

JOSE VACA, PLAINTIFF AND APPELLANT, VS. MANUEL KOSGA, DEFENDANT AND APPELLEE.*G.R. No. 8394. December 27, 1913*

Ponente: TORRES, J.

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This appeal, through a bill of exceptions, was filed by counsel for the plaintiff from the judgment of September 30, 1912, whereby the Honorable C. S. Lobingier, judge, found that the defendant was not liable to the plaintiff upon the causes of action set forth in the complaint and adjudged that the plaintiff take nothing by his complaint and that the defendant recover his costs.

On May 28, 1912, Jose Vaca filed a written complaint with the Court of First Instance of this city, wherein he alleged that, by an instrument ratified on February 15, 1912, before the notary Perfecto Salas, the defendant Kosca took over by purchase all the business assets and liabilities of the special partnership known as M. Kosca & Co., established in this city; that, among the credits that appeared against the assignor-partnership and for which the assignee defendant became liable, was one of P1,571.43, on the date of the assignment, in favor of the plaintiff for loans made to the vendor-partnership; and that in spite of several demands made upon him the defendant had not paid said sum either wholly or in part. As a second cause of action the plaintiff further alleged that, upon the petition of the defendant Kosca and for the benefit and profit of the latter's machine shop, he had ordered lumber from Tuason & Sampedro and as surety guaranteed the payment of the price thereof, which amounted to P414.48, a sum which the defendant had not paid, wherefore the plaintiff had to pay it to Tuason & Sampedro, for the defendant not only refused to pay the two aforesaid sums specified in the plaintiff's two causes of action, but also was endeavoring to dispose of his property and to absent himself with the purpose of defrauding his creditors, one of whom was the complainant. The plaintiff therefore prayed that judgment be rendered against the defendant for the said sums, amounting to P1,985.91, and the legal interest thereon, that the defendant's property be temporarily attached for an amount necessary to ensure the payment of the judgment, after deposit of the required bond which the plaintiff offered to furnish, and that the defendant be also sentenced to pay the costs.

Counsel for the defendant, in his answer, denied each and all of the allegations in the first and second causes of action set out in the complaint, with the exception of the second paragraph thereof. As a special defense he alleged that, on February 15, 1912, he had purchased the machine and carpenter shop of Manuel Ruperto, Nicomedes Constantino, Vicente Gabriel, Ceferino Lorenzana and Juan de los Reyes, representatives of the special partnership known as M. Kosca & Co.; that in April of the same year, by virtue of an agreement between the plaintiff, the defendant and the representatives of the said company, the defendant assigned and conveyed the said shop, together with all his rights, actions and obligations, to Jose Infante, which assignment and sale were approved and consented to by the plaintiff Jose Vaca, as a member of the said partnership of M. Kosca & Co.; that, on the 25th of the same month of April, Jose Infante took possession of the said shop and took over the business thereof, with its assets and liabilities, and assumed the obligation to pay all the debts of the defendant Kosca and those of the partnership M. Kosca & Co., under the terms and conditions recorded in the instrument of

sale executed for the purpose by the contracting parties and signed by all the persons interested therein and by the plaintiff himself, Jose Vaca; and that the right of action which the latter exercised in his complaint should be directed against Jose Infante, who was then the owner of the said machine and carpenter shop and had been subrogated in place of the defendant in all the latter's rights, actions and obligations; and he therefore prayed that he be absolved from the complaint, with the costs against the plaintiff.

Upon the hearing of the case and in view of the evidence adduced therein, the foregoing judgment was rendered, to which counsel for the plaintiff excepted and asked for its annulment and a new trial. This motion being denied, the appellant saved his exception and duly presented the proper bill of exceptions, which was approved, certified and forwarded to the clerk of this court.

In order to decide whether the defendant Manuel Kosca is or is not obligated to pay the sum of P1,985.91, due the plaintiff Jose Vaca from the partnership entitled M. Kosca & Co., as owner of the machine and carpenter shop purchased by the said Manuel Kosca with assets and liabilities and other rights and obligations of that special partnership; or whether, instead of the defendant Kosca, the later purchaser of the same business, Jose Infante, is the obligor, by virtue of a contract entered into between Kosca and Infante with the intervention of the original owners of the shop, it is first necessary to inquire whether this second sale made by Kosca to Infante, recorded in the instrument dated April 26, 1912, materially affects the previous contract executed on February 12, 1912, and ratified before a notary on the 15th of the same month, by the original owners of the shop and the defendant Manuel Kosca.

