

[G.R. No. 956. November 18, 1902]

FRANCISCO IRURETA GOYENA, PLAINTIFF AND APPELLEE, VS. ILDEFONSO TAMBUNTING, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The plaintiff's principal owned a tract of land and the building thereon known as No. 20 Calle San Jose, Ermita, Manila. This tract contained 152.46 square meters of land. A broker, representing the plaintiff, stated to the defendant that this lot was for sale and, on information received from the plaintiff, that it measured 23 meters in front and 8 meters in depth.

The broker had nothing more to do with the matter, and the plaintiff and defendant had certain negotiations between themselves concerning the sale.

On March 12, 1901, the defendant signed the following document:

"On this date I have bought from Don Francisco Yrureta Goyena a lot at No. 20 Oalle San Jose, Ermita, for the sum of thirty-two hundred pesos, this money to be paid as soon as the bill of sale is signed. Manila, March 12, 1901. (Signed) Tambunting."

The plaintiff signed a similar document. What the negotiations between the parties were prior to the signing of the these documents does not appear. There is no evidence whatever in the record that they came to any agreement in regard to the sale other than the one contained in the papers of March 12.

The defendant took from the office of the notary employed to make the formal transfer the

title papers which showed the area of the lot of land to be 152.46 square meters, kept them for several days, and returned them to the notary. On the day assigned for the execution of the instrument, all the parties being in the office of the notary, the defendant told the latter to insert in the writing the price, \$3,200, and then refused to sign it because the lot did not contain the area which the plaintiff, through the broker, had represented that it contained. He expressed his willingness to sign it if a proportional reduction was made in the price. This the plaintiff refused to make, and this action was brought under article 1451 of the Civil Code.

The question to be decided is: Ought the plaintiff to make this reduction?

The private contract expresses a specific thing as the object of the contract. Upon this point there is no controversy. There is no doubt as to which lot is No. 20 on Calle San Jose, of the District of Ermita of the city of Manila.

The private contract specifies a *certain* price, 3,200 pesos. There is no controversy whatsoever upon this point. There is no question that this sum is there specified plainly and specifically, and without being made subject to any condition whatever.

Is this a perfect contract ?

Evidently nothing is lacking for the existence of a perfect contract of purchase and sale. Article 1445 of the Civil Code is as follows: "By the contract of purchase and sale one of the contracting parties undertakes to deliver a *specific thing*, and the other to pay therefore a *price certain*, in money or in some thing representing it."

Article 1450 of the same Code is 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." This private document was not a mere draft or project. It can not be said that the purchase is not to be understood as perfected until the execution of the public instrument. That private document is not subject to any term or condition whatever. The least that can be said about the private document is that it contains a promise to buy, not a mere project of sale, and a promise to buy, according to article 1451, confers upon the contracting parties the right to reciprocally demand the performance of the contract. If the contract were not perfected no right would accrue in favor of the contracting parties to reciprocally demand its performance. A thing which has no existence can produce no effect.

Because it is merely a private document which contemplates the subsequent execution of a

public instrument, it does not follow that it is not enforceable as it now stands. "Contracts," says article 1278, "shall be obligatory *whatever may be the form* in which they have been entered into, provided that the *essential* elements for their validity are present," to wit, *a determinate thing, a price certain, and a meeting of the minds* with respect to the object of the contract. Hence the contract in question is obligatory.

But the defendant says: "I can not pay the 3,200 pesos indicated in the private document, inasmuch as the lot does not contain a sufficient number of meters to be worth this sum total of 3,200 pesos, *at so much a meter*. I made the purchase at *so much a meter*." He then cites article 1469, 2, which is: "If the sale of real property should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that may have been mentioned in the contract; but should this not be possible, the vendee may choose between a proportional reduction in the price or the rescission of the contract: *Provided*, That in the latter case the decrease in the real estate is not less than one-tenth of the area given it.

"The same shall be done, even when the area appears to be the same, if any part of the real estate is not of the character mentioned in the contract.

"The rescission in such case shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon."

In reply to the contention of the defendant the plaintiff cites article 1471, which says in part: "In the sale of real estate made for a fixed price and not at the rate of a specified sum for a unit of measure or number, the increase or decrease of the same shall not be considered, even when greater or less area or amount than that stated in the contract may be found."

The plaintiff also says: "The fact is that in a private document no statement is made of any superficial area, nor of a price on the basis of a unit of measure or number. Hence, I am under no obligation to deliver any determinate area or number or measure, but simply lot No. 20 Calle San Jose, as to whose specific individuality there is no controversy or doubt."

Article 1218 says: "Public documents may be used as evidence against the contracting parties and those who contract under them with respect to the statements therein contained, made by the contracting parties."

Article 1225 says: "A private document, legally acknowledged, has the *same value* as the public instrument between *those who have signed the same, and their privies.*"

Hence it follows that, whether evidenced by a public instrument or by a private document, the contract is what the words of the parties indicate. It will not avail the defendant to say, "But my intention was not what my words express." The defendant bought a specific article and agreed to pay \$3,200 for it. The fact that the article is not as large as he thought it was does not relieve him from the necessity of paying that price. It was just such cases as this that article 1471, 1, was intended to cover. If the defendant intended to buy by the meter he should have so stated in the contract. Not only does the contract not so state, but there is no evidence in the case that the parties ever discussed at all the price which should be paid for each meter.

There was considerable evidence in the case concerning an agreement by the plaintiff to reduce the price and the plaintiff in answering interrogatories propounded by the defendant said that, after the objection of the defendant to carry out the contract, he did agree to make a proportional reduction. The case shows, however, that this answer and the testimony of the defendant and his witness referred to a conversation at the house of the defendant, and that this statement of the plaintiff was made when he thought that the difference was slight, not amounting to more than a meter or two, and that a proportional reduction would not decrease the price more than 20 or 30 pesos. We do not think that this admission of the defendant is sufficient of itself to prove a contract by measure in the face of the written document and the entire absence of other evidence; to that end. We rather construe it as indicating a willingness on the part of the plaintiff to abate a triile from what he was entitled to demand with the purpose of obtaining an amicable settlement of the controversy and avoiding litigation.

Upon the whole evidence we think the judgment below is right, and it is accordingly affirmed, with costs of this instance against the defendant.

Arellano, C.J., Cooper, Smith, Mapa, and Ladd, JJ., concur.

Torres, J., withdrew from this case.

G. R. No. 1105. November 26, 1902

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