

ANTONIO M. BARRETTO, PLAINTIFF AND APPELLEE, VS. JOSE SANTA MARINA, DEFENDANT AND APPELLANT.*G.R. No. 8238. December 02, 1913*

Ponente: TRENT, J.

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The La Insular cigar and cigarette factory is a joint account association with a nominal capital of P865,000, the plaintiff's share being P20,000, or 4/173 of the whole. On March 14, 1910, the plaintiff's attorneys wrote the defendant's local representative a letter offering to sell to the defendant plaintiff's participation in the factory. The result of the correspondence between the parties and their representatives was that Exhibit G was duly executed on May 3, 1910. In accordance with the terms of this exhibit a committee of appraisers was appointed to ascertain and fix the actual value of La Insular. The committee rendered its report on November 14, 1910, fixing the net value at P4,428,194.44. Of this amount 4/173 part represented the plaintiff's share on his P20,000 of the nominal capital. In Exhibit J which was executed on November 22, 1910, the plaintiff acknowledged to have received from the defendant that amount.

Subsequently to the execution of Exhibit J, demand was made by the plaintiff upon the defendant for his share of the profits from June 30, 1909, to November 22, 1910. This demand was refused and thereupon this action was instituted to recover said profits. Upon the evidence submitted at the hearing, the court below held: (1) That the agreement of May 3, 1910, was by its terms a contract to sell in the future and did not pass title and (2) that the sale of plaintiff's interests did not include the profits in question. Judgment was rendered accordingly, with interest arid costs. The defendant appealed.

The important issue in this case is whether the sale in question included that proportionate share of the profits due the plaintiff by reason of his investment in the concern. It is admitted that no distribution of profits had taken place during the period from June 30, 1909, to November 22, 1910. We will inquire (1) into the nature and character of the agreement of May 3, 1910, and (2) whether the appraisers included in their appraisal the accumulated profits since June 30, 1909.

The plaintiff admits that if the agreement of May 3, 1910, was a perfected sale he cannot recover any profits after that date; while on the other hand the defendant concedes that if said agreement was only a promise to sell in the future it, standing alone, would not prevent recovery in this action.

The plaintiff and defendant were both interested in La Insular. The plaintiff was the local general manager from November 14, 1906, to January 8, 1910. The plaintiff's attorneys wrote the defendant's representative a letter on January 14, 1910, saying:

"On behalf of Sr. D. Antonio M. Barretto, we beg leave to offer for sale to your principal, at their actual market value, the participation of Sr. Barretto in the joint venture known as La Insular and the one-half interest of the latter in the participation therein which stands in the name of Messrs. Barretto & Co. As you are doubtless aware these participations represent nominal values of P20,000 and P69,400, making a total nominal value of

P54,700 which is hereby offered."

Again, the plaintiff's attorneys after acknowledging the receipt of the balance sheet of the profits for the year ending June 30, 1909, stated in their letter to the defendant's representative, dated March 2, 1910, that, "Now that the accord between the interested parties no longer exists we do not deem it feasible to subscribe a balance of this nature, unless * * *"

And again, the plaintiff himself, in his letter of April 7, 1910, addressed to the defendant's representative, said: "In view of the relations that have come about between Mr. Santa Marina and myself, I believe it would suit both of us that our interest in the La Insular business should be separated, and that the only point to be discussed is that of the amount that should be paid me for my share."

From the correspondence above mentioned it appears that the plaintiff offered to sell to the defendant his participation in La Insular. This offer was made on account of the strained relations existing between the parties at that time and the desire on the part of the plaintiff to separate himself from that business. In the offer the plaintiff's interest or participation was definitely defined and stated to be P20,000 in the nominal capital of P865,000. (We are not now dealing with the plaintiff's interest in the P69,400 of Barretto & Company.)

Article 1450 of the Civil Code reads: "The sale shall be perfected between vendor and vendee and shall be binding on both of them, if they have agreed upon the thing which is the object of the contract and upon the price, even when neither has been delivered."

This is supplemented by article 1447 of the Code which reads as follows: "In order that the price may be considered fixed, it shall be sufficient that it be fixed with regard to another determinate thing also specific, or that the determination of the same be left to the judgment of a specified person."

