

L. O. HIBBERD, PLAINTIFF AND APPELLANT, VS. ESTATE OF JAMES P. MCELROY, DEFENDANT AND APPELLEE.

G.R. No. 8170. August 27, 1913

Ponente: TRENT, J.

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TRENT, J.:

An appeal from a judgment of the Court of First Instance disallowing the claim of the plaintiff for P1,000 against the estate of the deceased James P. McElroy.

The case was submitted on an agreed statement of facts and the contract entered into on November 25, 1910, by and between the plaintiff and the deceased. The pertinent parts of these documents are as follows:

"It is further stipulated that the assessment work mentioned in said claim has been performed and salary of the watchman therein mentioned has been paid; that the mining property mentioned in the contract was operated for the first year under the terms of the contract, and as a result of such operation the claimant, Mr. Hibberd, suffered a loss, and that it is impossible to operate the property at a profit; that after the expiration of the first year's operation and after ceasing the further development of the property the claimant gave notice to the administrator requesting that they perform their share of the assessment work; but that the administrator refused to perform his share of the assessment work and that no part of the claim for his share of such assessment work has been paid." (Stipulation of facts.)

"It is further agreed by and between the parties hereto that the said L. O. Hibberd shall have the exclusive right to the possession of the said mining claims during the period of one year to commence from date of this instrument and shall have the sole and exclusive right to exploit the same and take all the profits of such exploitation unto himself as his own and exclusive individual property, and for that purpose shall have the right to make use of all the improvements now in and upon any of the above mentioned mining claims." (Contract.)

"It is further agreed by and between the parties hereto that if the said J. P. McElroy at the expiration of one year from the date of this instrument should not be in sufficiently good health to be himself upon said claims and assume comanagement thereof with the said L. O. Hibberd, then the said L. O. Hibberd shall continue in the exclusive possession, occupation, management and exploitation of the said mining claims and their improvements and after paying all expenses of the exploitation shall pay one-half of the net proceeds monthly to the said J. P. McElroy." (Contract.)

"The said H. O. Hibberd does hereby bind and obligate himself to do and perform all the assessment work on the said mining claims required under the laws of the Philippine Islands." (Contract.)

The only question raised on the appeal is the interpretation of the contract. Counsel for the administrator contends, and the Court of First Instance has decided, in effect, that the plaintiff is bound to do all of the annual assessment work upon the mining claims mentioned in the contract necessary to secure patents therefor, while counsel for the appellant contends that under the terms of the contract the plaintiff was obligated to perform on his own account only the annual assessment work required for the period of one year.

Under the terms of the third paragraph of the contract, McElroy was to assume the comanagement of the property at the end of the first year if the condition of his health permitted, and if not, the plaintiff was to continue in the exclusive possession and management and, after deducting all expenses of the exploitation, to pay over monthly to the said McElroy one-half of the net profits.

It is perfectly apparent from the terms of paragraph 3 of the contract that if McElroy had lived and had been in good health, he would have had to go upon the property himself at the end of the first year, and assume the comanagement of the same, thus sharing with the plaintiff the work of the administration and exploitation thereof, which necessarily included the annual assessment work, and it is unreasonable and inequitable to construe the sixth clause of the contract so as to require Hibberd to contribute twice as much labor and money while assuming the burden of the administration on account of the death of McElroy as he would have had to contribute had McElroy been able to perform his share of the labor and management.

The only reasonable interpretation that can be placed upon the contract is that it was intended to obligate plaintiff to perform the annual assessment work for the first year unconditionally, and that for any subsequent period during which he might remain in the exclusive possession and management of the property due to the illness or incapacity of his partner, he was to do such annual assessment work as manager without assistance from the coowner only in the event of there being sufficient proceeds from the operation of the property to defray the expenses thereof. If counsel for the appellee and the trial court are correct in their interpretation of the contract to the effect that it obligates the plaintiff to do all of the assessment work on his own account and for an indefinite period of time, then by the same logic the plaintiff would be obligated to continue the exploitation of the mining claims under the terms of the third paragraph of the contract even though the property should not produce a dollar in return for the heavy expenditures necessary to continue its operation.

Articles 1283, 1284, and 1285 of the Civil Code provide:

"However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract.

"If any stipulation of a contract should admit of different meanings, it should be understood in the sense most suitable to give it effect.

"The stipulations of a contract should be interpreted in relation to one another, giving to those that are doubtful the meaning which may appear from the consideration of all of them together."

Under section 36 of the Act of Congress of July 1, 1902, in order to retain possession of a mining claim the locator or possessor must do assessment work to the value of P200 per annum each year. Under section 37 of the same Act, labor or improvements of the value of P1,000 must be done upon each claim before patent can be obtained therefor. If the judgment of the trial court is correct, then the plaintiff would be obligated to make an outlay in labor or improvements of P10,000 upon the ten claims covered by the contract before he would be relieved from the obligations thereof. It is a principle of law well established that where a specific provision in a contract is followed by a general provision covering the same subject matter, the special provision will be held to prevail over the general provision when the two cannot stand together, but if reasonable effect can be given to both, each is to be retained.

