

**MANUEL RUPERTO ET AL., PLAINTIFFS AND APPELLEES, VS.
MANUEL KOSCA ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 8658. December 04, 1913*

Ponente: TORRES, J.

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This appeal, through a bill of exceptions, was made by the defendants from the judgment of November 27, 1912, rendered by the Honorable A. S. Crossfield, judge, whereby he sentenced them jointly and severally to pay to the plaintiffs the sum of P8,905.22, with interest at the rate of 6 per cent per annum from May 28, 1912, and the costs.

By a written complaint of May 28, 1912, counsel for the plaintiffs brought suit in the Court of First Instance of this city and alleged that, according to an instrument ratified on February 15 of the same year, before a notary, the plaintiffs being duly authorized, sold all the business, including the assets and liabilities, of the special partnership known as M. Kosca & Co., established on Calle Lavezares, Binondo, to the defendant Manuel Kosca for the sum of P9,073.72, payable in monthly installments of P168.50 each, of which the first payment and installment was to be made on March 31, 1912; that it was further stipulated that, should the purchaser fail to pay any installment when due, the vendors would be entitled immediately to demand the total payment of balance of the price, without awaiting the maturity of the monthly installments; that Sixto Mendoza became bondsman jointly with the purchaser Kosca, to guarantee the fulfilment of the obligation, contracted by the latter in the said instrument; that the purchaser, Manuel Kosca, paid only the first installment, pertaining to March, 1912, and failed to pay the sum of P168.50, corresponding to the following month of April, nor was this second installment paid by his bondsman, in spite of the requests duly made upon him so to do; and that it was to the plaintiffs' interests to demand the immediate payment of the total unpaid balance of the price of the sale, without awaiting payment by monthly installments. Said counsel therefore prayed that judgment be rendered by sentencing the defendants jointly and severally to pay the sum of P8,905.22, together with the legal interest thereon, and the costs.

The demurrer filed by the defendants having been overruled, counsel for the defendant Sixto Mendoza asked that the complaint filed against him be quashed, with the costs against the plaintiffs, and alleged in his petition that, after the execution of the said instrument, that is, in April, 1912, the defendant Mendoza transferred to Jose Infante all the rights which the former had in the store that had been sold; and that the plaintiffs agreed with Mendoza and with the purchaser Infante that the latter should subrogate the former and release him from all liability to the plaintiffs, and that the plaintiffs should subrogate the defendant Mendoza in all the rights which he might have against the said Infante in the matter of the price of the sale of the said store, a sale effected with the consent and approval of the defendants, who should be styled the plaintiffs.

Counsel for the other defendant, Manuel Kosca, denied each and all of the allegations contained in the complaint, with the exception of those admitted as true in the said answer, and admitted the facts set out in paragraphs 2 and 4 of the complaint. As a special defense he alleged that, on February 15, 1912, the defendant Kosca acquired from the plaintiffs by purchase the machine and carpenter shop of the said special partnership, and that, in April of the same year, by virtue of an agreement between Kosca and the plaintiffs, the former sold and transferred the said

shop to Jose Infante, together with all his rights, actions and obligations thereto pertaining, under the approval and with the mediation of the plaintiffs; that, as a result of such sale, Infante, on the 25th of the said month of April, took charge of the shop sold to him, with all the assets and liabilities of the business, and assumed the obligation to pay all of Kosca's debts and those of the said partnership, under the terms and conditions set forth in the instrument executed for the purpose by the contracting parties, with the approval of the plaintiffs themselves; that, among other conditions, it was stipulated that the purchaser Infante should thenceforth pay to the plaintiffs the monthly installments of P168.50, upon their maturity, until he should have paid them the sum of P9,072.72; that, should there be default in the payment of any installment, the debt should thereby immediately become due and the total balance owing should be demandable forthwith; and that, as a guarantee for the payment of the monthly installments until the extinction of the debt, a special mortgage should be placed on the property referred to; that, by virtue of the stipulations made, Jose Infante bound himself to comply with each and all of the obligations specified, released Kosca from all liability toward the plaintiffs and assumed all the rights and obligations that the said special partnership had had since the day of its organization; and that the plaintiffs were aware of each and all of the clauses and conditions of the said contract and approved the transfer made by Kosca to Infante and, consequently, released the former from all liability, on which account the plaintiffs ought to sue Jose Infante, the present owner of the said shop, who subrogated the defendant Kosca in all the rights, actions and obligations that the latter might have. Said counsel therefore prayed that the defendant Manuel Kosca be absolved from the complaint, with the costs against the plaintiffs.

After a hearing of the case and the introduction of evidence by both parties, the court rendered the judgment aforementioned, to which exception was entered by the attorneys for the defendants, who also moved for a new trial; this motion was overruled, an exception was taken by the defendant-appellants, and the proper bill of exceptions having been presented, the same was approved, certified and forwarded to the clerk of this court.

The question pending between the parties is whether the contract contained in the instrument Exhibit 1, drawn up on April 26, 1912, though not ratified before a notary on account of one of the contracting parties not having fulfilled the stipulated requirement of presenting two bondsmen who should guarantee the said purchaser-party's compliance with the obligations assumed by him, is a perfect, valid and effective contract, and, if so, whether it produces the effect of relieving the vendor, Kosca, and his bondsman from the obligations covenanted in the previous contract of February 15, 1912, executed between these two and the plaintiffs, the original owners of the machine and carpenter shop sold to the said Manuel Kosca.

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 all 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 bondsman, 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.

Whatever may be the nature of the contract entered into between Kosca and Infante, the stipulations therein made can in no wise affect the rights of the plaintiffs, who consented to its execution only under the explicit condition of there being bondsmen, which condition Infante did not fulfill, and therefore it can not be held that the plaintiffs gave their consent to such contract.

The defendant Kosca, after paying the first installment or the sum of P168.50, failed to make the other partial payments agreed upon, wherefore, in accordance with the agreement, he is legally obliged to pay all the rest of the price of the sale, which amounts to P9,073.72, and is likewise liable for the legal interest thereon from May 28, 1912, on account of his default, pursuant to the provisions of article 1108 of the Civil Code.

With respect to the first error assigned by the appellant, it is to be noted that counsel for the defendant Kosca admitted the allegation contained in paragraph 2 of the complaint and in which it is averred that the plaintiffs had sold the said shop to Kosca, and, furthermore, inasmuch as this defendant paid the plaintiffs the first installment agreed upon and the latter all appear and demand from him payment of the rest of the price of the shop sold, it is neither reasonable nor permissible for Kosca now to impugn the personality of the plaintiffs with whom he had covenanted the purchase of the said shop and to whom he bound himself to pay them the price of the sale and to whom he paid the first installment. It would be neither proper nor lawful to allow him to. assail the status of the

plaintiffs, who were in his opinion, when he executed with them the contract of February 15, 1912, competent persons with the right to sell him the shop in question, but whose personality and rights he impugns when called upon to pay.

Thus the errors assigned by the appellants to the judgment appealed from are deemed to have been refuted, and the said judgment should be, as it is hereby, affirmed; with the costs against the appellants.

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

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