

[G.R. No. 18335. January 10, 1923]

LORENZO ZAYCO, DIONISIO INZA, AND SEVERINO LIZARRAGA, PLAINTIFFS AND APPELLANTS, VS. SALVADOR SERRA, VENANCIO CONCEPCION, AND PHIL. C. WHITAKER, DEFENDANTS AND APPELLEES.

D E C I S I O N

AVANCEÑA, J.:

On November 7, 1918, the plaintiff, Lorenzo Zayco, and the defendant, Salvador Serra, entered into a contract, the pertinent clauses of which are the following:

“1. That the party of the first part shall give the party of the second part an option to buy the *Palma Central* for the sum of one million pesos (P1,000,000).

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“4. That in case the purchase of the *Palma Central* is made and the party of the second part cannot pay the whole price in cash, then he will be given a period not exceeding three years within which to make the full payment, computed from the day of the execution of the contract of sale, provided that the party of the second part gives a security or bond to the satisfaction of the party of the first part to guarantee the payment of the balance of the purchase price, with interest thereon at a reasonable rate.

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“6. That this option of the party of the second part to purchase the *Palma*

Central, or to become a partner of, or join, the party of the first part, expires on the 30th of June, 1919.

“7. That hereafter, in case of the sale of the *Palma Central*, or the formation of a partnership to operate the same, the party of the second part shall have preference to make such sale, or become a partner, over any other persons desiring to purchase the central or enter into partnership.”

Under date of June 28, 1919, the plaintiff, Lorenzo Zayco, through his attorney, wrote a letter (Exhibit A) to the defendant, Salvador Serra, accepting the foregoing contract and placing at his disposal a cash order of the Bank of the Philippine Islands of Iloilo in the amount of P100,000, in part payment of the price of the *Palma Central* and Estate. In this letter, notice was also given to Serra that the Philippine National Bank agreed to transfer his long term loan of P600,000, to the account of Zayco and to hold the latter responsible for all the amounts had and received on account of this loan, Serra to be completely relieved from all responsibility arising therefrom. Offer was further made in this letter to give the bond required by the contract of November 7, 1918, to secure the payment of the balance of the price of the *Palma Central* and Estate. The letter ended with a demand by Zayco on Serra to execute the deed of sale. Serra had knowledge of this letter on June 30, 1919, as may be inferred from his answer bearing that date (Exhibit C). On the following 15th of July, Serra wrote to Zayco’s attorney, stating that the option contract of November 7, 1918, was cancelled and annulled.

On the same day, June 30, 1919, Zayco brought suit against Serra to compel him to execute the deed of sale and conveyance of the *Palma Central* and Estate and to pay, in addition, P500,000 as damages.

It might be well to make a brief statement of the proceedings had thereafter until the holding of the trial.

To this complaint the defendant demurred on the ground, among others, that the contract of November 7, 1918, does not specify the part of the price that was to be paid in cash and the part that was to be paid within a period not exceeding three years.

Before the court could pass upon this demurrer, Zayco filed an amended complaint on September 9, 1919, which was later withdrawn, and substituted by another one dated October 21, 1919.

To this amended complaint of October 21, 1919, another demurrer was filed, one of its grounds being the same as that alleged in the first demurrer, to wit, that the contract of November 7, 1918, does not stipulate what part of the price was to be paid in cash and what part within a period not exceeding three years. The court sustained this demurrer and granted the plaintiff a period within which to amend his complaint.

On January 23, 1920, the last amended complaint was filed in which, for the first time, an allegation is made that subsequent to the contract of November 7, 1918, and prior to June 28, 1919, a stipulation was made by the plaintiff, Zayco, and the defendant, Serra, that the sum to be paid in cash on account of the total price of the sale was P100,000.

A demurrer was also interposed to this last amended complaint, which was overruled.

The defendant filed his answer on February 27, 1920, containing a general and specific denial of all and each of the allegations of the complaint and a special defense consisting in that the contract of November 7, 1918, did not specify a sufficient consideration on the part of the plaintiff Zayco.

On March 19, 1920, the plaintiff filed a supplemental complaint in which Philip Whitaker, Venancio Concepcion, and Eusebio E. de Luzuriaga were included as defendants, and it was alleged that, without the knowledge of the plaintiff Zayco, the defendant Serra sold the *Palma Central* and Estate to said Messrs. Philip Whitaker, Venancio Concepcion, and Eusebio R. de Luzuriaga on January 29, 1920, for the sum of P1,500,000 on the terms and conditions specified in said contract. It is prayed in this complaint that, at all events, the plaintiff Zayco be declared entitled to purchase from the defendant, Serra, the *Palma Central* and Estate on the same terms and conditions as those of the sale to Messrs. Whitaker, Concepcion, and Luzuriaga.

Later Mr. Eusebio R. de Luzuriaga was excluded from this complaint. The plaintiff Zayco having assigned his rights to Dionisio Inza and Severino

Lizarraga, these parties were admitted to intervene as plaintiffs. The cause having been tried, the court below rendered judgment absolving the defendants from the complaint.

By the terms of the contract of November 7, 1918, Zayco was granted the right: (a) To purchase the *Palma Central* and Estate until June 30, 1919, and (b) to have preference, after that date, over any other purchaser making the same terms.

The court below holds that this contract of November 7, 1918, has no consideration and is, for this reason, null and void. This conclusion, however, is not supported by the evidence.

