

7 Phil. 416

[G.R. No. 3148. February 06, 1907]

**ENRIQUE MA. BARRETTO, PLAINTIFF AND APPELLEE, VS. THE CITY OF MANILA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TRACEY, J.:

On June 16, 1885, in reply to an inquiry from the *corregidor* of the city of Manila as to whether he would sell his plat of ground facing the Malacañang Palace, in order to assist in the improvement of the locality, the plaintiff wrote the following letter:

“MANILA, *June 16, 1885.*

“To his excellency the CORREGIDOR OF THE CITY OF MANILA.

“SIR: In reply to your courteous communication of even date, I have the honor to state that I am willing to convey the land belonging to me in front of the Malacañang Palace, corner of San Rafael and Aviles streets, district of San Miguel, *not* as a sale but as a gift, thus contributing with great pleasure to the beautifying of that neighborhood, but I make this donation on condition that no structures shall be erected upon the land and that it will not be devoted to any purpose other than the beautifying of the vicinity, and for this purpose the city should acquire such of the adjoining land as may be necessary to form with mine a public square with gardens and walks.

“If my offer is accepted subject to the conditions above stated, I will turn over my title deeds to the said land that the municipal architect may survey it and the same be conveyed to the corporation over which you so fittingly preside.

“(Signed) E. M. BARRETTO.”

In its session of the 17th of June the *Ayuntamiento* passed an act reading as follows:

“Report having been made upon the proceedings instituted for the purpose of beautifying and improving the grounds near the Malacañang Palace, the residence of the highest authority in these Islands, together with a letter from Enrique M. Barretto, wherein he offers to donate a certain tract of land belonging to him in front of the said palace on condition that it shall be devoted to the purpose indicated in his letter, and states that in case any buildings be erected upon the said land he will reclaim the ownership of the same, the municipal council being duly informed of the said proceedings, and after discussing the matter, resolved to gratefully thank Mr. Barretto for his disinterested offer of this land and to request him to forward the title deeds so that the municipal architect may survey it and prepare a sketch showing its location, in order that with the same documents the necessary deed of conveyance may be executed. It is further resolved that the said architect be required to submit the necessary plans and specifications to carry out the improvements in question.”

In consequence whereof on the 19th of the same month the *corregimiento* forwarded to the plaintiff the following communication:

“MANILA, June 19, 1885.

“At a regular session of the municipal council held on the 17th inst., the same was duly informed of your letter wherein you offer to donate the tract of land belonging to you in front of the Malacañang Palace for the purpose of beautifying the neighborhood, on condition that it shall not be devoted to any other purpose. The municipal council resolved to gratefully thank you for your offer to donate the land in question, which will contribute to the realization of the improvement contemplated, and for which the municipality is indebted to you. At the same time I have the honor to request that you forward to this office the title deeds to your said land so that the architect may survey the same and make a sketch of it in order that the necessary deed of conveyance may be executed with the restrictions indicated by you.

“(Signed) JUSTO MARTIN LUNA.

“To ENRIQUE M. BARRETTO.”

The plaintiff thereafter sent to the *Ayuntamiento* his title deeds, and until the month of February, 1903, appears to have had the idea that a formal transfer of the plot had been executed by him; in fact, it had not been. The city, however, entered into possession of the land, building a railing separating it from the adjoining property, and ever since that time the ground has been used as part of the public street, increasing the width thereof opposite the exit from the Palace and substantially improving the appearance of the locality. The plaintiff now brings this action to recover possession of the land on account of the failure of the city to comply with the conditions of the donation.

Although a formal conveyance of the property appears to have never been made, yet the taking possession of the land by the city upon the terms contained in the offer and acceptance give effect to the latter. The conditions expressed in the offer of the plaintiff were two:

First. That no building should be erected upon the ground; and

Second. That it should be devoted to purposes of adornment; to which end, however, the *Ayuntamiento* was required to acquire enough of the contiguous lots to form in all a great public plaza with gardens and paths.

This last requirement is so specific and concrete that it must have formed an essential part of the conditions in the mind of the donor and must have also attracted the attention of the donee. It has never been complied with.

It is contended by the city that its resolution and letter of acceptance, omitting any express mention of this part of the condition, worked an evasion of it, and that the subsequent delivery of the plaintiff's title deeds must be taken as an acceptance of the terms specified by the city in its letter, without reference to the plaintiff's first offer. To this view we can not accede. The whole negotiation must be taken into consideration in order to determine what was in the minds of the parties at the time. The plaintiff's proposition was unmistakable. If the city designed to reject any part of it while accepting the rest, such rejection should have been in express terms. Not only do we fail to find any such rejection, but in the letter of June 19 there appears to be in its concluding words an express recognition of the terms imposed,

when it is provided that the deed of cession shall be drawn “with the restrictions indicated by you.” This is a reference to the restrictions in the letter of the plaintiff and operates of necessity as an acceptance of them.

The contract having fixed no period in which the condition should be fulfilled, the provisions of article 1128 of the Civil Code are applicable and it is the duty of the court to fix a suitable time for its fulfillment. (*Eleizegui vs. Manila Lawn Tennis Club*, 2 Phil. Rep., 309.)

Thereafter if the city desires to retain the property it must proceed to acquire so much land as shall satisfy the requirement of the donation.

With the other condition expressed in the plaintiff’s letter, that no building should be erected on the property, we think the city has sufficiently complied.

The judgment of the Court of First Instance awarding the plaintiff possession of the property is reversed, and the cause is remanded to the Court of First Instance for determination of the time within which the contiguous property must be acquired by the city in order to comply with the condition of the donation. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.
