5 Phil. 242

**[ G.R. No. 2296. November 10, 1905 ]**

**J. F. WRIGHT, PLAINTIFF AND APPELLEE, VS. LA COMPAÑIA DE TRANVIAS ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

On the 11th day of April, 1901, Walter A. Fitton, as one of the parties thereto, and Rafael Reyes, Enrique Brias, Cosine Churruca, and Jose Rosales, who then composed the administrative council of the anonymous partnership called the Street Car Company of the Philippines, entered into the following contract before a notary public:

> "That by virtue of a proposal made and presented by Mr. Fitton to the manager of the Street Car Company of the Philippines[1] regarding the purchase of the shares of the above company, which proposal was accepted in principle, the above mentioned (Reyes, Brias, Churruca, and Rosales) have agreed to perfect the present contract in order that the engagement entered into by the parties be acknowledged in an effective way; and to this purpose they grant this *escritura* on the following terms and under the following conditions.
>
> "First
> Walter A. Fitton binds himself to acquire two-thirds at least of the shares of the Street Car Company of the Philippines, as well as the founders' shares binding himself to pay the sums of one hundred and fifty pesos, Mexican, for each of the former, and fifty pesos, Mexican, for each of the latter transferred to his name.
>
> "Second. The

members who compose the administrative council of the above company bind themselves to take the proper steps and to obtain from the shareholders of the said company the transfer of their shares in favor of Mr. Fitton agreeing hereby to do so regarding the shares owned by them in their names, or of the persons or corporations represented by them.

"Third. Walter A, Fitton binds himself to deposit in the Chartered Bank of India, Australia, and China a guarantee for the sum of thirty thousand pesos, Mexican, as security of the proposal above stated and for the safety of the shareholders of the company.

"Fourth.
The conditions of this contract will be valid for the period of two months from this date, after which, should Mr. Fitton not take charge, for any reason, of the two-thirds of the shares and founder's stock of the Street Car Company, he will lose every right on the security deposited, which will be transferred to the above company; should Mr. Fitton be unable to acquire during the said term of two months the two-thirds of the above shares and founder's stock for causes depending on the shareholders' will, he will be at liberty to withdraw the above guarantee.

"And fifth. For the fulfillment of the provisions of the contract above stated, the parties bind themselves in the most solemn form, appointing this city of Manila by mutual agreement for all judicial and extrajudicial acts that may arise from this contract."

A written guaranty for the security of the stockholders was deposited in the Chartered Bank, in accordance with the provisions of article 3 of the contract. The capital stock of the company was represented by 3,500 shares of 500 pesetas each. There were also 1,050 cedulas. On the 4th day of June Rafael Reyes, as the representative of the company, notified Fitton in writing that there were on that day deposited, for the purpose of being turned over to him under the conditions of the contract, the following shares and cedulas:

| | Shares | Cedulas |
|---|---|---|
| Manila | 1,500 | 612 |
| Madrid | 1,620 | 438 |
| Total | 3,120 | 1,050 |

On the 12th day of June, the day after the two months mentioned in the contract had expired, Reyes again notified Fitton in writing that the number of shares and cedulas deposited at his disposition were:

| | Shares | Cedulas |
|---|---|---|
| Manila | 1,577 | 612 |
| Madrid | 1,620 | 438 |
| Total | 3,197 | 1,050 |

On the 14th of June, 1901, Fitton wrote to Reyes the following letter:

> "Mr. RAFAEL REYES,
> "*Managing Director of the*
> *"Street Car Company, present*.
>
> "Dear
> Sir: I beg to acknowledge the receipt of your favor dated 12th instant, and ask you to excuse me for having failed to reply yesterday as I was rather indisposed and very busy, as I am also now, I take note of what you state in your letter, and I regret to inform you that, although I am in communication by cable with the persons interested, I have to ask you for an extension of time, as you may grant me easily a week more. I must point out to you that in any case the Hongkong branch must fulfill its guarantee of $30,000, Mexican, should they be unable to perform the pending contract."

On the next day Reyes notified Fitton that the administrative council had decided to grant him an extension until the 22d day of the then month of June. On the 25th day of June Fitton wrote to Reyes the following letter:

"MANILA, *25th June, 1901.*

"Mr. RAFAEL REYES,
*Director of the*
*"Street Car*
*Company of the Philippines, present.*

"Dear
Sir:In view of the importance of the purchase of the concern of the street car system of the Philippines, and in consideration of the difficulty of arranging with the interested persons the purchase of the above concern by telegraphic correspondence, I have decided to interview the same personally, in order to settle this matter finally, for which purpose I hope you will consider as extended the term fixed in the *escritura* granted by the representatives of that company and myself before the notary, Mr. Barrera, up to October 31st next.

