

[G.R. No. 1698. September 26, 1905]

**JULIAN BORROME0, PLAINTIFF AND APPELLANT, VS. JOSE FRANCO Y FRANCO
ET AL., DEFENDANTS AND APPELLEES.**

D E C I S I O N

TORRES, J.:

On the 29th of April, 1902, and before the notary public Jose Maria Rosado y Calvo, a resident attorney of the city of Manila, Jose Franco, Cesar Franco, Antonio Franco, Manuel Franco, Soledad Franco, and Catalina Franco, as parties of the first part, the latter in her own behalf and in behalf of her minor child, Concepcion Franco, and Julian Borrromeo y Galan, as party of the second part, executed a contract as follows:

(1) The six Francos, parties of the first part, declare themselves to be the joint owners of two frame houses, with nipa roofs, built upon lots belonging to the said parties of the first part in Plaza Recoletos of the city of Cebu, and within the jurisdiction of the Registry of Property of the Province of Cebu. (2) That no description is given of the said property for lack of the necessary data; that the property is free from any lien or incumbrance; that they have agreed to sell the said property to Borrromeo y Galan, the party of the second part, and that as evidence of such agreement they have executed the present instrument, and in virtue thereof they solemnly bind themselves to transfer absolutely and forever to the said Borrromeo, the party of the second part, the aforesaid property under the following terms and conditions, to wit: (a) The consideration for the sale to be the sum of 2,500 pesos, Mexican currency, the payment of which shall be made upon the execution of the final deed of sale. (b) The expenses incurred in the execution of the said deed, as well as in any judicial and extrajudicial proceedings which may be necessary for the purpose of perfecting the title papers to the said property, including their inscription in the Registry of Property in the name of the purchaser, Borrromeo, shall be borne exclusively by the latter, whatever the amount of such expense may be. (c) Borrromeo, the party of the second part, is hereby given six months from the date of the execution of this instrument within which to arrange and

complete the documents and papers relating to the said property. (d) Whatever rent there may be due from the said property from the aforesaid date shall be paid to Borrromeo, the party of the second part, who in consideration thereof shall defray such expenses as may be or may have been incurred for the preservation and repair of the said property, and who shall pay all taxes and make all other necessary disbursements, whatever the amount may be, the parties of the first part assuming no liability therefor. (e) The parties of the first part do not guarantee the title which they undertake to transfer to Borrromeo, party of the second part, nor this promise to sell. (f) Julian Borrromeo shall defray whatever expenses may be incurred by Catalina Franco in obtaining the necessary judicial authority for the sale of the interest of her minor child in the said property. The foregoing conditions were accepted by the said Borrromeo (p. 13 of the bill of exceptions).

On the 7th day of January, 1903, Jose Maria Rosado y Calvo, as counsel for Julian Borrromeo y Galan, filed a complaint in the Court of First Instance praying that judgment be rendered in his favor and against the defendants Jose, Cesar, Manuel, and Catalina Franco, the latter in her own behalf and in her capacity as guardian of her minor children Antonio and Soledad Franco, compelling the said defendants to sell to him the property in question under the terms of the agreement entered into April 29, 1902, and also to pay the costs of proceedings and such damages as the plaintiff may have sustained and that, in case the property had been transferred to a third party, a notice of the pendency of this action be served upon the registrar of property of Cebu, and alleging that the plaintiff, under the terms of the aforesaid agreement, had taken some judicial and extra-judicial steps and defrayed the necessary expenses for the completion of the papers and other documents relating to the property which the defendant had agreed to sell to him; that although the plaintiff had been unable to complete the said documents he had, nevertheless, called upon the defendants to comply with their aforesaid promise to sell by executing to him the necessary deed, but that the defendants refused to do so, alleging that he had not completed the documents in question within the six months allowed him for this purpose; that defendants intended to sell, or had already sold the property in question to another person and that Antonio Franco and Soledad Franco had died on the 9th of June and on the 14th of July, 1903, respectively, without leaving wills and without descendants; Catalina Franco, the mother of the deceased, Antonio and Soledad Franco, being the only heir of the said deceased.

Jose Maria Memije, counsel for the defendants, filed his answer on the 22d of January, 1903, and asked that the complaint be dismissed and plaintiff ordered to pay the costs of proceedings, and damages, alleging that if the terms of the aforesaid agreement are true,

the defendants still deny that the plaintiff has made any disbursements in connection with the judicial and extra-judicial steps taken by him as alleged; that, assuming that the plaintiff had made such disbursements, the promise of sale made by the defendants was conditional and the plaintiff failed to comply with such condition; that Catalina Franco was in fact the heir of her deceased minor children, Antonio and Soledad; and that the defendants admit the allegations contained in the fourth paragraph of the complaint, because the plaintiff has failed to comply with the conditions under which the promise to sell the property to him was made, the defendants being, therefore, at liberty to dispose of this property in any way they might see fit.

This is an action by the plaintiff to compel the defendants, the owners of the two houses and lots in question, to comply with their agreement to sell to the former the said property and, inasmuch as the said agreement is perfectly valid and binding upon the contracting parties in the absence of any allegation or proof which would preclude the performance of the same, we hold that plaintiff's petition is in conformity with the law.

