

VICTOR D. YOUNG AND JOHNNY YOUNG, PETITIONERS, VS. COURT OF APPEALS, AS NOMINAL PARTY RESPONDENT, AND FAUSTA B. JAGDON, AMPARO R. CASAFRANCA AND MIGUELA R. JARIOL, RESPONDENTS.

G.R. No. 83271. May 08, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

On November 7, 1961, the estates of Humiliano Rodriguez and Timoteo Rodriguez leased to Victor D. Young a parcel of land consisting of 840 square meters and located at Colon Street, Cebu City, on which the latter's building, then known as Liza Theater (later renamed Nation Theater), was standing. The contract of lease contained the following stipulation:

(8) That at the end of this lease contract or after the twenty-first (21st) year, the LESSORS may purchase the LIZA THEATRE building (excluding movie projectors, equipment, and other movables of the business of the LESSEE) at their option from the LESSEE by paying the market value thereof if acceptable to the LESSEE; provided, however, that if the LESSORS do not exercise this option to buy, the LESSEE shall continue for another period of TWENTY-ONE (21) YEARS and the rental will be agreed upon by the parties with the prevailing rental of properties near the premises as the basis.

On December 18, 1961, exactly the same contract was again executed by the same parties, except that the estate of Humiliano Rodriguez was this time represented by Antolin A. Jariol, instead of Miguela Rodriguez, as one of the signatories.

During the period of the lease, the two estates were finally settled, and the land leased to Victor Young was distributed among Fausta R. Jagdon, Amparo R. Casafranca, Miguela R. Jariol, the herein private respondents, and Teresita R. Natividad. Natividad later sold her share, consisting of 223 square meters, to Johnny Young, son of Victor D. Young.

On November 5, 1982, or two days before the expiration of the first contract, the heirs (except Natividad) filed a suit for specific performance against Victor D. Young to compel him to sell to them his theater-building for P135,000.00. They tendered this amount with the clerk of court by way of consignment. They also sued Victor Young's son, Johnny, as an unwilling co-plaintiff.

The defendants contended that the plaintiffs had no cause of action because the complaint was premature. The lease contract of November 7, 1961, had been novated by the second lease contract dated December 18, 1961; hence, the lease was terminated on December 18, 1982, and not November 7, 1982. Moreover, even if the lease ended on November 7, 1982, the action brought by the respondent on November 5, 1982, was still premature because the plaintiffs had not yet then notified Victor Young of the exercise of their option. The lease expired without a valid exercise of the option and the lease contract was thus renewed for another 21 years.

In his decision dated May 28, 1986, Judge Ramon Am. Torres of the Regional Trial Court of Cebu found in favor of the plaintiffs and held that there was no novation. The second contract was executed merely to substitute the correct signatory. As there was no express stipulation therein that it superseded and replaced the first contract, the complaint was not prematurely filed.

The dispositive portion of the decision read:

"WHEREFORE, judgment is hereby rendered:

"(a) declaring the sum of P250,000.00 as the fair market value of the building known as the Liza Theatre (Nation Theatre);

"(b) declaring the plaintiffs as the legal owners of the said building when they shall have paid the defendant Victor Young the sum of P250,000.00;

"(c) ordering the defendant Victor Young to pay the plaintiffs the sum of P50,000.00 as moral damages, P10,000.00 as attorney's fees for Fausta R. Jagdon and another P10,000.00 as attorney's fees for the other plaintiffs and costs of the suit;

"(d) ordering the defendant Johnny Young to pay his proportionate share of the sum of P250,000.00 as well as in the sum of P20,000.00 incurred by the plaintiffs as attorney's fees.

"SO ORDERED.

On appeal, the decision was modified by the respondent court[1] which, while agreeing that there was no novation of the first contract, declared that the original period of the lease was extended by the second contract. It did not find that the complaint was premature because although the action below had been filed a month early, the question became moot and academic when Victor D. Young declared in his letter dated November 9, 1982, his refusal to sell the building in question. This stand was confirmed in the answer he filed on December 7, 1982, in which he rejected the plaintiffs' offer of P135,000.00.

The respondent court also held that the plaintiffs' complaint could be considered originally as an action for declaratory relief, which was later converted into an ordinary action for specific performance.

It is this decision that is now questioned in this petition for review.

Law and jurisprudence on the concept and effects of novation are well settled in this jurisdiction. In *Caneda, Jr. v. Court of Appeals*,[2] we held:

Novation has been defined as the extinguishment of an obligation by a subsequent one which terminates it, either by changing its object or principal conditions, referred to as objective or real novation or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor, also called as subjective or personal novation. But as explained by this Court, novation is never presumed; it must be explicitly stated or there must be a manifest incompatibility between the old and the new obligations in every aspect. The test of incompatibility between two obligations or contracts, is whether or not they can stand together, each one having an independent existence. If they cannot, they are incompatible, and the later obligation novates the first. (Emphasis supplied.)

A careful examination of the text of the two contracts will show that the only change introduced in the second contract was the substitution by Antolin A. Jariol of his wife Miguela as signatory for the estate of Humiliano Rodriguez. There was no express declaration in the second contract that it was novating the first.

