

SUGA SOTTO YUVIENCO, BRITANIA SOTTO, AND MARCELINO SOTTO, PETITIONERS, VS. HON. AUXENCIO C. DACUYCUI, JUDGE OF THE CFI OF LEYTE, DELY RODRIGUEZ, FELIPE ANG CRUZ, CONSTANCIA NOGA...

G.R. No. 55048. May 27, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition to declare void for being in grave abuse of discretion the orders of respondent judge dated November 2, 1978 and August 29, 1980, in Civil Case No. 5759 of the Court of First Instance of Leyte, which denied the motion filed by petitioners to dismiss the complaint of private respondents for specific performance of an alleged agreement of sale of real property, the said motion being based on the grounds that the respondents' complaint states no cause of action and/or that the claim alleged therein is unenforceable under the Statute of frauds.

Finding initially prima facie merit in the petition, We required respondents to answer and We issued temporary restraining order on October 7, 1980 enjoining the execution of the questioned orders.

In essence, the theory of petitioners is that while it is true that they did express willingness to sell to private respondents the subject property for P6,500,000 provided the latter made known their own decision to buy it not later than July 31, 1978, the respondents' reply that they were agreeable was not absolute, so much so that when ultimately petitioners' representative went to Cebu City with a prepared and duly signed contract for the purpose of perfecting and consummating the transaction, respondents and said representative found variance between the terms of payment stipulated in the prepared document and what respondents had in mind, hence the bankdraft which respondents were delivering to petitioners' representative was returned and the document remained unsigned by respondents. Hence the action below for specific performance.

To be more specific, the parties do not dispute that on July 12, 1978, petitioners, thru a certain Pedro C. Gamboa, sent to respondents the following letter:

"Mr. Yao King Ong

Life Bakery

Tacloban City

Dear Mr. Yao:

This refers to the Sotto property (land and building) situated at Tacloban City. My clients are willing to sell them at a total price of P6,500,000.00.

While there are other parties who are interested to buy the property, I am giving you and the other occupants the preference, but such priority has to be exercised within a given number of days as I do not want to lose the

opportunity if you are not interested. I am therefore giving you and the rest of the occupants until July 31, 1978 within which to decide whether you want to buy the property. If I do not hear from you by July 31, I will offer or close the deal with the other interested buyer.

Thank you so much for the hospitality extended to me during my last trip to Tacloban, and I hope to hear from you very soon.

Very truly yours,

Pedro C. Gamboa"[1]

(Page 9, Record.)

Reacting to the foregoing letter, the following telegram was sent by "Yao King Ong & tenants" to Atty. Pedro Gamboa in Cebu City:

"Atty. Pedro Gamboa

Room 314, Maria Cristina Bldg.

Osmeña Boulevard, Cebu City

Reurlet dated July 12 inform Dra. Yuvienco we agree to buy property proceed Tacloban to negotiate details

Yao King Ong & tenants"

(Page 10, Record.)

Likewise uncontroverted is the fact that under date of July 27, 1978, Atty. Gamboa wired Yao King Ong in Tacloban City as follows:

"NLT

YAO KING ONG

LIFE BAKERY

TACLOBAN CITY

PROPOSAL ACCEPTED ARRIVING TUESDAY MORNING WITH CONTRACT PREPARE PAYMENT
BANK DRAFT

ATTY GAMBOA"

(Page 10, id.)

Now, Paragraph 10 of the complaint below of respondents alleges:

"10. That on August 1, 1978, defendant Pedro Gamboa arrived Tacloban City bringing with him the prepared contract to purchase and to sell referred to in his telegram dated July 27, 1978 (Annex 'D' hereof), for the purpose of closing the transactions referred to in paragraphs 8 and 9 hereof, however, to the complete surprise of plaintiffs, the defendant (except def. Tacloban City Ice Plant, Inc.) without giving notice to plaintiffs, changed the mode of payment with respect to the balance of P4,500,000.00 by imposing upon plain-tiffs to pay same amount within thirty (30) days from execution of the contract instead of the former term of ninety (90) days as stated in paragraph 8 hereof." (Pp. 10-11, Record.)

