

JOSE FLORENDO, PLAINTIFF AND APPELLEE, VS. EUSTAQUIO P. FOZ, DEFENDANT AND APPELLANT.

G.R. No. 6565. October 24, 1911

Ponente: ARELLANO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-6565/>

ARELLANO, C.J.:

On May 11, 1909, Eustaquio P. Foz executed in Manila a contract, ratified before a notary, and substantially of the following purport:

"I, D. Eustaquio Foz * * *, in consideration of the sum of six thousand pesos (P6,000) Philippine currency, hereby sell, cede, and convey forever and perpetually to Sr. Jose Florendo, my house and camarin of strong materials, together with the lots on which they are erected, the boundaries of which are as follows: (and the boundaries are expressed).

"Of the six thousand pesos, I have already received from the said Sr. Jose Florendo, two thousand pesos (P2,000), and the said party shall pay me the remaining four thousand in Vigan when I go there at any time during this month or next month.

"In case of my being unable to go to Vigan, I authorize the said Jose Florendo to pay my debt to the church at that place, as well also (that is, I authorize him) to obtain the title papers of the house that is the subject matter of this sale, and the said Florendo shall send the remainder to me here in Manila,

"Record is also made in this instrument that the rents of the said properties may be collected by me only up to and including the month of June; after such period, I shall have no further right to said rents and Senor Florendo may then begin to collect them."

This contract was signed by the party who executed it, by his wife and two witnesses, and was, by the first mentioned, ratified before a notary.

Eustaquio Foz went to Vigan, and on June 23 of the same year, Jose Florendo, accompanied by a notary, tendered to the former the P4,000, the rest of the price of the sale; but Foz refused to receive them, saying that the true price of the sale, recorded in another instrument held by Florendo, was P10,000, and that on the second or third day after the first instrument had been executed, Florendo, while still in Manila, repudiated the contract. These facts were recorded by the notary in a notarial certificate. (Exhibit C, of the plaintiff.)

For the foregoing reasons, Florendo instituted the present suit against Foz, wherein he asked that the defendant be sentenced: (a) To comply with the contract of absolute purchase and sale, by delivering to the plaintiff the property sold; (b) to pay to the plaintiff the rents of the entire realty from July 1, 1909, until the judgment should be fulfilled, together with the legal interest on the amount of such rents, and that the court fix the sum which the defendant must pay for his use of a part of the property; (c) that, out of the P4,000 deposited by the plaintiff in the municipal treasury of Vigan, Ilocos Sur, payment be made to the Roman Catholic Apostolic Church, in the said pueblo of Vigan, "Obispado de Nueva Segovia," of the mortgage credit due that it holds against the defendant, and that the remainder left after paying all the debts found to be owing by the judgment to be rendered, be

delivered, to the said defendant; and, (d) to pay the costs of the trial.

The defendant, in his answer to the complaint, alleged that it was false that he had sold his property for the price of P6,000; that, if he signed the deed of sale, he was deceived in so doing, as he had heard, or believed that he had heard, when it was previously read to him, that the amount stated therein was P10,000, which was the true sum agreed upon between himself and the plaintiff as the price of the property. The defendant therefore asked that the deed of sale be declared to be false, null and void, and, in counter-complaint, prayed that the plaintiff be compelled to return to him the ownership title of the property, which was in the plaintiff's possession.

The Court of First Instance of Ilocos Sur, after hearing the evidence adduced by both sides, rendered judgment in conformity with the plaintiff's petition, except with regard to fixing the amount which the defendant should pay as rent for the personal use of a part of the house, and disallowed the defendant's counter-complaint.

The latter appealed from that judgment, and the hearing on the appeal discloses the following facts:

- That the evidence presented by the defendant was rather intended to prove that the year before he had been offered the price of P8,000 for his property and that the latter was worth more than P6,000, in rebuttal of which the plaintiff showed the price for which the property had been acquired and its assessed valuation, neither of which exceeded P6,000.

- That, as regards the defendant's special defense to the effect that the deed of sale was read to him before he signed it and that he heard or believed that he heard that the price stipulated in the deed was P10,000, not only was no evidence whatever presented, but also no offer nor attempt was made to introduce any.

