

THE KELLY SPRINGFIELD ROAD ROLLER COMPANY, PLAINTIFF AND APPELLEE, VS. CRISPULO SIDECO, DEFENDANT AND APPELLANT.

G.R. No. 5123. August 03, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Plaintiff and defendant made a contract by virtue of which the former was to deliver to the latter some agricultural machinery for which the defendant was to pay him P7,430 in two installments of P3,715 each, the first on or before September 30, 1906, and the second on the same date of 1907, with interest at 8 per cent payable at the same time as the principal. The defendant paid the first installment, but not the second; hence the complaint, which contains several demands: First, payment of the second installment, or P3,715, with interest thereon at 8 per cent from May 7, 1906; second, payment of P300 as attorneys' fees; third, payment of P200 "for freight and transportation of the said machinery from San Isidro, Nueva Ecija, to Manila;" fourth, payment of P20 a day "as rent for each and every day the said machinery is detained and until the same be delivered to the plaintiff;" fifth, the return of all the machinery and the payment of damages if the said machinery shall have been damaged; and sixth, payment of the costs.

The parties agreed in the contract that the same should be called one of lease; but the defendant testified at the trial that the contract was one of purchase and sale, and that it was called a lease in order that the machinery could not be disposed of until its sale price should have been entirely paid.

The Court of First Instance of the city of Manila, which tried this case, decided, in accordance with the testimony of the defendant, that the contract was one of sale. The plaintiff not having appealed from the judgment, this part thereof is now final, and it is established as a conclusion that the contract entered into by the parties was not one of lease.

The agreement not being one of lease, it is unnecessary to consider paragraphs 3, 4, and 5 of the complaint which are based on the supposition that it is a contract of lease. Moreover, the lower court having disregarded all these petitions, likewise that of paragraph 6 relative to the costs, or not having granted them in the judgment rendered, and the plaintiff company not having appealed, it is concluded that it does not insist upon them.

Only the two findings of the judgment of the lower court relating to the first two paragraphs of the complaint are the subject of this appeal, and whereby the defendant is adjudged to pay the second installment of the debt, that is, P3,715, with interest at 8 per cent per annum from the 7th of May, 1906, and P300 as attorneys' fees.

The defendant appealed from the judgment, with a right to a review of the evidence, and in his brief filed in this court adduced two classes of errors, one with regard to the form and the other with respect to the substance.

As to the form, for having overruled the exception or defense of *lis pendens* (second assignment of error), and also the counterclaim, the evidence offered relating to the facts of the counterclaim, and the remedy asked for in

the cross complaint, to wit, the rescission of the contract (third and fifth assignments of error).

And as to the substance: for not having found that the plaintiff also failed to, comply with the contract (first assignment of error), and for having adjudged the appellant to pay the costs, including the P300 for plaintiff's attorney's fees (fourth assignment of error).

With respect to the defense of *lis pendens*, these facts are alleged: First, that on May 10, 1907, the defendant brought suit against the plaintiff in the Court of First Instance of Nueva Ecija, for the purpose of obtaining the rescission of this same contract, on the ground of plaintiff's noncompliance therewith; and second, that the plaintiff did not file the present suit against the defendant until October, 1907. By such allegations the defendant endeavored to weaken plaintiff's cause of action and prayed for a dismissal of the complaint; but the court held that neither the answer nor the evidence appeared to be sufficient to establish this defense and that, after all, it was not claimed that the suit was prosecuted to final judgment and, consequently, it could not serve as a basis for the defense of *res adjudicata*.

In fact, the only proof adduced with respect to this alleged suit is that a copy of the complaint was served on the attorney for the defendant (now the plaintiff). We deem the reasons set forth by the lower court for disallowing such a defense to be in accord with the law; hence, the second assignment of error can not be sustained.

As to the third and fifth assignments, the appellant alleged, in the first instance, as the first cause of action in support of the counterclaim, that from the time of the execution of the contract to the date of his said counterclaim the mold-board plow could not be operated on the land; that it broke twice, and that, because of failure to operate, 20 hectares of rice land were left unsown and 50 were sown late. As a second cause of action, he further alleged that the plaintiff company did not deliver the thresher within the time stipulated, but some time thereafter, and that for this delay he was unable to thresh 3,000 cavanes of rice, wherefore he asked damages to the amount of 9,000 and some odd pesos, and in his cross complaint he asked for the rescission of the contract, with respect to the mold-board plow. He now alleges that the lower court erred in denying the counterclaim and not permitting the introduction of evidence relative to the facts alleged therein, and in denying the rescission. The appellant in his brief on the appeal recapitulates his contention in the matter and states that the appellee is not entitled to ask payment of the second installment since it failed to comply with the agreement to deliver the machinery to appellant's satisfaction, that is, after a trial, which should have been made immediately upon signing the contract, on May 7, 1906.