Additionally and to reenforce their position, respondents alleged further in their complaint:

"8. That on July 12, 1978, defendants (except defendant Tacloban City Ice Plant, Inc.) finally sent a telegram

letter to plaintiffs-tenants, through same Mr. Yao King Ong, notifying them that defendants are willing to sell the properties (lands and building) at a total price of P6,500,000.00, which herein plaintiffs-tenants have agreed to buy the said pro-perties for said price; a copy of which letter is hereto attached as integral part hereof and marked as Annex 'C', and plaintiffs accepted the offer through a telegram dated July 25, 1978, sent to defendants (through defendant Pedro C. Gamboa), a copy of which telegram is hereto attached as integral part hereof and marked as Annex 'C-1' and as a consequence hereof, plaintiffs (except plaintiff Tacloban Merchants' Realty Development Corporation) and defendants (except defendant Tacloban City Ice Plant, Inc.) agreed to the following terms and conditions respecting the pay-ment of said purchase price, to wit:

P2,000,000.00 to be paid in full on the date of the execution of the contract; and

the balance of P4,500,000.00 shall be fully paid within ninety (90) days thereafter;

"9. That on July 27, 1978, defendants sent a telegram to plaintiff-tenants, through the latter's representative Mr. Yao King Ong, reiterating their acceptance to the agreement referred to in the next preceding paragraph hereof and notifying plaintiffs--tenants to prepare payment by bank drafts; which the latter readily complied with; a copy of which telegram is hereto attached as integral part hereof and marked as Annex 'D';" (pp. 49-50, Record.)

It was on the basis of the foregoing facts and allegations that herein petitioners filed their motion to dismiss alleging as main grounds:

"I. That plaintiff, TACLOBAN MERCHANTS' REALTY DEVELOPMENT CORPORATION, amended complaint, does not state a cause of action and the claim on which the action is founded is likewise unenforceable under the provisions of the Statute of Frauds.

II. That as to the rest of the plaintiffs, their amended complaint does not state a cause of action and the claim on which the action is founded is likewise unenforceable under the provisions of the Statute of Frauds." (Page 81, Record.)

With commendable knowledgeability and industry, respondent judge ruled negatively on the motion to dismiss, discoursing at length on the personality as real party-in-interest of respondent corporation, while passing lightly, however, on what to Us are the more substantial and decisive issues of whether or not the complaint sufficiently states a cause of action and whether or not the claim alleged therein is unenforceable under the Statute of Frauds, by holding thus:

"The second ground of the motion to dismiss is that plaintiffs' claim is unenforceable under the Statute of Frauds. The defendants argued against this motion and asked the court to reject the objection for the simple reason that the contract of sale sued upon in this case is supported by letters and telegrams annexed to the complaint and other papers which will be presented during the trial. This contention of the defendants is not well taken. The plaintiffs having alleged that the contract is backed up by letters and telegrams, and the same being a sufficient memo-randum, the complaint states a cause of action and they should be given a day in court and allowed to substantiate their allegations (Paredes vs. Espino, 22 SCRA 1000).

To take a contract for the sale of land out of the Statute of Frauds a mere note or memoran-dum in writing subscribed by the vendor or his agent containing the names of the parties and a summary statement of the terms of the sale either expressly or by reference to something else is all that is required. The statute does not require a formal contract drawn up with technical exact-ness for the language of Par. 2 of Art. 1403 of the Philippine Civil Code is 'x x x x x x x x an agree-ment x x x x or some note or memorandum thereof,' thus recognizing a difference between the contract itself and the written evidence which the statute requires (Berg vs. Magdalena Estate, Inc., 92 Phil. 110; III Moran, Comments on the Rules of Court, 1952 ed. p. 187). See also Bautista's Monograph on the Statute of Frauds in 21 SCRA p. 250." (Pp. 110-111, Record)

Our first task then is to dwell on the issue of whether or not in the light of the foregoing circumstances, the complaint in contro-versy states sufficiently a cause of action. This issue necessarily entails the determination of whether or not the plaintiffs have alleged facts adequately showing the existence of a perfected contract of sale between herein petitioners and the occupants represented by respondent Yao King Ong.

In this respect, the governing legal provision is, of course, Article 1319 of the Civil Code which provides:

"ART. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made."

In the instant case, We can lay aside, for the moment, peti-tioners' contention that the letter of July 12, 1978 of Atty. Pedro C. Gamboa to respondents Yao King Ong and his companions constitute an offer that is "certain", although the petitioners claim that it was a mere expression of willingness to sell the subject property and not a direct offer of sale to said respondents. What We consider as more important and truly decisive is what is the correct juridical significance of the telegram of respondents instructing Atty. Gamboa to "proceed to Tacloban to negotiate details." We underline the word "negotiate" advisedly, because to Our mind it is the key word that negates and makes it legally impossible for Us to hold that respondents' acceptance of petitioners' offer, assuming that it was a "certain" offer indeed, was the "absolute" one that Article 1319 above-quoted requires.