The contract of May 3, 1910, after reciting the fact that each of the contracting parties is a participant in the joint account association known as La Insular, provides that:

"Whereas the respective contracting parties have agreed, the one to sell and the other to buy the whole of the right, title and interest of the said Antonio Maria Barretto in and to the said joint account association, including not only the individual participation of the said party of the second part standing on the books of the association in the name of Antonio M. Barretto, but also one-half of the share in the business which stands on the books in the name of Barretto & Company constituting a total nominal share of P54,700 Philippine currency in the total nominal capital of P865,000 Philippine currency; and

"Whereas the respective contracting parties have been unable to agree as to the true present value of the said interest of the party of the second part, but have agreed upon the method of fixing and determining the said value for which the party of the first part is to buy and the party of the second part is to sell that interest;

"Wherefore, by reason and in consideration of the foregoing and of the mutual promises and agreements herein-after set forth, the respective parties herein contracting do hereby mutually stipulate, agree, and provide the following:

"(1) That a board of assessors, composed of Enrique Barrera y Caldes, D, M. Fleming, J. H. Gibson, all of the city of Manila, Philippine Islands, by mutual agreement is hereby appointed, commissioned, and designated for the purpose of hearing the respective claims of the one and the other party relative to the value of the business known and designated by the name of La Insular tobacco factory, and the respective assets of said business; and in accordance with the proof adduced relative to said values to fix and determine the same for the purposes of the purchase and sale above mentioned.

* * * * *

"(5) That the decision and conclusion of said board with reference to the total value of the business known and designated by the name of La Insular Cigar Factory shall be conclusive, final, and binding upon each of the contracting parties herein; and the party of the first part will immediately buy for cash and the party of the second part will immediately sell to the party of the first part all the right, title and interest of the party of the second part in and to the said business; and the party of the first part will pay therefor such proportional part of the total net value of said business as equals the proportion that the sum of fifty-four thousand seven hundred pesos (P54,700) Philippine currency bears to the sum of eight hundred and sixty-five thousand pesos (P865,000), Philippine currency."

The following appears in the contract of November 22, 1910: "Antonio M. Barretto hereby declares to have received from John D. MacGavin as legal representative of Jose Santa Marina as the price of the cession and transfer of the said shares, the sum of P280,025.70 Philippine currency by check No. 528525 drawn by the said MacGavin in his above-stated capacity upon the Hongkong & Shanghai Bank of this city, for which sum the first named issues to him a most legal bill of sale. Antonio M. Barretto also acknowledges by virtue of the present sale, cession, and transfer that he has from this date relinquished (separado) all intervention, claim, right, or action that he has in said factory by reason of the shares under consideration."

Under article 1450, supra, there are two indispensable requisites in a perfected sale: (1) There must be an agreement upon the thing which is the object of the contract; and (2) the contracting parties must agree upon the price. The object of the contract in the case at bar was the whole of the plaintiff's right, title, and interest in La Insular. This whole was 4/173 of the entire net value of the business. The parties agreed that the price should be 4/173 of the total net value. The fixing of such net value was unreservedly left to the judgment of the appraisers. As to the thing and the price the minds of the contracting parties met, and all questions relating thereto were settled. Nothing was left unfinished in so far as the contracting parties were concerned. Neither party could withdraw from the contract without the consent of the other. The result is that the two essential requisites necessary to constitute a perfected sale were present.

But the plaintiff strongly insists that the language used in the contracts of May 3 and November 22 and the fact that the appraisers did not take into consideration in fixing the value of the business the profits accruing after June 30, 1909, show beyond a doubt that the first named contract constitutes an agreement to sell in the future and not a perfected sale and that this is clearly in harmony with the intention of the parties.

In support of the above proposition the plaintiff calls our attention to the recital in the first paragraph of the excerpt from the contract of May 3, 1910, to the effect that the parties "have agreed, the one to sell and the other to buy" and the words of the fifth paragraph where it is stated that "the party of the first part (the defendant) will immediately buy for cash and the party of the second part (the plaintiff) will immediately sell" the plaintiff's entire interest in the business; cites *Alcantara vs. Alinea et al.* (8 Phil. Rep., 112); and quotes the following from the report of the appraisers:

" * * * proceed to make a valuation of the property, stock, securities, and credits which compose the assets of the said business known and designated as the Insular Cigar Factory, taking as a basis therefor the assets of the said business on June 30, 1909, and in order to act with greater certainty in the discharge of their duties have had the real estate in Manila appraised by a civil engineer, Mr. Irureta Goyena, the machinery by an engineer, Mr. Loader, and the stocks of tobacco by tobacco experts recommended by the managers of the cigar factories called Flor de la Isabela, La Comercial, and Maria Cristina, and these experts have discharged the duties imposed upon them in the manner shown in the respective reports filed by them. With respect to the real estate in the Provinces of Cagayan and Isabela, and the steam launch Santa Marina, the undersigned, after hearing evidence of persons whom they deem to be competent, have fixed the valuation of those properties in a manner deemed by them to be fair and equitable. With regard to the 'Sundry Debtors' account, they have proceeded to make an examination of the same and have disregarded the accounts which in their judgment may be regarded

as uncollectible and deducted 25 per cent from those which in their opinion are doubtful. In view of the difference between the value placed by the parties on the furniture and fixtures, they have taken the average of those valuations so as to avoid the expense of an expert appraisal. And, finally, with respect to the rest of the items which make up the assets of the said business, they have accepted the figures at which they stand in the said inventory as these have been accepted by both parties."