In the case of *Calvo vs. Olives* (6 Phil. Rep., 88), the question was one as to the construction of a contract the third paragraph of which was in question. Under the terms of the will of one De la Fuente, all of his property was given to the defendants Angeles, Paz, and Gabriel Olives, subject to a life interest in the usufruct thereof in favor of his widow, Concepcion Calvo, the plaintiff in the case. In the settlement of the estate differences arose between the plaintiff and defendants, and with a view to the adjustment of these differences the contract in question was

entered into, the third paragraph of which was as follows:

"The remainder shall be turned over to Concepcion Calvo to be used by her as usufructuary heiress after she has given a mortgage bond."

The court, in interpreting this clause, says: "Article 1283 of the Civil Code provides: * * * and we are of the opinion that although the word 'remainder' as used in the third paragraph of the said agreement might, in the broadest acceptance of the term, refer to the total balance resulting from the sale of the Escolta property, nevertheless, under the provisions of the foregoing paragraph it should be limited to the subject matter of the agreement and thus limited, it must be taken to refer to the remainder of the share of the inheritance in which Concepcion Calvo had a usufructuary life interest.

"That this is the correct interpretation of the language used is confirmed by the fact that the paragraph itself expressly provides that the 'remainder' to be turned over to Concepcion Calvo was to be used by her 'as usufructuary heiress,' and it is not contended that she had an interest as usufructuary heiress in more than an undivided one-half interest in this particular property."

In the case at bar, although the words used in the sixth paragraph of the contract require Hibberd to do all the assessment work required by the laws of the Philippine Islands, it will be seen from the first alternative in paragraph 3 that after the first year, McElroy was to assume comanagement, possession, and exploitation of the claims. The words "possession, management, and exploitation" are certainly broad enough in meaning to include all and every requisite and thing necessary in connection with the operation and enjoyment of the possession of said claims, and the assessment work required by law to be done on said claims being necessary for the retention by both parties of the possession of the claims, the use of such words by the parties in this contract infixing their obligations after the first year must naturally include the obligation of performing such work thereafter as a joint one, the claims being held by them in common. Under the second alternative, Hibberd was authorized to deduct from the income of the property the expenses of such management and exploitation, the profits remaining to be divided equally between the parties. The assessment work being a necessary requisite to such possession, management, and exploitation as above pointed out, it follows that an expenditure for that purpose is a proper charge to the expenses of such management. Therefore, under either alternative open to McElroy, it is plain that the intention of the parties was that Hibberd was to do on his own account the assessment work for the first year and that thereafter such work was to be a joint obligation of the parties. This, then, would have the effect of limiting the provision of the sixth clause so as to make it applicable only to the first year after the date of the contract.

It appears from the stipulation between the parties that the operation of the claims for the first year by Hibberd, exclusively, resulted in a loss and that said claims cannot be operated at a profit. While it is true the contract does not provide for the liability of the coowners in case of loss in the operation of the property, still, in accordance with article 1689 of the Civil Code, the losses must be shared in the same proportion as the profits. Hibberd has paid the expenses of the assessment work of the second year and there having been no income from the property to reimburse him, he has a right to look to the estate of McElroy for such reimbursement.

Article 395 of the Civil Code provides: "Every coownershall have the right to oblige the participants to contribute to the cost of keeping the thing or right held in common. Only the party renouncing his share in the ownership can exempt himself from this obligation."

The property mentioned in the contract is listed and claimed as one of the assets of the estate of McElroy and there can, therefore, be no contention that his share in the ownership of the same has been renounced. Before performing the assessment work upon the property after the first year, Hibberd demanded of the administrator of

McElroy that he perform his share of such work and the administrator refused. Hibberd was then compelled to do the work in order to retain the property held in common by him and said estate.

Section 36 of the Act of Congress of July 1, 1902, providing for the forfeiture of the interest of the coowner who fails to contribute his share of the assessment work is not in conflict with article 395 of the Civil Code, above quoted, and would perhaps not be construed as an exclusive remedy in cases of ordinary coownership resulting from joint location of mining claims, but it is unnecessary to determine that point in this controversy because the contract imposes the duty upon Hibberd to manage and administer the property in the event of McElroy's being unable to assist him and such administration necessarily includes the assessment work. This was clearly intended to be paid out of the proceeds of the operation of the property whether managed by the partners jointly or by Hibberd alone on account of McElroy's inability to participate in the management by reason of illness or death. In default of any proceeds of operation the language of the contract and the law imply a joint obligation to do the annual assessment work as coowners and managers or in the event of the disability or death of McElroy an obligation on his part or that of his administrator to contribute one-half of the expense which the plaintiff was bound to incur to protect his possession held for the joint benefit of himself and his cotenant in accordance with the terms of article 395, *supra*.

The defendant does not contend that section 36 of the Act of Congress of July 1, 1902, is applicable to this case because such a defense would amount in effect to a renunciation of any interest in the claims. The administrator should have renounced all interest in the property at the time demand was made upon him to contribute his share of the assessment work in order to have escaped the absolute obligation imposed upon him by the terms of the contract and the law to reimburse the plaintiff for the estate's share of the expense incurred for the joint benefit of the coowners.

For the foregoing reasons, the judgment appealed from, in so far as it disallows the claim of the plaintiff for P1,000 for assessment work on the claims in question, done in behalf of the defendant, is reversed; and it is hereby ordered that this claim against the estate be allowed in full. Otherwise, the judgment is affirmed.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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