Republic of the Philippines
SUPREME COURT
Manila

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G.R. No. L-16449 August 31, 1962

PAUL SCHENKER, plaintiff-appellant,
vs.
WILLIAM F. GEMPERLE, defendant-appellee.

Campos, Mendoza & Hernandez, Jose C. Zulueta and A. R. Narvasa for plaintiff-appellant.
Angel S. Gamboa for defendant-appellee.

PAREDES, *J.*:

The amended complaint, in a nutshell, avers that sometime in the summer of 1953, at Zurich, Switzerland, plaintiff Paul Schenker and defendant William F. Gemperle agreed to organize a Philippine Corporation, later named as "The Philippine Swiss Trading Co., Inc.", and to divide the capital stock equally between themselves and/or their associates. This verbal agreement was acknowledged and confirmed in writing by defendant in his letter of September 14, 1953 (Annex A, amended complaint). Defendant caused articles of incorporation to be drafted and sent to plaintiff at Zurich. In a moment of indiscretion and mistaken trust, according to him, the plaintiff signed and remitted to the defendant at Manila, the said articles which placed in the name of plaintiff only 24% of the total subscription and the balance of 76% being in the name of defendant and his relatives. Explaining the discrepancy between the articles and their verbal covenant, the defendant stated in said letter Annex A, that "Temporarily, I had to place in my name 75% of the shares because there is a local law which provides that when one intends to make contracts with the government, 75% of the subscribed capital has to be Filipino as otherwise the Flag Law will be applied." In the same letter, how ever defendant assured the plaintiff that he would give the latter "exactly the same share holding as I have". The plaintiff paid to the defendant the sum of P7,000. for his subscription. In view of the consistent refusal of the defendant to live up to their agreement, notwithstanding repeated demands, the plaintiff filed the present complaint, praying that defendant be condemned:

> (a) upon the first cause of action, to transfer or cause to be transferred or assigned to the plaintiff 26% of the entire capital stock issued and subscribed, as of the date he obeys said judgment, of Philippine Swiss Trading Co., Inc., or enough thereof to make the plaintiff's interest and participation in said corporation total 50% of said entire capital stock issued an subscribed, which ever may be more;

(b) upon the second cause of action, to return to the plaintiff or properly account to him for the unexpended balance, in the sum of P2,000.00, Philippine Currency, of the remittance alleged in paragraph 18(a) of the complaint;

(c) Upon the third cause of action, to pay the plaintiff the sum of P25,000.00, Philippine Currency, by way of recompense for business lost, profits unrealized and goodwill impaired or destroyed; and

(d) upon all three causes of actions, to pay the plaintiff the additional sum of P100,000.00, Philippine Currency, ... The plaintiff also prays for costs, and for such other an further relief as to the Court may appear just and equitable.

An Answer was filed, with the customary admissions an denials and with affirmative defenses and counterclaims.

On November 21, 1958, the defendant filed a pleading styled "manifestation and motion to dismiss" (Section 10 Rule 9) — alleging that — "With reference to the first cause of action, the amended complaint states no cause of action".

In support of the motion to dismiss, defendant claimed that

There is no allegation in the amended complaint that the alleged obligation of the defendant to have the plaintiff's share holding in the capital stock subscribed in Articles of Incorporation in the proportion of 50% thereof is *already due*.*1äwphï1.ñët*

Such being the situation, the demands allegedly made upon the defendant for his compliance with the obligation sued upon have been futile, because legally the alleged obligation is not yet due. *It not having fixed a period for its compliance, there has been no default thereof.*

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In his opposition to the motion to dismiss, filed on November 3, 1958, plaintiff contended that the oral agreement was the actual as well as the expressed basis of plaintiff's cause of action; the letter Annex A, was not the agreement but only an evidence of it and if the references of Annex A were deleted from the amended complaint, the latter would not, for that reason alone, cease to state a cause of action; the obligation being pure, it is demandable immediately (Art. 1179, Civil Code); the filing of the complaint itself constituted a judicial demand for performance, thereby making the defendant's obligation to become due; even if Annex A is considered as the basis of the action, it is still a pure obligation, because it says "will give you, however, exactly the same share holding as I have" — which imparts an unconditional promise; and supposing that from the allegations of the complaint, it may reasonably be inferred that it was intended to give the defendant time to fulfill his obligation, the present action can be considered one for the fixing of such time (Art. 1197, Civil Code).