For the purposes of determining the soundness of the plaintiff's position with reference to the intention of the parties, we will examine (1) the contract of May 3, and (2) the report of the appraisers.

1. The recitals in the first and fifth paragraphs relied upon by the plaintiff standing alone indicate that it was the intention of the parties to make a contract to sell in the future, but it must be remembered that the whole contract must be interpreted or read together in order to arrive at its true meaning. Certain stipulations cannot be segregated and then made to control, neither do particular words and phrases necessarily determine the character of the contract. As to whether or not the parties, when they executed the contract of May 3, made a perfected sale or only an agreement to sell in the future is not to be determined alone by any particular provision the said contract contains, disconnected from all others, but in the ruling intention of the parties as gathered from all the language they have used and from their contemporaneous and subsequent acts.

In the contract of May 3, we find that the parties did not only agree "the one to sell and the other to buy" and that "one will immediately sell and the other will immediately buy" the whole of the plaintiff's interest but that they were unable to agree "as to the true present value of the said interest;" they did agree, however, upon the method of fixing and determining such value by appointing appraisers for this purpose. It was the duty of the appraisers to hear the respective claims of the one and the other party relative to the value and assets of the business, "and in accordance with the proof adduced relative to said values to fix and determine the same for the purposes of the purchase and sale above mentioned." They did not say for the purposes of a sale to be made in the future. Is the language, "for the purposes of the purchase and sale above mentioned" any the less significant or controlling than that relied upon by the plaintiff found in the first and fifth paragraphs? When the parties used this language they had in mind the purchase and sale which they had just made. According to the ordinary and well-understood use of the words "purchase" and "sale" they mean, in the absence of any expression to limit their significance, a transmutation of property from one party to another in consideration of some price or recompense in value; a transmission of property by a voluntary act or agreement, founded on a valuable consideration; divesting the title out of the vendor and vesting it in the vendee. Again, not only was the title of the plaintiff's interest vested in the defendant on the execution of the contract of May 3 but the possession of that interest was also then transferred to the defendant. (Art. 1462, Civil Code; *Uy Piaoco vs. McMicking*, 10 Phil. Rep., 286.)

The total value of the business as fixed by the appraisers was final and conclusive and binding upon each of the parties. Neither could question the correctness of such value when once thus fixed. The only thing which either could then do was the one to tender and the other accept the cash. The one could not "immediately sell" and the other could not "immediately buy" because the purchase and sale had already taken place. If they could have done this then the plaintiff could have sold his interest to any other person at any time after the execution of the contract of May 3 and before November 22 for the reason that by a contract to sell only a *jus in personam* is created; while, by a sale a *jus in rem* is transferred.

Now, did the parties intend to include the profits in question in the purchase and sale, and did the appraisers include said profits when they fixed the total net value of *La Insular*?

In the second paragraph of the contract of May 3 this language was used: "Whereas the respective contracting parties have been unable to agree as to the true present value of said interest of the party of the second part, * * * ."

The "said interest" was the whole of the right, title, and interest of the plaintiff in the factory. The "true present value" was the actual value of the plaintiff's entire interest on that date, May 3. The appraisers were appointed to ascertain and fix the total net value so that the true present value, 4/173 of the whole net value, of the plaintiff's interest might be segregated and paid for.

The plaintiff delivered to the defendant or his predecessor in interest a sum of money in order to participate in the profits and losses that might accrue from the business denominated La Insular. An obligation was thereby created between the parties by virtue of which the plaintiff became the creditor and the defendant the debtor. The plaintiff was a creditor in a double sense, to wit: (a) For the capital invested, and (6) for the profits which that capital might produce.

This juridical relation existed on May 3, 1910, when that contract was executed and signed by the parties. On this date the plaintiff had:

- "1. Right to and right of action for his capital invested in the business of La Insular,
- "2. Right to participate, in proportion to his investment, in the expansion and increase of the company's capital.
- "3. Right in proportion to his capital in all the trademarks, credit, and good will of the business.
- "4. Right to a proportional share in the annual dividends of the business on his capital invested, after deduction of the 20 per cent of said dividends to which Santa Marina is entitled in his capacity of managing partner.
- "5. Right to revise, approve or impugn the annual statements rendered by the managing partner, Santa Marina."