If the contract were a conditional one, dependent on a condition either precedent or subsequent; or if it had been agreed that there should be a previous test or trial of the thing sold, it would then be pertinent to examine the evidence adduced bearing on such trial or test, and the proofs introduced to show the compliance or noncompliance with the condition stipulated; but the agreement is simple, unconditional and absolute. This contract, in the form of a lease between the plaintiff and the defendant, contains ten clauses: The first concerns the term of the contract, to run until September 30, 1907; the second provides for the payment of the rental in two installments, as aforesaid - the sole clause applicable to the present litigation; the third relates to the execution of two promissory notes as causes of action for the recovery of the two stipulated installments of rental; the fourth concerns the title of ownership, which is to be retained by the lessor until the lessee shall have paid the two stipulated installments; the fifth binds the lessor to execute in favor of the lessee a proper bill of sale, provided the latter should pay the two said installments of rental and all other amounts contracted the sixth provides that the lessee shall not transfer the leased machinery, and creates responsibility for any injury, loss or damage it may suffer, including such as arise from unforeseen casualty; the seventh treats of the termination of the contract in the case where the lessee should fail to pay either of the installments aforesaid, and of the liability in the matter of costs and others; the eighth stipulates that the machinery shall be returned in good condition, in case of

nonpayment; the ninth refers to a security of 2,000 cavanese of unhulled rice which the lessee must deposit in favor of the lessor; and the tenth clause relates to the expenses of freight and transportation, all of which are chargeable to the lessee. None of these clauses stipulates a previous test or trial, nor that the perfection and validity of the contract shall be subject to any act whatever on the part of the lessor. At the end of the instrument it is recorded that immediately after both contracting parties had signed the same they agreed that the three-gang disc plow should be substituted for a mold-board plow, both parties signing this addition to the contract (pp. 2 to 7 of the record).

It is therefore unnecessary to examine and pass upon the evidence introduced at the trial, for whatever it be, it can in nowise influence the validity of a simple contract, accepted and signed by both parties, of whom the one who might consider himself as not yet obligated signed, on the same contract date, the two promissory notes agreed upon, which in themselves alone constitute a right of action sufficient to require payment, without need of any other evidence, for the reason that the exhibition of the contract referred to constitutes proof of the basis of the debt which supports the promissory notes. So much with respect to the first basis of the cross complaint.

We hold that the disallowance of such a cause of action on the part of the defendant and of the evidence which he endeavored to introduce in connection therewith, was in accordance with the law.

With regard to the second ground of the cross complaint, that is, the delay in the delivery of the thresher, inasmuch as, according to the defendant's statement, it was not delivered on the day agreed upon, and 3,000 cavanese of unhulled rice were not threshed in consequence, first, we find in the contract no time whatever stipulated for such delivery, and then the following testimony: The defendant himself testified that he had about 4,000 cavanese of palay or unhulled rice and that he threshed all this rice when the thresher arrived. "Many of my neighbors there who had rice and wanted to thresh it asked me to rent them the thresher as they wanted to do the work in a hurry in order to take advantage of the high price, but were unable to do so as the thresher was not there."

The witness H. L. Hunt, for the plaintiff, testified that the defendant paid the first installment of his debt, to wit, P3,715, P3,000 in Philippine currency on January 7, 1907, and \$400.54 in United States currency on February 11th of the same year.

Another witness, John V. Pereyra, testified:

"The contract was executed, and after it was signed in the office of the attorney, Mr. Hixson, Mr. Sideco, Mr. Peveral, myself, and Mr. Webb went to our warehouse to see the engine, and during the conversation Mr. Sideco said he did not want the thresher shipped until the threshing season commenced, and he would advise the company in due course when he wanted it shipped.

"Q. Do you know what finally became of that threshing machine? - A. It was shipped to Mr. Sideco.