That instrument ratified before the notary Salas on February 15, 1912, shows that the defendant Kosca purchased and acquired the shop with the business conducted therein and all its assets and liabilities for the price of P9,073.72, payable at the rate of P168.50 per month from the subsequent March of that year to its owners, the vendor members of the partnership M. Kosca & Co.; and by virtue of this contract the purchaser Kosca took over all the rights and obligations of the partnership, under the joint and several guaranty of the bondsman Sixto Mendoza.

Among the items that form the liabilities of the business acquired by the defendant Kosca, is the debt in cash to the plaintiff, Jose Vaca, of P2,729.87; deducting from this sum P1,226.44, the aggregate of the amounts collected by the plaintiff or credited to the defendant, there remains the net sum of P1,571.73; adding to this the P414.48 advanced by the plaintiff to Tuason & Sampedro, for lumber furnished by them on February 8th and 9th, 1912, to the partnership of M. Kosca & Co., we have the total sum of P1,985.91, the amount which the defendant Kosca, who is liable for the debts of the said firm, owes Jose Vaca, and it is the amount claimed in this suit.

Defendant's contention that he is exempt from the obligation to pay the sum demanded and that the action for its collection should be brought against Jose Infante, the present possessor of the said shop, could be considered and admitted, if the contract contained in the instrument Exhibit 1 had been perfected and if it embodied the essential requisites of a valid and effective contract in such wise that it completely altered and invalidated the previous contract executed between the former owners of the said shop and Manuel Kosca, on February 12, 1912, for, were it so, it would be unquestionable that the defendant Kosca would have been entirely relieved of all liability and his obligations toward the original owners of the shop mentioned, including the plaintiff Jose Vaca; but it is fully proven by the record that the instrument Exhibit 1 does not express, as the defendant supposes, a perfect, valid and effective contract by virtue of which the defendant Kosca has been relieved from complying with the obligations contained in the previous contract of February 12, 1912; and, therefore, the action brought for the collection of the credit claimed by the plaintiff is sustainable and was properly instituted against the said Kosca. It could not have lain or been brought against Jose Infante, as he was not legally and effectively obligated by the proposed contract of April 26, 1912, unratified by its executors before the notary who drafted it.

In connection with the said instrument Exhibit 1, dated April 26, 1912, the following considerations are quoted from the decision rendered by this court in case No. 8658 (Ruperto vs. Kosca, ante, p. 227), brought by the original owners of the said shop against Manuel Kosca and his bondsman for the collection of a sum of money:

"In order to decide the first point relative to whether the contract contained in the aforementioned instrument Exhibit 1 is valid and effective, an examination must be made to ascertain whether this contract became perfected between the contracting parties, since, pursuant to article 1278 of the Civil Code, contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist.

"It is a fact that the interested parties agreed to execute a contract for the purchase and sale, through the mediation of the plaintiffs, of a machine and carpenter shop belonging to Manuel Kosca, by virtue of which the purchaser, Jose Infante, should be subrogated in place of the vendor, Kosca, with respect to the rights and obligations contracted by the latter in accordance with the previous contract of sale executed between him and the plaintiffs on February 15, 1912; and, for this purpose, Kosca's substitute, Jose Infante, bound himself to present two bondsmen who would guarantee Infante's fulfillment, as Kosca's substitute, with respect to the obligations contracted by Kosca toward the plaintiffs; but, though it appears that the latter signed the said instrument, it constituted only a proposed agreement drawn up by the notary, until it should be ratified by the contracting parties, and it cannot be held that a proposed contract is binding, because it is not perfect and the essential conditions required for its validity do not exist.

