Such contention finds no legal nor even moral justification and must be overruled.

2. Appellant's second assignment of error is directed against the forfeiture of the advance payment on the purchase price and of the dividend of P200. The stipulations of the contract between the parties on this point read as follows:

"2. As consideration for this agreement the Buyer, upon the signing hereof, pays unto the Seller for its use the sum of P504.80 which upon final accomplishment of the above undertaking shall be considered and applied as part of the purchase price of said 5000 shares of stock of the Suyoc Consolidated; but should the Buyer fail to pay to the Seller the purchase price on or before the 14th day of June, 1937, said sum of P504.80 shall be forfeited to the Seller as liquidation damages."

"6. Should any dividend be declared or any rights accrue with respect to the above-mentioned shares' of stock during the life of this contract they are to be credited to the Seller and will be paid to the Buyer when all the terms and conditions stipulated herein are complied with, otherwise, the dividends and/or rights will be forfeited to the Seller." (Exhibit A.)

The advance payment thus made was, in our opinion, in the nature of a pledge money as contemplated in article 1454 of the Civil Code, which reads as follows :

"Art. 1454.—When earnest money or a pledge has been given to bind the contract of purchase and sale, the contract may be rescinded if the vendee should be willing to forfeit the earnest money or pledge or the vendor to return double the amount."

The clear implication of the agreement is that if the contract of purchase and sale be consummated by the buyer's taking delivery of the stocks and paying the price agreed upon, the advance payment would be credited to him by the seller, but that if he should fail to do so at the time stipulated, the seller could keep the advance payment and refuse to go on with the sale. It certainly does not mean that the seller was entitled to both forfeiture and specific performance. Under article 1454 either party was entitled to rescission—the buyer by forfeiting the pledge, or the seller by returning double the amount. Neither party, however, chose to rescind. Once the performance is demanded by the seller and accomplished by the buyer, whether judicially or extra-judicially, the latter is entitled to be credited with his advance payment under the first clause of paragraph 2 above quoted. It was not stipulated that in case of suit the advance payment would accrue to the seller as attorney's fees or liquidated damages.

As a matter of fact, it appears from the subsequent extension agreements that the plaintiff had actually credited the advance payments in favor of the defendant. It will be recalled from exhibit J hereinbefore transcribed (which is couched in similar terms as exhibits I, H, and G) that in consideration of plaintiff's extending the terms of the contracts to January 14, 1938, the defendant agreed to pay to the plaintiff 12% annual interest on the balance of the purchase price. The total balance of the purchase price after deducting the advances was P3,942.38. Now, in exhibits G, H, I, and J the monthly interest which plaintiff charged to the defendant was P39.42, which is exactly

1% a month on the balance of P3,942.38.

Thus, independently of our interpretation of paragraph 2 of each of the contracts, the plaintiff is estopped by exhibits G to J from claiming forfeiture. With regard to the dividend, paragraph 6 is similar to paragraph 2 of the contract and must be given the same interpretation. Hence appellant's second assignment of error must be sustained.

3. Appellant's third and last contention is that the trial court erred in allowing interest at 12% per annum up to December 31, 1938, and 8% per annum thereafter until the amount is fully paid.

There is no stipulation as to interest in the contracts exhibits A, B, and C. The only stipulation as to interest is found in the agreements extending the term of said contracts from month to month up to January 14, 1938, as a consideration for which extension the defendant agreed to pay 12% per annum on the balance, or P39.42 a month. In the absence of any proof to the contrary, we deduce from exhibits G, H, I, and J that said interest was paid up to December 14, 1937; for the last paragraph of each of said exhibits says: "Le rogamos se sirva firmar el duplicado de esta carta y devolvernoslo despues juntamente con la cantidad de P39.42 por intereses vencidos hasta la fecha." Each of said exhibits bears the signature of the defendant after the word "Conforme." In the absence of proof to the contrary, it must be presumed that the plaintiff received the P39.42 mentioned in each of said exhibits as the consideration for the extension of the term of the contracts. We find no basis for the judgment for interest at 12% per annum from the dates of the contracts exhibits A, B, and C to December 31, 1938, and 8 % per annum thereafter. The interest stipulate at 12% per annum having been paid up to December 14, 1937, the only agreed interest owing from defendant to plaintiff is the sum of P39.42 corresponding to the period from December 15, 1937, to January 14, 1938, in accordance with exhibit J. Aside from that, the plaintiff is not entitled to any other interest than the legal rate from the date of the filing of the complaint.

It results from the foregoing considerations that the defendant is obligated to take delivery of and pay for the shares of stock mentioned in the complaint at the agreed prices aggregating P5,256.50, from which must be deducted the advance payments amounting to P1,314.12 and the dividend of P200, or a total of P1,514.12, leaving a balance of P3,742.38 to which must be added the accrued interest of P39.42 under exhibit J, resulting in the net balance due from defendant to plaintiff of P3,781.80.

Wherefore, the judgment appealed from is hereby modified by ordering the defendant to take delivery from the plaintiff of 5,000 shares of stock of the Suyoc Consolidated Mining Co., 20,000 shares of stock of the Santa Rosa Mining Co., and 5,000 shares of stock of the Masbate Consolidated Mining Co., and upon such delivery to pay to said plaintiff the sum of P3,781.80, with interest thereon at 6 c/c per annum from the date of the filing of the complaint until the date of payment. No finding as to costs in this instance.

Yulo, C. J., Moran, Paras, and Hontiveros,[1] JJ., concur.

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[1] Justice Hontiveros of the Court of Appeals took part in this case by special designation.

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