On September 30, 1959; the trial court granted the motion to dismiss in so far as the first cause of action is concerned, predicating its ruling upon the following considerations: that the agreement did not fix the time within which the defendant sought to perform its alleged promise and, therefore, the obligation was not due and the action for its compliance was premature (Barreto v. City of Manila, 7 Phil. 416-420); that the obligation is not pure, because its compliance is dependent upon a future or uncertain event; that the alleged oral agreement had been novated, after the execution of the articles of incorporation, and that the action being for specific performance and there being a need to fix the period for compliance of the agreement and the present complaint does not allege facts or lacks the characteristics for an action to fix the period, a separate action to that effect should have been filed, because the action to that effect be brought in order to have a term fixed is different from the action to enforce the obligation; thus conveying the notion that the fixing of the period is incompatible with an action for specific performance. Plaintiff appealed questions of law.

Article 1197 of the Civil Code, provides —

> If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
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> The courts shall also fix the duration of the period when it depends upon the will of the debtor.
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> In every case, the courts shall determine such period may under the circumstances have been probably contemplate by the parties. Once fixed by the courts, the period cannot be changed by them.

The ultimate facts to be alleged in a complaint to properly and adequately plead the right of action granted the above quoted provision of law are (1) Facts showing that a contract was entered into, imposing on one the parties an obligation or obligations in favor of the other; (2) Facts showing that the performance of the obligation was left to the will of the obligor or clean showing or from which an inference may reasonably drawn, that a period was intended by the parties. The first cause of action, under consideration, sets out fact describing an obligation with an indefinite period, there by bringing the case within the pale of the article above quoted, albeit it fails to specifically and categorically demand that the court fix the duration of the period. Under the circumstances, the court could render judgment granting the remedy indicated in said article 1197, notwithstanding standing the fact that the complaint does not positive and by explicit expression ask for such relief. What determines the nature and character of an action is not the prayer but the essential basic allegations of fact set forth in the pertinent pleading. A judgment may grant the relief to which a party in whose favor it is entered is entitled, even if the party has not demanded such relief in his pleadings (Sec. 9, Rule 35; Baguioro v. Barrios, 77 Phil. 120). The amended complaint in question moreover, "prays for . . . such other and further relief as the Court may appear just and equitable" which is broad and comprehensive enough, to justify the extension of a *remedy different from or together with, the right* to be declared owner or to recover the ownership or the possession of Twenty-six (26%)

percent of the capital stock of the Philippine Swiss Trading Co., Inc. presently in the name of the defendant. The case of *Barrette v. City of Manila, supra*, cited by the trial court, is of little help to the defendant-appellee. It strengthens rather the plaintiff-appellant's position. In the Barreto case as in the present, the essential allegations of the pleadings made out an obligation subject to an indefinite period. In the Barretto case, like the one at bar, the complaint did not risk for the fixing of the period, but for immediate and more positive relief, yet this Court remanded the said case to the court of origin "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" — all of which go to show that the fixing of the period in the case at bar, may and/or could be properly undertaken by the trial court.

Even discarding the above considerations, still there is no gainsaying the fact that the obligation in question, is pure, because "its performance does not depend upon a future or uncertain event or upon a past event unknown to the parties" and as such, "is demandable at once" (Art. 1179, New York Code). It was so understood and treated by the defendant-appellee himself. The immediate payment by the plaintiff-appellant of his subscriptions, after the organization of the corporation, can only mean that the obligation should be immediately fulfilled. giving the defendant only such time as might reasonably be necessary for its actual fulfillment. The contract was to organize the corporation and to divide equally, after its organization, its capital stock.

IN VIEW HEREOF, the order appealed from is reversed and the case remanded to the court of origin, for further and appropriate proceedings. No costs.

*Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ.,*concur.