Dictionally, the implication of "to negotiate" is practically the opposite of the idea that an agreement has been reached. Webster's Third International Dictionary, Vol. II (G. & C. Merriam Co., 1971 Philippine copyright) gives the meaning of negotiate as "to commu-nicate or confer with another so as to arrive at the settlement of some matter; meet with another so as to arrive through discussion at some kind of agreement or compromise about something; --- to arrange for or bring about through conference or discussion; work at or arrive at or settle upon by meetings and agreements or compromises --". Importantly, it must be borne in mind that Yao King Ong's telegram simply says "we agree to buy property". It does not necessarily connote acceptance of the price but instead suggests that the details were to be subject of negotiation.

Respondents now maintain that what the telegram refers to as "details" to be "negotiated" are mere "accidental elements", not the essential elements of the contract. They even invite attention to the fact that they have alleged in their complaint (Par. 6) that it was as early as "in the month of October, 1977 (that) negotiations between plaintiffs and defendants for the purchase and sale (in question) ----- were made, thus resulting to offers of same defendants and counter-offer of plaintiffs". But to Our mind such alleged facts pre-cisely indicate the failure of any meeting of the minds of the parties, and it is only from the letter and telegrams above-quoted that one can determine whether or not such meeting of the minds did materialize. As We see it, what such allegations bring out in bold relief is that it was precisely because of their past failure to arrive at an agree-ment that petitioners had to put an end to the uncertainty by writing the letter of July 12, 1978. On the other hand, that respondents were all the time agreeable to buy the property may be conceded, but what impresses Us is that instead of "absolutely" accepting the "certain" offer - if there was one - of the petitioners, they still insisted on further negotiation of details. For anyone to read in the telegram of Yao that they accepted the price of P6,500,000.00 would be an inference not necessarily warranted by the words "we agree to buy" and "proceed Tacloban to negotiate details". If indeed the details being left by them for further negotiations were merely accidental or formal ones, what need was there to say in the telegram that they had still "to negotiate (such) details", when, being unessential per their contention, they could have been just easily clarified and agreed upon when Atty. Gamboa would reach Tacloban?

Anent the telegram of Atty. Gamboa of July 27, 1978, also quoted earlier above, We gather that it was in answer to the telegram of Yao. Considering that Yao was in Tacloban then while Atty. Gamboa was in Cebu, it is difficult to surmise that there was any communication of any kind between them during the intervening period, and none such is alleged anyway by respondents. Accordingly, the claim of respondents in paragraph 8 of their complaint below that there was an agreement of a down payment of P2 M, with the balance of P4.5M to be paid within 90 days afterwards is rather improbable to imagine to have actually happened.

Respondents maintain that under existing jurisprudence relative to a motion to dismiss on the ground of failure of the complaint to state a cause of action, the movant-defendant is deemed to admit the factual allegations of the complaint, hence, petitioners cannot deny, for purposes of their motion, that such terms of payment had indeed been agreed upon. While such is the rule, those allegations do not detract from the fact that under Article 1319 of the Civil Code above-quoted, and judged in the light of the telegram-reply of Yao to Atty. Gamboa's letter of July 12, 1978, there was not an absolute acceptance, hence from that point of view, petitioners' contention that the complaint of respondents state no cause of action is correct.

Nonetheless, the alleged subsequent agreement about the P2 M down and P4.5 M in 90 days may at best be deemed as a distinct cause of action. And placed against the insistence of petitioners, as demonstrated in the two deeds of sale taken by Atty. Gamboa to Tacloban, Annexes 9 and 10 of the answer of herein respondents, that there was no agreement about 90 days, an issue of fact arose, which could warrant a trial in order for the trial court to determine whether or not there was such an agreement about the balance being payable in 90 days instead of the 30 days stipulated in Annexes 9 and 10 above-referred to. Our conclusion, therefore, is that although there was no perfected contract of sale in the light of the letter of Atty. Gamboa of July 12, 1978 and the letter-reply thereto of Yao; it being doubtful whether or not, under Article 1319 of the Civil Code, the said letter may be deemed as an offer to sell that is "certain", and more, the Yao telegram is far from being an "absolute" acceptance under said article, still there appears to be a cause of action alleged in Paragraphs 8 to 12 of the respondents' complaint, considering it is alleged therein that subsequent to the telegram of Yao, it was agreed that the petitioners would sell the property to respondents for P6.5 M, by paying P2 M down and the balance in 90 days and which agreement was allegedly violated when in the deeds prepared by Atty. Gamboa and taken to Tacloban, only 30 days were given to the respondents.