"Awaiting your reply, I remain,

"Yours faithfully,"

The extension asked for in this letter was granted on the condition that, in place of the written guaranty then deposited with the Chartered Bank, Fitton deposit with the company itself 30,000 pesos in cash, for the security of the stockholders. This money was so deposited in cash with the company. On the 7th of September, 1901, Fitton executed a general power of attorney to T. E. Sansom. On the 18th of October, 1901, Sansom, as the agent of Fitton, wrote to Reyes the following letter:

"Mr. RAFAEL REYES,
"*Director of the*
*"Street Car Company of the Philippines, present.*

"Dear Sir:Referring to the *escritura*
executed by us on April 11th last about the purchase of the two-thirds of the shares of the Street Car Company, I am informed that nearly the

half of those shares are still in Madrid, and therefore it will be impossible for you to deliver to me the above two-thirds of the shares before November 1st next.

"Kindly return to me the thirty thousand pesos deposited by me to your favor on July 3d last.

"I am, dear sir, yours faithfully,

"WALTER A. FITTON,
"By T. E. SANSOM,
*Acting Agent of the Chartered Bank of India,*
*"Australia amd China, his attorney"*

On the 19th of October Reyes notified Sansom in writing that the company held at the disposition of Fitton more than two-thirds of the stock and cedulas of the company. On the 28th of October Sansom, as the attorney in fact of Fitton, assigned to the plaintiff all his rights in the 30,000 pesos deposited with the company. No consideration is stated in this document to have been paid by the plaintiff for the transfer.

On the 31st of October, 1901, defendant, by a notary, caused a demand to be made on plaintiff as attorney in fact for Fitton for the fulfillment of the contract. In answer to this notarial demand plaintiff stated that he was not the attorney in fact of Fitton. This action was commenced by the plaintiff as the assignee of Fitton on the 8th of November, 1901, The prayer of the complaint was that the plaintiff recover the 30,000 pesos deposited with the defendant, and 20,000 pesos as damages. The court below rendered judgment in favor of the plaintiff for 35,030 pesos, Mexican currency, which it reduced to Philippine pesos, and ordered judgment for P31,000 of the latter. The defendant has brought the case here by bill of exceptions.

The court below based its decision upon the ground that there was no consideration for the contract between Fitton and the company; that all of the obligations were upon Fitton's part; that the other parties to the contract bound themselves to do nothing, and that the contract was

therefore void.

We do not think that this view of the contract can be sustained. Without considering the fact that the persons signing the contract agreed to do what they could to get the other stockholders of the company to transfer their stock to Fitton, it is sufficient to say that by the second paragraph of the contract the four directors bound themselves to at once deliver to Fitton the stock which they possessed, at the price named in the contract. It is very clear that upon the day following the contract, or at any time within two months from the 11th of April, Fitton had the right to demand of these four directors the delivery to him of all the stock in the company owned by them, and that upon such a demand having been made it would have been the duty of the directors, under the contract, to have delivered to him such stock. During the two months named the directors had no power to sell the stock to anyone else. If the price of the stock during that time had advanced and they had sold it to third persons, Fitton could unquestionably have maintained an action against them to recover damages for such sale. In other words, there was a binding contract on the part of the directors to deliver to Fitton at any time within two months, at the price named, the stock which they held. This was a sufficient consideration.

It is said in the brief of the appellee in this court that there is no evidence in the case that the four directors owned any stock in the company. The action was tried in the court below upon an agreed statement of facts, signed by the parties, and it is true that in this agreed statement of facts it is not stated how much, if any, of the stock in Manila was owned by the directors. However, the articles of incorporation of the company are expressly made a part of the agreed statement of facts. From these articles of incorporation it appears that no one could be a member of the administrative council of the company without depositing fifty shares of stock in the treasury of the company, and that the stock so deposited should not be returned so long as the owners thereof remained directors of the company. This is sufficient to show that Reyes and his associates, at the time the contract was signed, owned at least 200 shares of the stock of the

company.