To determine if there was at least an implied novation because of a clear incompatibility between the old and new contracts, we apply the rule that -

In order that there may be implied novation arising from incompatibility of the old and new obligations, the change must refer to the object, the cause, or the principal conditions of the obligation. In other words, there must be an essential change.

There was clearly no implied novation for lack of an essential change in the object, cause, or principal conditions of the obligation. At most, the substitution of a signatory in the second contract can be considered only an accidental modification which, according to Tolentino, "does not extinguish an existing obligation. When the changes refer to secondary agreements, and not to the object or principal conditions of the contract, there is no novation; such changes will produce modifications of incidental facts, but will not extinguish the original obligation." [3]

Hence, he concludes, "it is not proper to consider an obligation novated by unimportant modifications which do not alter its essence." [4]

There being no novation, the lease is properly deemed to have commenced on November 7, 1961, and so ended 21 years later on November 7, 1982. It is significant that it was in fact from this first date that Victor Young effectively started as lessee.

We do not agree with the respondent court that there was an extension of the period of lease in the second contract. As earlier explained, the only reason for the execution of the second contract was to change the signatory. There is no clear showing from the language of that contract that the parties intended to extend the lease for one month.

According to Article 1370 of the new Civil Code:

If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.

But although the lease contract was not novated or extended, the action for specific performance was still premature because it was filed before the petitioner was given a chance to refuse the option. The complaint was filed on November 5, 1982, and it was only on the following day, or on November 6, 1982, that the plaintiffs informed Victor Young of their decision to buy the theater-building. The tender of the purchase price is further proof of the fact that Victor Young was informed of that decision only on November 6, 1982.

The action was premature not because the option was exercised prior to the expiration of the lease but because the complaint was filed before the defendant could reject the lessors' offer. No right of the plaintiffs had as yet been violated when they filed their complaint on November 5, 1982.

Since a "cause of action" requires, as essential elements, not only a legal right of the plaintiff and a correlative obligation of the defendant but also "an act or omission of the defendant in violation of said legal right," the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty. [5]

Therefore unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible. [6] (Emphasis supplied.)

The Court adds that even if the case was prematurely filed, it did not follow that the option was not properly exercised. An option may be exercised at any time before the expiration of the period agreed upon. An "option" is defined as a contract granting a person the privilege to buy or not to buy certain objects at any time within the agreed period at a fixed price. [7] It is settled that when the offer has stated a fixed period for acceptance, the

offeree may accept at any time until such period expires.[8]

The ruling of the respondent court that the complaint for specific performance could be originally regarded as a petition for declaratory relief is not acceptable. The Rules of Court provide that an action for declaratory relief may be filed by "any person"[9] and does not say it may be initiated by the court itself *motu proprio*. More importantly, there was as yet no refusal or denial by the defendants of the plaintiffs' claimed right to buy the theater-building when the complaint was filed on November 5, 1986. In fact, as previously noted, it was only the following day that the defendants were informed of the plaintiffs' decision to exercise their option under the contract. Before that date, there was no uncertainty about the said option to justify the filing of a petition for declaratory relief. Hence, there was no cause of action to support a declaratory relief proceeding.

We dismiss out of hand the argument that the merger of the character of the lessor and the lessee in Johnny Young resulted in the extinguishment of the right to the option to buy. It is utterly fallacious. Victor Young did not purchase any portion of the land covered by the lease; it was his son, Johnny Young, who did. The sale to the son of part of the land under lease to the father did not extinguish the plaintiffs' option to buy, which was enforceable against Victor D. Young and no other.

The respondent court rejected the petitioner's contention that the case has become moot and academic because the theater subject of the option was no longer existing, having been gutted by fire. Its reason was that there was no adequate evidence of such destruction. On the contrary, the record contains a certificate from the Deputy Chief of Constabulary that the building was indeed burned to the ground on January 31, 1987.[10] This fact indeed rendered the action for specific performance no longer viable.

Since the action filed by the private respondents was premature, they are not entitled to any award of damages. Neither may the petitioners recover on their counterclaim because the private respondents filed their complaint in the honest belief that they had a right to the relief they were seeking. Attorney's fees are also not due to either of the parties because it has not been shown that any of them acted "in a wanton, fraudulent, reckless, oppressive, or malevolent manner." The parties must therefore bear their own costs.

WHEREFORE, the challenged decision is SET ASIDE and a new judgment is rendered: (a) DISMISSING the complaint for specific performance; (b) DECLARING the lease terminated as of November 7, 1982; and (c) ORDERING petitioner Victor D. Young to vacate the leased premises. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Mendoza, J., ponente, with Paras and Limcaoco, JJ., concurring.

[2] 181 SCRA 762.

[3] Tolentino, Civil Code of the Philippines, 1985 Edition, Vol. IV, p. 388.

[4] Ibid.

[5] Summit Guaranty and Insurance Co., Inc. v. De Guzman, 151 SCRA 389.

[6] Surigao Mine Exploration Co., Inc. v. C. Harris, 68 Phil. 113.

[7] Paras, Civil Code of the Philippines Annotated, 1978 Edition, Vol. IV, p. 448.

[8] Tolentino, Civil Code of the Philippines, 1985 Edition, Vol. IV, p. 464.

[9] Rule 64, Section 1, Rules of Court.

[10] Rollo, p. 160.

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