But the foregoing conclusion is not enough to carry the day for respondents. It only brings Us to the question of whether or not the claim for specific performance of respondents is enforceable under the Statute of Frauds. In this respect, We may view the situation at hand from two angles, namely, (1) that the allegations contained in paragraphs 8 to 12 of respondents' complaint should be taken together with the documents already aforementioned and (2) that the said allegations constitute a separate and distinct cause of action. We hold that either way We view the situation, the conclusion is inescapable that the claim of respondents that petitioners have unjustifiably refused to proceed with the sale to them of the property in question is unenforceable under the Statute of Frauds.

It is nowhere alleged in said paragraphs 8 to 12 of the complaint that there is any writing or memorandum, much less a duly signed agreement to the effect that the price of P6,500,000 fixed by petitioners for the real property herein involved was agreed to be paid not in cash but in installments as alleged by respondents. The only documented indication of the non-wholly-cash payment extant in the record is that stipulated in Annexes 9 and 10 above-referred to, the deeds already signed by the petitioners and taken to Tacloban by Atty. Gamboa for the signatures of the respondents. In other words, the 90-day term for the balance of P4.5 M insisted upon by respondents does not appear in any note, writing or memorandum signed by either the petitioners or any of them, not even by Atty. Gamboa. Hence, looking at the pose of respondents that there was a perfected agreement of purchase and sale between them and petitioners under which they would pay in installments of P2 M down and

P4.5 M within ninety (90) days afterwards, it is evident that such oral contract involving the "sale of real property" comes squarely under the Statute of Frauds. (Article 1403, No. 2(e), Civil Code.)

On the other score of considering the supposed agreement of paying installments as partly supported by the letter and telegrams earlier quoted herein, His Honor declared with well studied ratioci-nation, albeit legally inaccurate, that:

"The next issue relate to the State of Frauds. It is contended that plaintiffs' action for specific performance to compel the defendants to execute a good and sufficient conveyance of the property in question (Sotto land and building) is unenforceable because there is no other note, memorandum or writing except annexes 'C', 'C-1' and 'D', which by themselves did not give birth to a contract to sell. The argument is not well founded. The rules of pleading limit the statement of the cause of action only to such operative facts as give rise to the right of action of the plaintiff to obtain relief against the wrongdoer. The details of probative matter or particulars of evidence, statements of law, inferences and arguments need not be stated. Thus, Sec. 1 of Rule 8 provides that 'every pleading shall contain in a methodical and logical form, a plain concise and direct statement of the ultimate facts on which the party plead-ing relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.' Exhibits need not be attached. The contract of sale sued upon in this case is supported by letters and telegrams annexed to the complaint and plaintiffs have announced that they will present additional evi-dences during the trial to prove their cause of action. The plaintiffs having alleged that the contract is backed up by letters and telegrams, and the same being sufficient memorandum, the complaint states a cause of action and they should be given their day in court and allowed to substantiate their allegations (Paredes vs. Espino, 22 SCRA 1000)." (Pp. 165-166, Record.)

The foregoing disquisition of respondent judge misses at least two (2) juridical substantive aspects of the Statute of Frauds insofar as sale of real property is concerned. First, His Honor assumed that the requirement of perfection of such kind of contract under Article 1475 of the Civil Code which provides that "(t)he contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price", the Statute would no longer apply as long as the total price or con-sideration is mentioned in some note or memorandum and there is no need of any indication of the manner in which such total price is to be paid.

We cannot agree. In the reality of the economic world and the exacting demands of business interests monetary in character, payment on installments or staggered payment of the total price is entirely a different matter from cash payment, considering the unpredictable trends in the sudden fluctuation of the rate of interest. In other words, it is indisputable that the value of money varies from day to day, hence the indispensability of providing in any sale of the terms of payment when not expressly or impliedly intended to be in cash.

