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[G.R. No. 1923. October 26, 1905]

IGNACIO DE ICAZA ET AL., PLAINTIFFS AND APPELANTS, VS, MATEO PEREZ Y ORTEGA, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

On the 8th of November, 1902, the representative of the minor children and widow of Icaza presented a complaint praying that a judgment be rendered in their favor against the defendant Perez in the sum of 2,030 pesos and 70 cents, Mexican currency, with legal interest and costs of the suit and such other relief as may be in accordance with justice and equity, alleging that on the 19th of November 1901, the representative of the plaintiffs and the defendant entered into a written contract for the lease of the building Nos. 114 to 124 San Vicente Street, Binondo, city of Manila, the tenant having occupied the building from that date under the condition, among others stipulated, that all repairs required on the property in order that the same might continue in the same condition in which it was when leased, would be charged to the account of the defendant that in March, 1902, the Board of Health of this city ordered some necessary work to be performed on the said building in order to keep the same in habitable condition, which work was executed at a cost of 2,030 pesos and 70 cents Mexican currency. The defendant having refused to pay this sum, or any part thereof, for the above- mentioned work, this complaint was filed.

The defendant Mateo Perez in his reply, denied paragraphs 4 and 5 of the above complaint, and alleged that the general representative of the plaintiff minors ordered, on his own account, the work mentioned in

paragraph 5 of the complaint.

It is also stated in the bill of exceptions that the parties agreed to the following facts: that the plaintiffs are the owners of the building above-mentioned, and that the *escritura* No. 896 is the contract of lease made between the same parties; that on the last days of the month of March, 1902, the Board of Health of Manila required repairs to be done on the said house, to which the contract refers, in order to place it in a habitable condition; that the defendant refused to make the repairs; that the representative of the plaintiffs made said repairs required by the Board of Health; and that the plaintiffs Ignacio, Gracia, Mariano, Julia, and Gloria de Icaza are under age, and Miguel Velasco is their general guardian, duly appointed.

In the above-mentioned *escritura* of the 19th of November, 1901, executed before the notary Jose Maria Rosado, the contract of lease appears, made between the guardian, Velasco (who is at the same time the representative of Rosario Del Pan, widow of Icaza), on the one part, and the lessee, Mateo Perez y Ortega, on the other part, it being stipulated in the said document, among other conditions, that the lessee would occupy the above building as a tenant, and the contract of lease would begin to run from the 1st of January, 1902, and continue to the 31st of December, 1906; that the same would be transferable only in case the landlord or his representative should accept the proposed transferee; that the painting of the inside and outside of the house would be at the expense of the lessee, as well as the water taxes, the repairs to the faucets, water pipes and meter, and the cleaning of lavatories and drains; the work required on the building to keep it, at least in the condition in which it was at the time of the contract; that the tenant was forbidden to make any repairs without the written consent of the landlord or representative; that the monthly rent would be 560 pesos, Mexican, or its equivalent in American gold, payable in advance before the 10th of each month at the landlord’s house or at the house of his representative; that in order to guarantee the whole or a part of his obligation, the tenant would hand Miguel Velasco the sum of 1,950 pesos, a check drawn against the Chartered Bank of India, Australia and China, for the sum of 1,800 pesos, and the balance of 157

pesos in coin, which guaranty would be returned without any interest to the tenant, at the expiration of the contract. The plaintiffs presented also as proof, bills stating materials and wages paid to workmen, the amount of which was 478 pesos and 70 cents.

The judge, by judgment of the 11th of August, 1903, acquitted the defendant, with the costs to the plaintiffs, from which judgment the latter appealed by bill of exceptions to this court after a motion for a new trial had been denied.

The question of the present case is not one of law; it refers to the construction and interpretation of the fourth clause, section *(d)*, of the contract of lease, and is therefore a mere question of fact.

The above-mentioned fourth clause, section *(d)*, reads:

> "The work required on the building in order to,keep it in the same condition, at least, in which it is on this date."