"It was signed by the contracting parties, and particularly by the plaintiffs, upon the condition that the principal obligor, Jose Infante, would comply with the conditions therein stipulated, among which was the furnishing of security by two bondsmen and because this requirement, stipulated in condition 5 of the said contract, was not complied with (for Infante was unable to furnish two bondsmen, as the two persons presented by him in the office of the notary would not sign the instrument, according to the latter's testimony), the plaintiffs, who intervened as creditors and parties principally interested in the contract of sale stipulated between the vendor Kosca, and the vendee Infante, refused to ratify the said contract before a notary.

"Article 1114 of the Civil Code prescribes: 'In conditional obligations, the acquisition of rights as well as the extinction or loss of those already acquired, shall depend upon the event constituting the condition.'

"The condition imposed by the plaintiffs, creditors entitled to collect nearly the whole price of the sale of the said shop, was that the purchaser, Infante, should guarantee the fulfillment of the obligations for the execution of which he was to substitute Kosca in taking charge of the shop, and the plaintiffs' consent to the sale and transfer of the shop by Kosca to Infante was dependent on that condition.

"Since the said condition was unfulfilled, to wit, that two bondsmen should guarantee the liability that would be contracted by Jose Infante, it is unquestionable that the plaintiffs cannot be obliged to consent to the stipulations covenanted between Kosca and Infante and that the instrument Exhibit 1 contains only a projected contract, one not perfected because of the lack of consent on the part of the plaintiffs, which is a requisite prescribed in article 1261 of the Civil Code.

"On this hypothesis, that the contract of purchase and sale projected in the instrument Exhibit 1, did not rest upon the express consent of the plaintiffs, it is evident that this instrument has not produced the effect of annulling or invalidating the previous contract of February 15, 1912, executed by Manuel Kosca in favor of the plaintiffs, and that, if this first contract subsists and is maintained and neither Kosca nor his bondsmen, Sixto Mendoza, has been substituted by Jose Infante, nor by the latter relieved from the fulfillment of the obligations established in the said previous contract, then Manuel Kosca is still bound to comply with the obligations and liabilities he assumed toward the plaintiffs under the guarantee given jointly and severally by him and his bondsman, Sixto Mendoza."

The prior contract of February 12, 1912, ratified before the notary Salas, undoubtedly subsists, and for this reason

the defendant Kosca is liable for the debts and all the obligations contracted by the partnership known as M. Kosca & Co. and assumed by him, according to the said contract; and if the sum claimed by Jose Vaca forms a part of the liabilities of that partnership, for which the defendant Kosca became liable, together with all its assets and rights, it is undeniable that he is directly and effectively bound to pay the sum claimed, since he was unable to deny or refute the certainty and lawfulness of the said debt, for his whole defense consists merely in the averment that the plaintiff, Jose Vaca, as one of the partners and owners of the shop and its business, had consented to and approved the assignment and sale made by him to Jose Infante who, according to the aforementioned contract of April 25th, took charge of the business and assumed the obligation to pay the defendant's debts, as shown by the instrument of April 25, signed by all the interested parties, including the plaintiff Jose Vaca.

In the considerations quoted, which among others served as grounds for the decision rendered in the said case No. 8658, it was fully and extensively demonstrated that the projected contract contained in the instrument Exhibit 1 did not become perfected, for the reason that Jose Infante did not fulfill the condition of presenting two bondsmen who would guarantee the said contract, wherefore the original owners of the said shop, one of whom was the plaintiff Jose Vaca, did not give their consent to the price of the sale of the same, and for this reason the contract of purchase and sale stipulated between Manuel Kosca and Jose Infante was not perfected and, as a mere project, could not produce the effect of annulling and invalidating the prior contract of February 15, 1912, executed by the said Kosca in favor of the vendors of the shop, one of whom was the plaintiff Jose Vaca, In consequence thereof, Kosca was not substituted by Jose Infante, nor relieved by the latter from complying with the obligations and liabilities he had assumed toward all the creditors of the partnership of M. Kosca & Co., and it is neither just nor reasonable that Jose Infante be considered as subrogated in place of Kosca and held responsible for the obligations and liabilities that the said Infante did not assume, even with respect to the previous owners of the shop sold.