Thus, We hold that in any sale of real property on installments, the Statute of Frauds read together with the perfection requirements of Article 1475 of the Civil Code must be understood and applied in the sense that the idea of payment on installments must be in the requisite of a note or memorandum therein contemplated. Stated otherwise, the "essential elements" mentioned in the case of Paredes vs. Espino, 22 SCRA 1000, relied upon by respondent judge must be deemed to include the requirement just discussed when it comes to installment sales. There is nothing in the monograph re- the Statute of Frauds appearing in 21 SCRA 250 also cited by His Honor indicative of any contrary view to this ruling of Ours, for the essence and thrust of the said monograph refers only to the form of the note or memorandum which would comply with the Statute, and no doubt, while such note or memorandum need not be in one single document or writing and it can be in just sufficiently implicit tenor, imperatively, the separate notes must, when put together, contain all the requisites of a perfected contract of sale. To put it the other way, under the Statute of Frauds, the contents of the note or memorandum, whether in one writing or in separate ones merely indicative for an adequate understanding of all the essential elements of the

entire agreement, may be said to be the contract itself, except as to the form.

Secondly, We are of the considered opinion that under the rules on proper pleading, the ruling of the trial court that, even if the allegation of the existence of a sale of real property in a complaint is challenged as barred from enforceability by the Statute of Frauds, the plaintiff may simply say there are documents, notes or memoranda without either quoting them in or annexing them to the complaint, as if holding an ace in the sleeves is not correct. To go directly to the point, for Us to sanction such a procedure is to tolerate and even encourage undue delay in litigation, for the simple reason that to await the stage of trial for the showing or presentation of the requisite documentary proof when it already exists and is asked to be produced by the adverse party would amount to unnecessarily postponing, with the concomitant waste of time and the prolongation of the proceedings, something that can immediately be evidenced and thereby determinable with decisiveness and pre-cision by the court without further delay.

In this connection, Moran observes that unlike when the ground of dismissal alleged is failure of the complaint to state a cause of action, a motion to dismiss invoking the Statute of Frauds may be filed even if the absence of compliance does not appear on the face of the complaint. Such absence may be the subject of proof in the motion stage of the proceedings. (Moran, Comment on the Rules of Court, Vol. 1, p. 494, 1979 ed.) It follows then that when such a motion is filed and all the documents available to movant are before the court, and they are insufficient to comply with the Statute, it becomes incumbent upon the plaintiff, for the reasons of policy We have just indicated regarding speedy administration of justice, to bring out what note or memorandum still exists in his possession in order to enable the court to expeditiously determine then and there the need for further proceedings. In other words, it would be inimical to the public interests in speedy justice for plaintiff to play hide and seek at his own convenience, particularly, when, as is quite apparent as in the instant case that chances are that there are no more writings, notes or memoranda of the installment agreement alleged by respondents. We cannot divine any reason why any such document would be withheld if they existed, except the unpermissible desire of the respondents to force the petitioners to undergo the ordeals, time, effort and expenses of a futile trial.

In the foregoing premises, We find no alternative than to render judgment in favor of petitioners in this certiorari and prohibition case. If at all, appeal could be available if the petitioners subjected themselves to the trial ruled to be held by the trial court. We foresee even at this point, on the basis of what is both extant and implicit in the records, that no different result can be probable. We consider it as sufficiently a grave abuse of discretion warranting the special civil actions herein the failure of respondent judge to properly apply the laws on perfection of contracts in relation to the Statute of Frauds and the pertinent rules of pleading and practice, as We have discussed above.

ACCORDINGLY, the impugned orders of respondent judge of November 2, 1978 and August 29, 1980 are hereby set aside and private respondents' amended complaint, Annex A of the petition, is hereby ordered dismissed and the restraining order heretofore issued by this Court on October 7, 1980 is declared permanent.

Costs against respondents.

Guerrero*, Abad Santos, and De Castro, JJ., concur.

Aquino, J., concurs in the result. Private respondents cannot prove any perfected sale which they can enforce.

Concepcion, Jr., J., on official leave of absence.

[1] Yao King Ong was recognized as acting not only on his own behalf but also of his co-tenants. On the other hand, the authority of Pedro C. Gamboa to make this offer is not disputed, regardless of whether it was in writing or not.

At this point, it may be mentioned that among the plaintiffs in Civil Case No. 5759 is a corporation named Tacloban Merchants Realty Development Corporation which registered its articles of incorporation with the Securities and Exchange Commission on August 8, 1978 and secured the issuance of the corresponding certificate on August 9, 1978. It appears that said corporation was purportedly formed in order to carry out the intent of the occupants of petitioners' property in question, albeit there are stockholders who are not occupants and vice-versa. The personality as a real party-in-interest of this corporation to be plaintiff is among the issues passed upon by His Honor. Considering the ultimate manner We view this controversy, We believe it is not essential for the final resolution thereof to deal with that matter here.

* Member of the First Division, was designated to sit in the Second Division.

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