- That the court ordered the deposit of the P4,000, as the remainder of the payment of the price and which in the complaint was said to be deposited in the municipal treasury of Vigan, to be made in the provincial treasury, from which ruling the defendant took an exception, alleging that it was another defense of his, in support of his refusal to deliver the property sold, that the rest of the price thereof had not been properly deposited, either in May or in June, 1909.

- That the defendant ratified at the trial his answer in the notarial certificate of June 23, 1909 (Exhibit C of the plaintiff), that is, his averment that another instrument had been executed in which the true price of P10,000 was stipulated; but this averment was not repeated nor proved during the whole trial.

- That in the appellant's brief in this instance, on page 14 thereof, the following statements appear:

"The plaintiff, on his reading this instrument to the defendant, made the latter believe that the amount stipulated therein as the price of the contract was P10,000, and in this belief the defendant signed that notarial document. That fact having been proved by the defendant's testimony, which was neither contradicted nor rebutted, is that document to prevail over all the proofs adduced?"

None of these statements can be accepted as correct. It was not proved, nor was it attempted to be proved, that the instrument, before being signed by the appellant, was read to him by another person; nor that such other person

was the appellee himself; nor that any person read one thing for another, as being what was stipulated in the instrument. For these reasons it was the conclusion of the trial court that neither the deceit alleged by the defendant to have been employed by the plaintiff in the execution of the contract, nor the falsity of the instrument executed, was proved. (B. of eM p. 12.)

Consequently, the instrument of contract is valid and effective. From the validity and force of the contract is derived the obligation on the part of the vendor to deliver the thing sold.

Pursuant to article 1466 of the Civil Code, the vendor shall not be bound to deliver the thing sold, if the vendee should not have paid the price, or if a period for the payment has not been fixed in the contract. If in the contract a period has been fixed for the payment, the vendor must deliver the thing sold. In the contract in question, a period was fixed for the payment:

The said party (the vendee) - says the vendor - shall pay me the remaining four thousand in Vigan when I go there at any time during this month or next month. In case of my being unable to go to Vigan, * * * the said Florendo shall send the remainder (after paying the vendor's debt to the Church of Vigan) to me here in Manila.

In accordance with the first of the said quoted clauses, the period for payment is when the vendor shall have arrived at Vigan; and if he does not arrive at Vigan, such period is, according to the second clause, indefinite, the vendee merely taking it upon himself to send the rest to Manila, after the month of June, 1909, should the vendor not arrive at Vigan.

The provisions of the said article 1466, contain a rule and an exception: the rule is that the thing shall not be delivered, unless the price be paid; and the exception is that the thing must be delivered, though the price be not first paid, if a time for such payment has been fixed in the contract. Hence, all the discussion between the contending parties, with respect to whether the deposit of the P4,000, a part of the price, was or was not made, or was duly or unduly made, is entirely impertinent: the conveyance of the thing sold does not depend on the payment of the price, in this case of exception contained in article 1466 of the Civil Code.

"If this period was fixed, the vendor, notwithstanding that such period has not terminated, nor, consequently, that he has not collected the price, is obliged to deliver the thing sold." (10 Manresa, Commentaries on the Civil Code, 130.)

There was no need, therefore, of assent on the part of the plaintiff to pay the P4,000, the remainder of the price, in order to oblige the defendant unconditionally to deliver the property sold. With still more reason should the defendant be compelled to effect the material delivery of the property, since, after the lapse of the period for the delivery of the price, the plaintiff hastened to pay it and, on account of the defendant's refusal to receive it, duly deposited it, in order to avoid the consequences that might issue from delinquency in the payment of a sum entrusted to him for a fixed period.

It is the material delivery of the property sold which the defendant must make in compliance with the contract, inasmuch as the formal delivery de jure was made, according to the provisions of article 1462, 2d paragraph, of the same code:

"When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred."

As the contrary does not appear nor is to be inferred from the public instrument executed by the defendant, its execution was really a formal or symbolical delivery of the property sold and authorized the plaintiff to use the title of ownership as proof that he was thenceforth the owner of the property.

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

Torres, Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.