It was agreed in the aforesaid instrument, among other things, that the purchaser, Borromeo, as set out in clause (c), should have six months' time to complete the documents and other papers relating to the property in question. The six months having expired, and the plaintiff not having completed the title deeds to the said property, he now seeks to compel the defendants to carry out their agreement to sell by executing to him the necessary deed of sale.

The agreement on the part of the purchaser to complete the title papers to the said property within the six months allowed him for this purpose in clause (c) of the agreement is not a condition subsequent of the obligation to sell, but a mere incidental stipulation which the parties saw fit to include in the agreement.

By virtue of the provisions of article 1255 of the Civil Code which gives to every person the right to freely contract, the parties to the aforesaid agreement could have stipulated, among other things, what they actually stipulated in clause (c). That stipulation is not contrary to law, public morals, or public policy. But a failure to comply with such a stipulation, and the fact that the purchaser was unable to complete his title papers to the property in question do not preclude the performance of the sale which the purchaser now demands.

The vendors should comply with their agreement under such terms and conditions as may be legally possible in view of the statements made by them as owners of the property in

question in the aforesaid instrument and accepted by the purchaser, that they did not describe the property by metes and bounds for lack of sufficient information, and that they did not guarantee the deed of sale which they might execute in favor of the vendee, Borromeo, nor the present promise to sell.

If the purchaser accepts the transfer of the property under the terms and conditions stipulated in the agreement in question and in such a form as to enable the vendors to make such transfer, even though the documents and other papers relating to the property are not yet completed, the defendants can not, under the circumstances, refuse to comply with their agreement.

The stipulation contained in the clause in question was merely incidental and not inherent or essential to the agreement or promise to sell. Such an agreement could have existed without the clause in question. The purchaser having failed to comply with the said stipulation, and having sought to enforce the sale agreed upon, the vendors are bound to effect such sale after all the other conditions stipulated have been complied with.

Article 1451 of the Civil Code provides as follows:

“A promise to sell or buy, there being an agreement as to the thing and price, gives a right to the contracting parties to mutually demand the fulfillment of the contract.

“Whenever the promise to purchase and sell can not be fulfilled, the provisions relating to obligations and contracts of this book shall be observed by the vendor and by the vendee, as the case may be.”

The purchaser having demanded the fulfillment of the promise to sell the two houses herein referred to, the question arises whether the defendants can properly refuse so to do for the reason that the purchaser has failed to complete the title papers thereto as stipulated. We think not. When the plaintiff, Borromeo, demanded the execution of the sale, even though the documents were not in proper shape, it must be assumed that he was willing to buy the property even with a defective title, the perfection of which he expressly undertook to obtain.

The contract in question contains various clauses and stipulations but the defendants refused to fulfill their promise to sell on the ground that the vendee had not perfected the

title papers to the property in question within the six months agreed upon in clause (c). That stipulation was not an essential part of the contract and a failure to comply therewith is no obstacle to the fulfillment of the promise to sell.

The contract in question is a bilateral one containing mutual obligations and the fulfillment of which may be demanded after the expiration of the aforesaid six months. The obligation to buy the property in question is correlative with the obligation to sell it, so that upon the execution of the deed of transfer the purchaser shall pay the sum of 2,500 pesos, Mexican currency, as stipulated in the written contract referred to.

The obligation which the purchaser, Borrromeo, imposed upon himself, to perfect the papers to the property within a period of six months, is not correlative with the obligation to sell the property. These obligations do not arise from the same cause. They create no reciprocal rights between the contracting parties, so that a failure to comply with the stipulation contained in clause (c) on the part of the plaintiff purchaser within the period of six months provided for in the said contract, as he, the plaintiff, himself admits, does not give the defendants the right to cancel the obligation which they imposed upon themselves to sell the two houses in question in accordance with the provisions of article 1124 of the Civil Code, since no real juridical bilaterality or reciprocity existed between the two obligations, because the obligation to perfect the title papers to the houses in question is not correlative with the obligation to fulfill the promise to sell such property. One obligation is entirely independent of the other. The latter obligation is not subordinate to nor does it depend upon the fulfillment of the obligation to perfect the title deeds to the property.

Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations. (Art. 1091 of the Civil Code.)

The six months provided for in clause (c) having expired and all the other conditions stipulated in the agreement of the 29th of April, 1902, having been complied with, and the purchaser, Borrromeo, who was the one principally interested in the perfecting of the title papers to the property, having demanded the execution of the sale agreed upon in the said instrument, the vendors must comply with the obligation by them contracted.

In case the aforesaid promise to sell can not be fulfilled, both vendor and vendee may seek their remedy under the provisions of the Civil Code relating to contracts and obligations, as contemplated in the last paragraph of article 1451 of the Civil Code above cited.

For the reasons above stated we are of the opinion that the judgment of the court below,

dated October 5, 1903, should be reversed and it is held that the defendants Jose, Cesar, Manuel, and Catalina Franco are under obligation to sell to the plaintiff, Julian Borromeo, the two houses in question and the lots upon which they stand, and referred to in the agreement of the 29th of April, 1902, under the terms and conditions therein stipulated, and without any special order as to costs.

After the expiration of twenty days let judgment be entered in accordance herewith and the case be remanded to the court below for proper action. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

Willard, J., did not sit in this case.