The sum total of these constituted on May 3, 1910, the whole of the plaintiff's right, title, and interest in the "La Insular." In the absence of something in the contract showing that the word "whole" (totalidad) was not used in its ordinary sense it must be understood so to have been used, and we find nothing of that kind. All the authorities agree that when the word "whole" is thus used it means the entire thing; the entire assemblage of parts; totality; all of a thing without defect or exception; comprising all the parts; complete; entire. Exclude one part, the remainder would not be the whole. "The whole of the right, title, and interest of the said Antonio Maria Barretto in and to said joint account association" means what it says if it means anything at all. Language will not admit of a clearer and more expressive statement of what was sold. Exclude the profits sought to be recovered then the plaintiff did not sell the whole of his right, title, and interest, he only sold a part, and a part is never equal to the whole. That the profits were a part of the plaintiff's interest is self-evident.

In the case of *Alcantara vs. Alinea et al.* (supra), the defendants borrowed P480 from the plaintiff to be returned at the expiration of an agreed period, at the same time promised that in the event of their failure to pay the borrowed money within that time they would sell him certain property for the amount of the loan, the court holding that it was a contract of loan and a promise of sale of a house and lot. In this case, however, the consummation of the contract of sale depended upon the failure to pay the loan. If the loan was repaid the sale did not take place. It was uncertain whether the sale of the house and lot would be consummated until after the loan was due. In the case at bar was there any such uncertainty as to the sale of the property? The one agreed to sell and the other agreed to buy a certain specified interest in La Insular. This agreement was carried into effect. No subsequent contingency could affect the sale. The distinction between the two cases is apparent. It is therefore clear that the recitals from the contract and the case cited do not support the contention of the plaintiff.

2. The appraisers were appointed, as we have said, to ascertain and fix the total net value of the factory for the purpose of determining the true present value of the plaintiff's entire interest therein. The profits for the year ending June 30, 1910, were not ascertained until some twelve days after the appraisers submitted their report. Such profits were in the possession of the association during the entire period from May 3 to November 22, and

had not been segregated from the general mass of property up to the latter date. It is true that the appraisers said that they made a valuation of the assets of the business, "taking as a basis therefor the assets of said business on June 30, 1909." The appraisers could not have based their valuation exclusively upon the assets of that date for the reason that the books of the concern had not been balanced when they concluded their work. In fact, we find the appraisers saying in the very same paragraph in which the above quotation appears that "in order to act with greater certainty in the discharge of their duties they had the real estate and the machinery appraised by civil engineers and the stock of tobacco by tobacco experts."

The value of the real estate in the provinces and a certain small launch was fixed by the appraisers upon the testimony of competent witnesses. The appraisers disposed of the accounts of various debtors not in accordance with the inventory or the books of the company but according to their own judgment, excluding those which they found were uncollectible and deducting 25 per cent from the doubtful ones. So it is clear from the quotation relied upon by the plaintiff that the appraisers paid very little attention to the assets of the business on June 30, 1909, in fixing the valuation of the property. The stock of tobacco which was appraised by tobacco experts was not that on hand on June 30, 1909, but was the amount belonging to the association at the time the appraisal was made. This item alone was fixed at P1,140,259.77. Another item of assets was the cash on hand of P323,235.20. This was the actual amount of cash in the possession of the association at the time the appraisal was made and was considered as a part of the assets. In fact, according to the report of the appraisers the books of the concern showed that the total assets, not including the trade-mark and good will, amounted to P2,505,767.83 while the appraisers fixed the value at P3,049,394.07, a difference of a little over a half million pesos. That the appraisers in fixing the total net value included the accumulated profits we think there can be no question. These profits formed for that purpose a part of the assets. The appraisers could not distinguish the profits from the other personal property as such profits had not at that time been set aside and the appraisers were instructed to ascertain and fix the total net value so that the entire present value of the plaintiff's interest might be ascertained.

The contracts and the report of the appraisers are so clear and cover the entire subject matter so fully that we are convinced that the subsequent demand for the profits in question was an afterthought. If there had been any doubt in the mind of the plaintiff about the inclusion of the accrued profits in the sale of May 3 or that the appraisers were authorized to take into consideration such profits in fixing the total net value of the business so that the entire present value of the plaintiff's interest might be ascertained, the plaintiff would certainly have raised the question at the time. He remained perfectly quiet until after he had received the full value for the whole of his right, title, and interest in the factory and had solemnly declared that he "relinquished all intervention, claim, right, or action in said factory by reason of the shares under consideration." After this he came forward for the first time and demanded his share of the profits which he had sold and received payment therefor. Surely he does not expect to be paid twice for the same thing.

For the foregoing reasons the judgment appealed from is reversed upon the merits and the complaint dismissed without costs in either instance.

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

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