

YU TEK & CO., PLAINTIFF AND APPELLANT, VS. BASILIO GONZALEZ, DEFENDANT AND APPELLANT.

G.R. No. 9935. February 01, 1915

Ponente: TRENT, J.

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TRENT, J.:

The basis of this action is a written contract, Exhibit A, the pertinent paragraphs of which follow:

"1. That Mr. Basilio Gonzalez hereby acknowledges receipt of the sum of P3,000 Philippine currency from Messrs. Yu Tek & Co., and that in consideration of said sum he obligates himself to deliver to the said Yu Tek & Co., 600 piculs of sugar of the first and second grade, according to the result of the polarization, within the period of three months, beginning on the 1st day of January, 1912, and ending on the 31st day of March of the same year, 1912.

"2. That the said Mr. Basilio Gonzalez obligates himself to deliver to the said Messrs. Yu Tek & Co. of this city the said 600 piculs of sugar at any place within the said municipality of Santa Rosa which the said Messrs. Yu Tek & Co. or a representative of the same may designate.

"3. That in case the said Mr. Basilio Gonzales does not deliver to Messrs. Yu Tek & Co. the 600 piculs of sugar within the period of three months, referred to in the second paragraph of this document, this contract will be rescinded and the said Mr. Basilio Gonzalez will then be obligated to return to Messrs. Yu Tek & Co. the P3,000 received and also the sum of P1,200 by way of indemnity for loss and damages."

Plaintiff proved that no sugar had been delivered to it under this contract nor had it been able to recover the P3,000. Plaintiff prayed for judgment for the P3,000 and, in addition, for P1,200 under paragraph 4, *supra*. Judgment was rendered for P3,000 only, and from this judgment both parties appealed.

The points raised by the defendant will be considered first. He alleges that the court erred in refusing to permit parol evidence showing that the parties intended that the sugar was to be secured from the crop which the defendant raised on his plantation, and that he was unable to fulfill the contract by reason of the almost total failure of his crop. This case appears to be one to which the rule which excludes parol evidence to add to or vary the terms of a written contract is decidedly applicable. There is not the slightest intimation in the contract that the sugar was to be raised by the defendant. Parties are presumed to have reduced to writing all the essential conditions of their contract. While parol evidence is admissible in a variety of ways to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing, unless there has been fraud or mistake. In an early case this court declined to allow parol evidence showing that a party to a written contract was to become a partner in a firm instead of a creditor of the firm. (*Pastor vs. Gaspar*, 2 Phil. Rep., 692.) Again, in *Eveland vs. Eastern Mining Co.* (14 Phil. Rep., 509) a contract of employment provided that the plaintiff should receive from the defendant a stipulated salary and expenses. The defendant sought to interpose as a defense to recovery that the payment of the salary was contingent upon the plaintiff's employment redounding to the benefit of the defendant company. The contract contained no such condition and the court declined to receive parol evidence thereof.

In the case at bar, it is sought to show that the sugar was to be obtained exclusively from the crop raised by the defendant. There is no clause in the written contract which even remotely suggests such a condition. The defendant undertook to deliver a specified quantity of sugar within a specified time. The contract placed no restriction upon the defendant in the matter of obtaining the sugar. He was equally at liberty to purchase it on the market or raise it himself. It may be true that defendant owned a plantation and expected to raise the sugar himself, but he did not limit his obligation to his own crop of sugar. Our conclusion is that the condition which the defendant seeks to add to the contract by parol evidence cannot be considered. The rights of the parties must be determined by the writing itself.

The second contention of the defendant arises from the first. He assumes that the contract was limited to the sugar he might raise upon his own plantation; that the contract represented a perfected sale; and that by failure of his crop he was relieved from complying with his undertaking by loss of the thing due. (Arts. 1452, 1096, and 1182, Civil Code.) This argument is faulty in assuming that there was a perfected sale. Article 1450 defines a perfected sale as follows:

"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."

Article 1452 reads: "The injury to or the profit of the thing sold shall, after the contract has been perfected be governed by the provisions of articles 1096 and 1182."

This court has consistently held that there is a perfected sale with regard to the "thing" whenever the article of sale has been physically segregated from all other articles. Thus, a particular tobacco factory with its contents was held sold under a contract which did not provide for either delivery of the price or of the thing until a future time. *McCullough vs. Aenlle & Co.* (3 Phil. Rep., 285). Quite similar was the recent case of *Barretto vs. Santa Marina* (26 Phil. Rep., 200) where specified shares of stock in a tobacco factory were held sold by a contract which deferred delivery of both the price and the stock until the latter had been appraised by an inventory of the entire assets of the company. In *Borromeo vs. Franco* (6 Phil. Rep. (49) a sale of a specific house was held perfected between the vendor and vendee, although the delivery of the price was withheld until the necessary documents of ownership were prepared by the vendee. In *Tan Leonco vs. Go Inqui* (8 Phil. Rep., 531) the plaintiff had delivered a quantity of hemp into the warehouse of the defendant. The defendant drew a bill of exchange in the sum of P800, representing the price which had been agreed upon for the hemp thus delivered. Prior to the presentation of the bill for payment, the hemp was destroyed. Whereupon, the defendant suspended payment of the bill. It was held that the hemp having been already delivered, the title had passed and the loss was the vendee's. It is our purpose to distinguish the case at bar from all these cases.