In the inventory of the assets and liabilities of the said partnership, inserted in the instrument Exhibit F, there appears as the first item of the liabilities the partnership's debt to Jose Vaca, amounting to P2,797.87. In paragraph 4 of the same document it is said that "by virtue of this contract Manuel Kosca assumes all the obligations of the special partnership, M. Kosca & Co., in conformity with the liabilities," and in paragraph 5 that "it is also covenanted that, by virtue of this purchase, whatever other rights and whatever other obligations the special partnership M. Kosca & Co. may have or may have had since the day of its organization are hereby transferred to the said Manuel Kosca," and that "the cost of this instrument and of the others hereto annexed shall be borne by the said Manuel Kosca."

After the deduction of various sums which the defendant, Manuel Kosca, now as owner of the shop, paid to the plaintiff, Jose Vaca, and of other amounts which Vaca credited to Kosca in the latter's same capacity, the debt recorded in the aforesaid instrument was reduced to P1,571.43; but by failure to pay the account, Exhibit B, for P414.48, the price of the lumber bought on credit by the said partnership from Tuason & Sampedro on the 8th and 9th of February, 1912, dates prior to the purchase and acquisition of the said shop by Kosca, according to the instrument of February 12, 1912, which lumber was delivered to the partnership under the guaranty of Jose Vaca, the latter had to pay for this lumber, and it is just that the plaintiff recover the amount so paid by him from the present owner of the shop, who is the defendant Manuel Kosca, since this latter assumed all the obligations and liabilities against the shop acquired by him, according to the express agreement made with its previous owners.

It seems strange that the defendant should have had in his possession and made use of the projected contract, although it was neither perfected, nor, for lack of bondsmen, ratified before the notary who drafted it. The notary explained this irregularity by saying that he furnished this document to the defendant under promise to return it, which he did not do.

The instrument Exhibit 1 was drawn up on April 26, 1912, for the purpose of effecting the renewal by novation of the previous contract of February 12 of the same year by modifying it so as to substitute the debtor and bondsmen and by subrogating Jose Infante in place of the defendant Manuel Kosca, with the express consent of the creditors, Infante binding himself to comply with the obligations and liabilities of the defendant Kosca, in accordance with the provisions of articles 1203 and 1205 of the Civil Code.

Pursuant to the agreement, Jose Infante, the purchaser and substitute debtor, who was subrogated in place of the defendant in order to comply with the obligations contracted by the latter toward the previous owners of the shop, as set forth in the previous contract of February 12, 1912, was to present two bondsmen who should guarantee the fulfillment of the contract; this he was unable to do, notwithstanding his efforts; wherefore one of the principal conditions of the contract remained unfulfilled and without this, as is to be supposed, the previous owners of the said shop and creditors for its price never would have consented to the agreement, as they did not ratify the contents of the aforesaid instrument Exhibit 1, on account of such lack of guaranty, as they did not consider this document perfected and definitely completed, and it could not, therefore, produce the effects of a valid and effective instrument in favor of the defendant Kosca and against Jose Infante, or affect the rights of the defendant's creditors.

The credit, the payment of which is demanded by the plaintiff, appears as one of the debits among the liabilities recorded in the instrument, Exhibit F, of the date of February 12, 1912, which the purchaser of the shop, Manuel Kosca, obligated himself to pay, and therefore the plaintiff-creditor, Jose Vaca, was not obligated to give notice of his acceptance to Manuel Kosca, the debtor, who assumed the obligations and liabilities contracted by the previous owners of the shop, and such notice was not required in order to enable Vaca to exercise his right, as creditor, to collect his credit with entire independence of the right of the previous owners of the said shop in the price of the sale thereof.

So then, this suit involves the unquestionable right of Jose Vaca, as creditor, to collect his credit from the defendant, Manuel Kosca, the party obligated to pay the debts of the previous owners of the said shop, pursuant to the obligation contracted in the instrument, Exhibit F, of February 12, 1912, duly ratified before a notary. The plaintiff is also entitled to collect, as an indemnity, legal interest at the rate of 6 per cent per annum from the date of his complaint.

For the foregoing reasons we are of the opinion that, with reversal of the judgment appealed from, we should sentence the defendant Manuel Kosca, as we do hereby, to pay the sum of P1,985.91, with legal interest at the rate of 6 per cent per annum from the date of the complaint, May 28, 1912; and no special finding is made as to the costs of both instances.

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

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