It is true that the contract does not state any consideration on the part of Serra, but it is presumed that there is a consideration in all contracts (art. 1277, Civ. Code). Besides, a consideration can be proved and, in this case, there is evidence showing its existence.

The *Palma Central* was in competition with the *Bearin Central* of Lizarraga Hermanos and both were doing their best to gain the greatest number of supporters, which, as is well-known, constitutes the basis and measure of their development. Zayco owned an estate containing 350 hectares used for cultivating cane, situated between both centrals in such a way as to constitute an opening to them from the adjacent estates. Owing to this circumstance, Zayco has been the subject of solicitations of both centrals, each making the most favorable offers to win him. Lizarraga Hermanos went so far as to offer to remit his debt, amounting to P40,000, if he became a supporter of their central. Serra, in turn, offered to give him 60 per cent of the sugar of his cane milled in the *Palma Central* instead of 55 per cent, as allowed by the other centrals, and besides, they promised to assist him in acquiring this central. Zayco, at last, decided to become, as he in fact became, a supporter of the *Palma Central*.

All this, which preceded and led to the execution of the contract of November 7, 1918, is evidently a sufficient consideration to give life to the contract. It meant, on the part of Zayco, the waiver of positive benefits which he would have obtained from Lizarraga Hermanos. It meant at the same time, on the part of

Serra, an expansion of his central and the consequent increase in his production and profit. Under such circumstances Zayco's support to the *Palma Central* was a prestation of thing or service which positively benefited Serra.

As has been stated, Zayco prays in this action that Serra be compelled to sell to him the *Palma Central* in accordance with the contract of November 7, 1918. It having been determined that there exists a consideration for this contract, the same is binding upon the parties.

However, it is not necessary to view the question from this standpoint. It can be taken for granted, as contended by the defendants, that the option contract was not valid for lack of consideration. But it was, at least, an offer to sell, which was accepted by letter, and of this acceptance the offerer had knowledge before said offer was withdrawn. The concurrence of both acts—the offer and the acceptance—could at all events have generated a contract, if none there was before (arts. 1254 and 1262 of the Civil Code).

However, Zayco's acceptance, as his letter of June 28, 1919, indicates, could not, in itself, convert the offer of sale made by Serra in the document of November 7, 1918, into a perfect contract. In order for the acceptance to have this effect, it must be plain and unconditional, and it will not be so if it involves any new proposal, for in that case it would not mean conformity with the offer, which is what gives rise to the generation of the contract. The letter of acceptance of Zayco lacks these requisites.

It should be noted that, according to the terms of the offer, in case the total of the agreed price of P1,000,000 could not be paid in cash, the balance was to be paid within a period not exceeding three years. This means that a part of this price was to be paid in cash. But the amount of this first payment was not determined. Consequently, when Zayco accepted the offer, tendering the sum of P100,000 as first payment, his acceptance involved a proposal, not contained in the offer, that this precisely, and not any other, should be the amount of the first payment. This proposal, in turn, required acceptance on the part of Serra. For this reason, Zayco's acceptance did not imply conformity with the offer of Serra, but only when the latter shall, in turn, have accepted his proposal that the amount to be paid in cash was P100,000. Not only was this not accepted by Serra, but Serra cancelled his offer on July 15, 1919.

An attempt was made to prove the allegation contained in the last amended complaint to the effect that subsequent to the execution of the contract of November 7, 1918, Zayco and Serra agreed, as a suppletory stipulation, that the amount of the first payment to be made in cash should be P100,000. It is said that this stipulation is contained in a letter sent by Serra to Zayco. This letter, however, was not introduced in evidence, but was alleged to have been lost, and secondary evidence of its contents was presented which consisted in the testimonies of Zayco, his son, Rafael, and Antonio Velez. Upon examination of the testimony of these witnesses, the same is found so uncertain and contradictory on many points affecting their veracity as not to be considered sufficient to prove either the loss of the alleged letter, or its existence and contents. Moreover, it is strange, if that stipulation ever existed, that Zayco, in accepting the offer, not only agreed to pay P100,000 in cash, but agreed also, as part of his acceptance, to assume Serra's obligations in connection with the credit of P600,000 given him by the National Bank. It is stranger still that this stipulation, being so important a part of the contract, was not alleged in the original complaint, and notwithstanding that in the demurrer to this complaint attention was called to the fact that this stipulation was lacking, this allegation was not made in the two successive amended complaints but only in the fourth, after the court had sustained the demurrer filed on this ground.

Our conclusion is that the acceptance made by Zayco of Serra's offer was not sufficient to give life to a contract and is no ground for compelling Serra to execute the sale offered.

As to plaintiffs' claim that they have preference over the defendants, Messrs. Venancio Concepcion and Phil. C. Whitaker in the purchase of the *Palma Central*, two members of this court and the writer of this opinion believe that the plaintiffs are entitled to this preference, but the majority of the court hold otherwise, for the reason that the plaintiffs have not formally offered to repay the defendants Concepcion and Whitaker the price paid by them, and to assume their obligations incurred under the contract.

For the foregoing reasons, the judgment appealed from is affirmed with the costs against the appellants. So ordered.

*Araullo, C.J., Johnson, Street,
Malcolm, Villamor, Ostrand, and Johns, JJ., concur.*

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