In a sworn statement the plaintiffs' representative declared that, in view of the tenant's refusal to make repairs which ought to be made by the latter, as per contract, the former decided to do the same, because there were no proper terms to determine who ought to make them; that he made the repairs in order to avoid the penalties of the law; that the condition of the house before the expiration of the first contract was very bad, especially as to the sanitary requisites required at present by the Municipal Board, and the house being occupied by tenants, either the use of the building would be discontinued, thereby prejudicing the tenants, or partial repairs would be necessary and were actually made under the urgent orders of the Board of Health, an absolutely necessary expense being thus incurred for the building; that in November, 1901, the condition of the said building was very defective, and it was not stated in the contract that the tenant would place the house in good condition, because he asserted that business did not permit him to make any repairs on it, but it was stipulated that all repairs which might be required by the Board of

Health would be made by him, the work performed on the building being undoubtedly improvements of the same.

In order to make it clear whether, according to clause *(d)*, fourth condition of the contract, the tenant Perez was obliged to perform the work done on the leased building by order of the Board of Health, we must point out that the above clause *(d)* is perfectly legal, is not contrary to law, to morals, or to public order, and therefore the parties could have stipulated the same in accordance with the provisions of article 1255 of the Civil Code, and the doctrine established by the Supreme Court of Spain in judgments of the 12th of April and 26th of February, 1904.

Is the kind of work performed on the building leased in March, 1902, and made by order of the Board of Health, included in those mentioned in the above clause *(d)* ? We do not think so.

Under the terms of the contract it is indubitable that the work required by the Board of Health is not provided for in the said contract and especially in the above-mentioned clause *(d)*,fourth condition of the *escritura*.

Velasco, replying to the questions of the other party, asserted that it had been stipulated that all repairs which might be required by the Board of Health would be done by the defendant; but the evidence produced by the plaintiff in the trial does not show any other stipulation between the parties than that stated in the contract, and especially in the above-mentioned fourth condition.

Judging from the context of the said clause *(d)*, it seems that the representative of the widow and minors, owners of the building, granting that the condition of the same in regard to its sanitary requirements was very defective, as per his own statement, would be contented and satisfied if, in case of deterioration or decay, the tenant should perform the work required on the building in order to keep the same in the condition, at least, in which it was on the 19th of November, 1901.

It is evident, therefore, that except the kind of work provided for

in the contract of lease, no other has been agreed to, and especially that ordered by the Board of Health; and as it has not been proven that the condition of the building, which was already defective when the lease commenced, has deteriorated, there is no reason or legal motive determining the tenant's obligation to perform the work in question performed on the building, or to pay the amount of the same by virtue of the above-mentioned clause*(d)*, fourth condition of the contract.

Article 1580 of the Civil Code reads: "In the absence of a special agreement for the repairs of town property, which shall be borne by the owner, the customs of the country shall be observed. In case of doubt they shall be understood as for the account of the owner."

It is not the custom of this country, nor is there any proof to the contrary, that the tenants shall be obliged to perform work on the leased building, especially that required by the Board of Health, unless there is an express agreement for such obligation, and the same is duly proven in the trial in case of litigation.

The *escritura* expressing the contract of lease is a literal copy admitted in the trial with the consent of the adverse party, the original of which is kept in the official record, according to a note signed by the chief of the division of archives; and as it has not been impeached or attacked as false, it is to be presumed that the said *escritura* contains all the conditions stipulated between the contracting parties, and the same document is the only proof of the agreement entered into by them. (Sec. 285 of the Code of Civil Procedure.)

In view, therefore, of the foregoing considerations, and that, under the above clause *(d)*, fourth condition of the contract, the defendant is not obliged to perform the work on the leased building, nor to pay the cost of the same, we are of opinion that the appealed judgment is according to law and to the merits of the case and, therefore, we should and do affirm it with the costs. After the expiration of twenty days judgment will be entered in accordance herewith, and the case remanded to the trial court for the execution thereof. So ordered.

Mapa, Johnson,, Carson, and *Willard,, JJ.*,concur.
Arellano, C.J., disqualified.

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