

LIM TUICO, PLAINTIFF AND APPELLEE, VS. CU-UNJIENG, DEFENDANT AND APPELLANT.

G.R. No. 6761. February 16, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

On the 13th day of August, 1900, the appellee was the owner of an undivided two-eighths interest in two adjoining lots on Calle Rosario in the city of Manila and Barretto & Co. was the owner of the remaining six-eighths of said lots. On said date Barretto & Co. executed, in favor of the appellee, a twenty-year lease on the six-eighths interest referred to, said lease containing the following clause;

"Should the said Barretto & Co. sell the said lots herein leased said company shall require the purchaser of said premises to respect this lease, and the lessee shall have the preference in the purchase of said lots at the same price and under the same conditions."

Said lease also contained the following provision:

"If during the life of this lease the lessee, Lim Tuico, or his heirs should desire to sell the building and his interest in the land in question, Barretto & Co. shall have the same preference on the same conditions, and in case a third person should be the purchaser he shall himself assume all the obligations and the acquired benefits of this lease."

After the execution of this lease the appellee, as coowner and lessee, constructed a building thereon for storage purposes.

On the 21st of December, 1909, the lessor, Barretto & Co., without notifying the appellee, sold and conveyed its interest in said lots to the defendant Cu-Unjieng, setting out in the deed the lease above referred to and the rights of the lessee to purchase the property as in said lease expressed. The amount named in said deed as the purchase price of said lots was P60,000. On the day following, December 22, 1909, Mr. Barretto, who was acting for the firm of Barretto & Co., reported the sale to his brother in Madrid by cable in which he said, "I have sold Rosario P40,000." On the same date Barretto paid to the broker Gonzalez his commission of 1 per cent on the purchase price of P40,000, in proof of which the latter's receipt was produced by Mr. Barretto. On December 27, 1909, a deed of donation in the sum of P20,000 was executed by Barretto & Co. to the defendant before a notary public, who was a different notary public than the one before whom the deed heretofore referred to was executed, reciting as a consideration therefor that the title to the property conveyed to the defendant on the 21st was defective. In that instrument no mention was made of the obligation under which Barretto & Co. lay by virtue of its warranty in the deed of sale of the lots in question. Instead of said instrument relieving said company from the burden of said warranty, a second warranty was therein set out in the form of an agreement to return the balance of the purchase price P40,000, if the appellant failed to secure a title within one year.

On January 3, 1910, one week after executing the deed of donation just referred to, Barretto wrote a letter to the appellant in which he inclosed a notice directed to the appellee notifying him of the sale to the appellant and that

he could pay him rent in the future under the lease. Nothing, however, was said about the appellee's right to buy the property as set forth in the lease between him and Barretto & Co. On the 11th day of January, the last day but one before the expiration of the period of the nine days after notice prescribed by article 1524 of the Civil Code relative to the exercise of the right of redemption in such cases, the appellee purchased the property from the appellant, paying therefor the sum of P60,000, which amount the appellant represented by recital in said deed as having been paid to Barretto & Co. as the purchase price of said property.

The appellee, the plaintiff in the court below, having soon thereafter discovered, as he believed, that under the law and by virtue of his agreement he was in reality obligated to pay only P40,000, and believing that he had consequently been unjustly and illegally deprived of P20,000, began this action for the recovery of that amount. The court below after trial found in favor of the plaintiff and gave him a judgment against the defendant for P20,000, interest and costs. This appeal is from that judgment.

We are of the opinion that the judgment of the court below must be affirmed. The court below found as a fact:

"That on the 3d day of January, 1910, Mr. Barretto notified the plaintiff of the sale which he had made of Barretto & Co.'s interest in the land and to whom the sale was made, and on the same day notified the defendant that the plaintiff had been notified of the sale and that he could arrange with him about the payment of the rent;

"That on the following day the plaintiff went to the defendant to ascertain what price he had paid for Barretto & Co.'s interest in the land, and was told by the defendant that it was the sum of P60,000, and thereafter and on January 11, 1910, the defendant and the plaintiff went before a notary public and a deed of transfer of the three-fourths interest was made by the defendant to the plaintiff, and the plaintiff paid the defendant the sum of P60,000, and the deed recited that the purchase price of the interest was the sum of P60,000;

"That in the deed from Barretto & Co. to the defendant the preference right of the plaintiff to purchase the interest of Barretto & Co. was specifically set forth, and the defendant had full knowledge of the fact that the plaintiff had the right of purchase or redemption from such sale;

"That shortly after the plaintiff made the purchase, as before stated he learned that the true purchase price which the defendant paid was the sum of P40,000, and he thereupon demanded the return of the P20,000 overpaid."

As to the question which was before the court for determination the trial court said:

"The only question for determination is, Was the actual purchase price when the defendant purchased from Barretto & Co, the sum of P60,000 or P40,000?"