In the case at bar the undertaking of the defendant was to sell to the plaintiff 600 piculs of sugar of the first and second classes. Was this an agreement upon the "thing" which was the object of the contract within the meaning of article 1450, *supra*? Sugar is one of the staple commodities of this country. For the purpose of sale its bulk is weighed, the customary unit of weight being denominated a "picul." There was no delivery under the contract. Now, if called upon to designate the article sold, it is clear that the defendant could only say that it was "sugar." He could only use this generic name for the thing sold. There was no "appropriation" of any particular lot of sugar. Neither party could point to any specific quantity of sugar and say: "This is the article which was the subject of our contract." How different is this from the contracts discussed in the cases referred to above! In the *McCullough* case, for instance, the tobacco factory which the parties dealt with was specifically pointed out and distinguished from all other tobacco factories. So, in the *Barretto* case, the particular shares of stock which the parties desired to transfer were capable of designation. In the *Tan Leonco* case, where a quantity of hemp was the

subject of the contract, it was shown that that quantity had been deposited in a specific warehouse, and thus set apart and distinguished from all other hemp.

A number of cases have been decided in the State of Louisiana, where the civil law prevails, which confirm our position. Perhaps the latest is *Witt Shoe Co. vs. Seegars & Co.* (122 La., 145; 47 Sou., 444). In this case a contract was entered into by a traveling salesman for a quantity of shoes, the sales having been made by sample. The court said of this contract:

"But it is wholly immaterial, for the purposes of the main question, whether Mitchell was authorized to make a definite contract of sale or not, since the only contract that he was in a position to make was an agreement to sell or an executory contract of sale. He says that plaintiff sends out 375 samples of shoes, and as he was offering to sell by sample shoes, part of which had not been manufactured and the rest of which were incorporated in plaintiff's stock in Lynchburg, Va., it was impossible that he and Seegars & Co. should at that time have agreed upon the specific objects, the title to which was to pass, and hence there could have been no sale. He and Seegars & Co. might have agreed, and did (in effect) agree, that the identification of the objects and their appropriation to the contract necessary to make a sale should thereafter be made by the plaintiff, acting for itself and for Seegars & Co., and the legend printed in red ink on plaintiff's billheads ("Our responsibility ceases when we take transportation Co's. receipt 'In good order' ") indicates plaintiff's idea of the moment at which such identification and appropriation would become effective. The question presented was carefully considered in the case of *State vs. Shields, et al.* (110 La., 547, 34 Sou., 673) (in which it was absolutely necessary that it should be decided), and it was there held that in receiving an order for a quantity of goods, of a kind and at a price agreed on, to be supplied from a general stock, warehoused at another place, the agent receiving the order merely enters into an executory contract for the sale of the goods, which does not divest or transfer the title of any determinate object, and which becomes effective for that purpose only when specific goods are thereafter appropriated to the contract; and, in the absence of a more specific agreement on the subject, that such appropriation takes place only when the goods as ordered are delivered to the public carriers at the place from which they are to be shipped, consigned to the person by whom the order is given, at which time and place, therefore, the sale is perfected and the title passes."

This case and *State vs. Shields*, referred to in the above quotation are amply illustrative of the position taken by the Louisiana court on the question before us. But we cannot refrain from referring to the case of *Larue & Prevost vs. Rugely, Blair & Co.* (10 La. Ann., 242) which is summarized by the court itself in the *Shields* case as follows:

"* * * It appears that the defendants had made a contract for the sale, by weight, of a lot of cotton, had received \$3,000 on account of the price, and had given an order for its delivery, which had been presented to the purchaser, and recognized by the press in which the cotton was stored, but that the cotton had been destroyed by fire before it was weighed. It was held that it was still at the risk of the seller, and that the buyer was entitled to recover the \$3,000 paid on account of the price."

We conclude that the contract in the case at bar was merely an executory agreement; a promise of sale and not a sale. As there was no perfected sale, it is clear that articles 1452, 1096, and 1182 are not applicable. The defendant having defaulted in his engagement, the plaintiff is entitled to recover the P3,000 which it advanced to the defendant, and this portion of the judgment appealed from must therefore be affirmed.

The plaintiff has appealed from the judgment of the trial court on the ground that it is entitled to recover the additional sum of P1,200 under paragraph 4 of the contract. The court below held that this paragraph was simply a limitation upon the amount of damages which could be recovered and not liquidated damages as contemplated by the law; "It also appears," said the lower court, "that in any event the defendant was prevented from fulfilling the contract by the delivery of the sugar by conditions over which he had no control, but these conditions were not sufficient to absolve him from the obligation of returning the money which he received."

The above quoted portion of the trial court's opinion appears to be based upon the proposition that the sugar which was to be delivered by the defendant was that which he expected to obtain from his own hacienda and, as the dry weather destroyed his growing cane, he could not comply with his part of the contract. As we have indicated, this view is erroneous, as, under the contract, the defendant was not limited to his growing crop in order to make the delivery. He agreed to deliver the sugar and nothing is said in the contract about where he was to get it.

We think this is a clear case of liquidated damages. The contract plainly states that if the defendant fails to deliver the 600 piculs of sugar within the time agreed on, the contract will be rescinded and he will be obliged to return the P3,000 and pay the sum of P1,200 by way of indemnity for loss and damages. There cannot be the slightest doubt about the meaning of this language or the intention of the parties. There is no room for either interpretation or construction. Under the provisions of article 1255 of the Civil Code contracting parties are free to execute the contracts that they may consider suitable, provided they are not in contravention of law, morals, or public order. In our opinion there is nothing in the contract under consideration which is opposed to any of these principles.

For the foregoing reasons the judgment appealed from is modified by allowing the recovery of P1,200 under paragraph 4 of the contract. As thus modified, the judgment appealed from is affirmed, without costs in this instance.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.
Johnson, J., dissents.

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