The plaintiff claims the right to recover on the ground that the stock, or a part of it, was not physically in Manila at the time the second extension granted to Fitton expired; that it was the obligation of the defendant to deliver this stock to Fitton in Manila, and not having done so, it violated the terms of the contract and lost the right to retain the 30,000 pesos deposited with it.

That Fitton might fail to carry out the contract on his part was something that was foreseen by the directors. For that reason they required the deposit of 30,000 pesos and they not only required this deposit, but they expressly stated in the contract the circumstances under which Fitton should have the right to withdraw it. Those terms are found in paragraph 4 of the contract, and to our mind the determination of this case rests entirely upon the construction to be given to said paragraph 4. This is not an action brought by the defendant to recover damages against Fitton for failure to fulfill the contract. We do not think it necessary to determine just what the obligations of the directors or the defendant were under the contract. We do not think it necessary to determine whether they were bound to deliver the actual shares of stock to Fitton in Manila or not. It would seem, however, difficult to find anywhere in the contract any obligation of that kind. The contract requires Fitton to buy the stock, to acquire it. It nowhere imposes in terms any obligation upon the directors or the defendant to seek out Fitton and deliver stock to him. It would seem that they fulfilled their part of the contract when they did what they could to secure the consent of the other stockholders of the company to the terms of the contract, and when they held themselves ready at all times, as they did, to turn over to Fitton the shares actually owned by themselves. It is, however, not necessary to decide this question. The question to be decided is, What was the reason for Fitton’s failure to comply with his contract? Did the fact that some of the shares of stock were not actually in Manila have anything to do with this failure? If it did, if the reasons why Fitton did not comply with his contract and pay the money was because the stock was not in Manila, then the plaintiff might perhaps be entitled to recover. But

if, on the other hand, the.fact that the stock was not in Manila had nothing whatever to do with Fitton's failure, if he would not have complied with his contract had the stock been in Manila, if his failure to take over the stock was due entirely to some other cause, then the plaintiff can not recover.

Paragraph 4 says that if Fitton fails for any reason whatever to take over the stock, he shall lose all right to the 30,000 pesos, unless the reason depended upon the will of the stockholders, and the only question in the case is, Did the will of the stockholders have anything to do with Fitton's failure to buy the stock ? No one reading the record in this case can come to any other than one conclusion in that respect. It is apparent that the single and only reason why Fitton did not buy was because he did not have the money with which to make the purchase. It is also apparent that the fact that part of the stock was in Madrid and not in Manila had nothing to do with his failure. When he asked for the first extension, in June, he then knew that part of the stock was in Madrid. He said nothing about the necessity of having the stock in Manila. When he asked for another extension of three months in his letters of the 28th of June and the 3d of July he made no mention of this matter. No offer of any kind was ever made by Fitton or Sansom, his agent, or the plaintiff to pay any sum of money whatever for any of these shares of stock. They never in any way offered to comply with the contract, and the question as to where the stock should be, whether in Madrid or Manila, was never presented by anyone until the 18th day of October, twelve days before the extension expired, at which time Sansom, when he knew that it was too late for the company to get the stock here, required a return of the deposit on the ground that it would be impossible for the defendant to fulfill its contract. It appeared from the agreed statement of facts that some of this stock was deposited in the Bank of Castile, in Madrid, to be turned over upon the payment of certain money, and that it could not be delivered until that money was paid. There is nothing in the case to show but that the defendant, if it had known in time that it was necessary to have the stock in Manila instead of Madrid, might not have procured the actual transfer of the shares to this capital, making a

deposit or giving security that either their value or the shares themselves would be returned to Madrid. But the company was given no such opportunity. Sansom waited until it was too late for the company to comply with his requirement, and even then made no offer of any kind to fulfill the contract. He did not then make any tender of money.

We hold, as has been said before, that the provisions of paragraph 4 of this contract must govern; that if the reason why Fitton did not buy the stock did not depend upon the will of the stockholders, the plaintiff can not recover; that the real reason why he did not buy the stock was because he did not have the money to pay for it; that this reason did not depend upon the will of the stock- holders, and that consequently the plaintiff can not recover.

The judgment of the court below is reversed, and after the expiration of twenty days judgment should be entered in accordance herewith, and the case remanded to the court below, with directions to that court to enter judgment in favor of the defendant, with costs. No costs will be allowed to either party in this court. So ordered.

*Arellano, C. J., Torres, Johnson*, and *Carson, JJ.*, concur.

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[1] Compaña de Tranvias de Filipinas.

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Date created: April 28, 2014