34 Phil. 549

[G.R. No. 11068. March 29, 1916]

FERNANDEZ HERMANOS, PLAINTIFFS AND APPELLEES, VS. HAROLD M. PITT, DEFENDANT AND APPELLANT.

D E C I S I O N

MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila in favor of the plaintiffs requiring:

"Wherefore, it is hereby ordered and adjudged that the plaintiff have and recover judgment against the defendant for the sum of PI, 106.45, with interest at the rate of 6 per cent per annum from the 21st day of October, 1914, the date of the filing of the complaint in this case, and for the further sum of P350, with interest at the same rate, from the 5th day of November, 1914.

> "It is further ordered and adjudged that the defendant pay to the plaintiff the sum of P50 for each and every month during the period beginning November 1, 1914, and ending June 30, 1917, both dates inclusive, the monthly payment to be made on or before the 5th day of the next succeeding month, and to draw interest at the rate of 6 per cent per annum from that date until paid. Upon the occurrence of any fortuitous event which under existing laws would have extinguished the obligation on the part of the defendant to pay rent under the lease here in question this judgment shall be regarded as satisfied as to the payment not yet due at the time of the occurrence of the event."

The case comes to this court on a stipulation of facts in which it appears that, on the 1st day of July, 1913, plaintiff and defendant entered into a contract whereby the plaintiff leased to the defendant the premises described therein for a period of four years from the date of

said lease for a monthly rent of P350 payable by the lessee "within the first five days of each following month." The lessee entered into possession of the premises and occupied the same until the 8th day of August, 1914, when he served on the lessor notice in the form of a letter addressed to him that he had elected to terminate the lease and that the premises were at the disposal of the lessor thenceforth. The lessee turned the premises over to the lessor's caretaker notwithstanding the fact "that plaintiff did not wish the surrender of the premises and desired that defendant should continue to occupy them under the lease." The letter of the lessee to the lessor is as follows:

> "Gentlemen: By the terms of agreement entered into between us on July 19, 1913, for lease of building No. 53-55 Plaza McKinley, district of Intramuros, Manila, the same has, under the provisions of the first and tenth sections thereof, automatically lapsed.
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> "You are hereby notified that I am now prepared to pay the rental of said building for the month of July, 1914, and for that part of the month of August during which the above-named lease was in force and effect, viz., from the first to fifth day inclusive."

On the 25th of August, 1914, the attorney for the lessor called the attention of the lessee to what he termed the latter's breach of the provisions of the lease asking him to reconsider his determination to vacate the premises and warning him that, in case he continued in his present attitude, the plaintiff would attempt to rent the premises to some other tenant and would hold the lessee responsible for all resulting damage. On the 27th of August the lessee replied to this letter stating:

> "Your favor of the 25th inst., with reference to the contract of lease between the Sres. Fernandez Hermanos and me, is received.
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> "I regret my inability to agree with the construction of the contract as expressed by you, and am constrained to maintain that under its terms as specifically stated, the contract lapsed on August 5, 1914."

The stipulation of facts states:

> "That since the defendant left the premises in question to the disposition of the plaintiffs, they tried to lease the same under the most advantageous conditions possible, and advertised them for rent by notice posted on the premises and by publication in the daily newspapers, the *Daily Bulletin* and *El Comercio* from the month of August to the month of October, 1914, and paid for the publication of notice the sum of thirty-seven pesos and ninety centavos (P37.90).
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> "That notwithstanding the efforts made by the plaintiff to lease the premises under the most advantageous conditions possible, they only succeeded in leasing them to Don Mariano Lim on the 10th day of October, 1914, the contract . of lease to take effect on the 1st day of November of the same year and copy of the contract of lease is attached hereto marked Exhibit E and made a part hereof, and is the best lease which the plaintiff succeeded in making."

The stipulation further says:

> "That the defendant has not paid the rent beginning with the month of July, 1914, nor the cost of water used upon the premises during the third quarter of the year 1914, which amounts to the sum of eighteen pesos and fifty-five centavos (P18.55).
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> "That the premises were unoccupied from the time that the defendant gave notice of termination of lease on the 8th day of August until the 1st day of November, 1914, at which time they were occupied by the present tenant, Don Mariano Lim, and that the plaintiff has received no rent for the premises during that period.
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> "Parties further agree that the court may enter judgment upon the foregoing statement of facts without further trial of the issue raised by the pleadings, the parties reserving only the privilege of presenting briefs—the plaintiff, fifteen (15) days from date hereof and the defendant, fifteen (15) days after the receipt of plaintiff's brief."

The appellant bases his whole contention on paragraph 10 of the lease which reads as follows:

> "Tenth. Failure on the part of the lessee to comply with all or any of the terms of this lease, and more particularly of that set forth in paragraph first of this agreement will cause the rescission of this lease on the part of the lessor and lessee being thereby obliged to immediately vacate the premises."

Placing himself upon this paragraph appellant maintains that his failure to pay rent for the month of July, 1914, automatically produced under paragraph 10 the rescission of the contract, and released him from the obligation thereby imposed; and that he was accordingly at liberty to leave the premises any moment thereafter. We cannot agree with this interpretation of paragraph 10; but are constrained to accept the construction placed thereon by the trial court. Appellant has overlooked not only certain important words in the paragraph referred to but also the general principles of law which, in the absence of express stipulation to the contrary, prohibit a party from taking advantage of his own wrong. Appellant seems to have forgotten that the very first paragraph of the lease imposes upon him the obligation to occupy the premises and pay rent for a period of four years from the date of the lease. This obligation cannot be avoided without the consent of the lessor. In the absence of a stipulation by the terms of which the lessee could terminate the lease, the provision fixing the duration of the lease at four years is binding on the lessee and he cannot legally escape therefrom. Paragraph 10 is not a provision by which the lessee may terminate the lease; it is rather a provision whereby the lessor may rescind the contract and collect from the lessee damages resulting from the acts of the lessee which gave the lessor the right to rescind. The paragraph itself provides that the only rescission which can take place will be one which proceeds from the lessor himself and to that end it disposes that the lease shall continue in full force and effect until the performance of some act on the part of the lessee which "will cause the rescission of this lease *on the part of the lessor*." The lease containing no provision by which the lessee may release himself from the obligation imposed thereby, any act performed by the lessee which is in violation of its terms is a wrong against the lessor. Being a wrong the wrongdoer can take no advantage therefrom. If a person could rescind an obligation by the simple act of refusing to fulfill it then contracts would be worthless things; and if one may take advantage of his own wrong then there is no inducement to do right.

There being no objection by either party to the form of the judgment it is hereby affirmed, with costs against the appellant. So ordered.

Torres, Trent, and *Araullo, JJ.,* concur.

Johnson, J., dissents.

Date created: October 09, 2014