"Q. Now state what actually occurred between Mr. Sideco and Mr. Farmer at the time of the falling due of the first installment, that is to say, the promissory note for P3,715, which fell due on September 30, 1906. - A. It was long after the note was due that Mr. Sideco came to the office one morning with some money wrapped up in a handkerchief which he claimed contained P1,000. He offered to Mr. Farmer to pay that amount on account of his note, but stated that he wanted the threshing machine shipped and that he would make settlement of the balance of the note at some later date, to which Mr. Farmer replied that he could not do it and insisted on having full settlement of the amount due on the note."

Witness, continuing, said that during the day Mr. Sideco returned with a contract drawn up by an attorney and offered to pay Mr. Farmer the amount of his note, provided the latter would sign that contract; that Mr. Farmer refused, on account of the conditions that it contained, which Mr. Farmer said were absurd. One of the conditions

was that, if at the second trial of the plow the machinery was not satisfactory, it then would be the duty of the company to take back this machinery and return the money to Mr. Sideco. When asked on cross-examination whether before the first note became due Mr. Sideco had not been in the office with the amount thereof and offered to pay it provided they would assure him that the machinery would be satisfactory, he replied in the negative.

If on such testimony the lower court disallowed the second basis of the counterclaim, this court sees no reason to consider such a finding erroneous, supported as it is by a preponderance of evidence.

The dismissal of the cross complaint whereby the rescission of the contract is asked is also in accordance with the law. Contrary to appellant's contention, neither article 328 of the Code of Commerce nor article 1453 of the Civil Code has been violated, if, as found from the evidence adduced, it is not a question of goods which were not seen nor could be classified under a quality well known in commerce, in which case it is to be understood, according to the first of the said articles, that the purchaser reserves the privilege of examination and the right to rescind the contract if the goods do not suit him; nor of a sale made subject to approval or trial of the thing sold, nor of a sale of things which it is usual to test or try before being received, which sales, according to the second article cited, are always to be considered as made under a condition precedent.

For these very reasons, the first assignment of error should not be sustained, for the appellee company is not guilty of such noncompliance with the contract that the appellant may excuse himself for his arrears and failure to pay the second installment of the debt. As a special defense, the appellant stated in his answer to the complaint that the appellee had not complied with the stipulations of the contract, inasmuch as it had delayed in the delivery of the machinery and as, moreover, one of the machines, the mold-board plow, had been delivered broken and was then still in that condition.

The record shows, by the testimony of the appellee company itself and of its witness Benito Natividad, that the motor and the plow were in operation on the 18th or 19th of May, 1906, some ten days after the execution of the contract; and that with respect to the thresher, if it was not delivered at the same time as the motor and the plow, it was for the reasons aforesaid, according to the evidence.

The trial court found that there was no testimony whatever which tended to show that the plow was broken at the time of its delivery to the defendant; on the contrary, two witnesses testified that it was in good condition when it was shipped; and with regard to the alleged fact that it could not be used at the time it was tested, the lower court formed its opinion upon the facts that occurred, according to the evidence adduced. Against this opinion so formed, no violation of law or of doctrine is argued, nor are any grounds alleged whereby this court may set aside the preponderance of the evidence as found in the judgment rendered by the lower court.

It is claimed, from the foregoing allegations, that the machinery constantly showed defects and that it was unserviceable; but the law provides that the purchaser who has not made any claim based on the inherent defects in the article sold, within thirty days following its delivery, shall lose all rights of action against the vendor. (Art. 342, Code of Commerce.)

The first assignment of error has, therefore, not been proved; and with regard to the fourth, if the appellee defaulted in the payment of the debt, and it was stipulated in the seventh clause of the contract that, in case of the institution of judicial proceedings, the costs and attorney's fees shall be paid by the lessee or purchaser, the finding that the defendant must pay P300 as attorney's fees, an amount not impugned, as shown by the judgment, is in accordance with the law.

The judgment appealed from provides that "It is therefore found and adjudged that the plaintiff have and recover

from the defendant the said sum of P3,715, with interest thereon at 8 per cent per annum from September 30, 1907, and attorney's fees in the sum of P300, with interest at 6 per cent per annum from October 1, 1907, together with the costs, and that, upon defendant so paying said amounts, the title to said machinery shall be decreed in him, but that he take nothing by his counterclaim and cross complaint."

The judgment appealed from is affirmed, with the costs in this instance against the appellant.

Torres, Mapa, and Johnson, JJ., concur.

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