It is the claim on the part of the defendant in this case that after having purchased the property from Mr. Barretto for the agreed price of P60,000 he discovered that the title thereto was defective in that it was not subject to registration under the Torrens Law of the Philippine Islands, and that, thereupon, Barretto reduced the purchase price to P40,000; that, therefore, the real purchase price was P40,000 and not P60,000. The defendant in this case, in negotiating the purchase in question, was represented by one Edilberto Calixto. Concerning the transaction Mr. Barretto testified:

"Q. At the time you received this check for P60,000, what documents or papers, if any, did you deliver to Edilberto Calixto?—A. I gave him an I O U for P20,000, because the agreement was to sell the property for P40,000, but the deal was made for P60,000 because they wanted to have it for a bigger price, as they said it would facilitate matters in case they wanted to get some money on the property under mortgage. The sale was practically done for P40,000, and they paid P60,000 and got my provisional I O U for P20,000.

"Q. To whom did you deliver that provisional I O U for P20,000?—A. To Mr. Calixto, who was representing

Cu-Unjieng.

"Q. Do you know where that I O U is now?—A. That was destroyed,

"Q. It was destroyed?—A. Yes, sir.

"Q. What was the occasion for its destruction, Mr. Barretto?—A. When I signed the second deed and returned him the P20,000, he gave me back the IOU and I destroyed it, and that finished the transaction.

"Q. By the second deed, do you mean the deed of donation executed in favor of the defendant Cu-Unjieng for P20,000?— A. Yes, sir.

* * * * *

"Q. Did you pay Mr. Gonzalez any commission for the sale of this Rosario property?—A. Yes, sir.

"Q. On what amount did you pay him a commission?—A.P40,000.

"Q. Did you take his receipt for the payment of that commission ?—A. Yes, sir; I have the voucher.

* * * * *

"Q. I call your attention to receipt marked plaintiff's Exhibit B, to your deposition, and ask you to state whether that is the receipt issued by the broker, Mr. Gonzalez, to you in acknowledgment of the commission?— A. Yes, sir; though he does not mention in the receipt on what amount it is based, you can easily see—1 per cent; P400, which is on P40,000.

"Q. I call your attention to the erasure of the words, 'Mil dos cientos,' and the insertion of the words, 'cuatrocientos,' and ask you how that occurred?—A, He wanted to collect 3 per cent on the sale; but I told him I could not pay but 1 per cent. That is his agreement; he came to me and offered to sell; so I cut his commission from three to one."

The broker Gonzalez, who acted for Barretto & Co., testified, in part, as follows:

"I went to Cu-Unjieng and offered to sell him the Barraca house and told him I was also selling the house on Calle Rosario, and asked him if he wanted to buy it, and the highest offer I could get was P87,500 for the two properties, if I remember correctly, and Mr. Barretto accepted it. There was afterward some difficulty because Cu-Unjieng wished that the price should be placed at P60,000 for the property on Calle Rosario and P27,500 for the property on Calle Barraca. Mr. Barretto refused both propositions, because the property on Calle Barraca was his own property and that on Calle Rosario of Barretto & Co. At last he accepted it, putting P60,000 for the property on Calle Rosario, on the condition that he would only receive P40,000 and P27,500 for the property on Calle Barraca."

"Q. How was the deal managed so as to make it appear that the vendor received P60,000, as stated by you, whereas, as a matter of fact, he only received ₱40,000 for the Calle Rosario property?—A, On making the payment Barretto gave him a receipt for P20,000."

The fact that the sale was in reality made for P40,000 is corroborated by a cablegram which Mr. Barretto sent to Madrid, Spain, in which he stated, as heretofore mentioned, that the Rosario property had been sold for P40,000.

It being remembered that the defendant alleges as one of the reasons why Barretto was willing to reduce the purchase price from P60,000 to P40,000 was that he was desirous of immediately leaving this country for Spain and did not want to leave any unsettled matters behind him; it is significant to note that at the time Mr. Barretto sold the Calle Rosario property he was not contemplating a journey to Europe, "because," as he said, "I was then manager of 'La Insular,' and expected to remain in Manila for a long time."

It being apparent to us from all the facts that the selling price was P40,000 and that the dealings between the parties relative to the P60,000 were for the purpose of covering up the realities of the case as to the plaintiff, we find the judgment of the court below well founded.

The judgment is affirmed, it being understood that the judgment of the court below is the sum of P20,000, with interest thereon at six per centum per annum from the 4th day of April, 1910, down to the date of that judgment, to which sum, principal and interest, shall be added interest at 6 per cent per annum from the date of that judgment to the date of the final judgment of this court.

Arellano, C. J., Torres, Mapa, and Trent, JJ., concur.

CONCURRING

CARSON, J.:

I concur.

Understanding as I do that this case is not in conflict with the case of *Pepperell vs. Taylor* (5 Phil. Rep., 536) wherein we held that:

"Section 510 of the Code of Civil Procedure, relating to interest on judgments, does not apply to a case where the obligation sued on bears interest. In such a case a judgment which provides for interest from the maturity of the obligation until final payment is proper."

And understanding that the modified judgment as finally entered by us will bear interest at the legal rate until paid, by operation of law, and without the necessity for express provision to that effect in the judgment, I concur in the reasoning and conclusions of the majority opinion.

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