34 Phil. 562

[G.R. No. 8697. March 30, 1916]

M. GOLDSTEIN, PLAINTIFF AND APPELLEE, VS. ALEJANDRO ROCES ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

Defendants leased to plaintiff the first floor of a building belonging to them. They leased the rest of the premises to the proprietor of the Hotel de Francia. The proprietor of this hotel requested permission of defendants to add another story to the building. Defendants gave him permission to do so. The proprietor of the hotel covenanted with a contractor for the construction of the new upper story. The contractor having taken charge of the work, it was found necessary to open holes in the roof for the insertion of uprights. When it rained, the water leaked through these holes. Plaintiff conducted a saloon business, known as the "Luzon Cafe," in the premises leased by him and the water stained the walls and furniture, making his place unattractive to his customers. As a consequence, it became necessary to make certain repairs and his receipts fell off during the progress of this work. The trial court, basing his action on the provisions of article 1554 of the Civil Code, rendered judgment in plaintiff's behalf.

Articles 1554 provides that the lessor is obliged to maintain the lessee in the peaceful enjoyment of the lease during all the time covered by the contract.

Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change, without the least opposition on the part of any one. That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented. The peace would likewise have been

disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bar-tender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he would, of course, have a right of action for the recovery of damages from those who disturbed his peace, but he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessee's peace.

Manresa, in commenting on the aforementioned article 1554, very clearly says:

> "The lessor must see that the enjoyment is not interrupted or disturbed, either by others' acts (*save* in the case provided for in the article 1560), or by his own. By his own acts, because, being the person principally obligated by the contract, he would openly violate it if, in going back on his agreement, he should attempt to render ineffective in practice the right in the thing he had granted to the lessee; and by others' acts, because he must guarantee the right he created, for he is obliged to give warranty in the manner we have set forth in our commentary on article 1553, and, in this sense, it is incumbent upon him to protect the lessee in the latters' peaceful enjoyment."

It is unquestionable that, if plaintiff has suffered damages, a right of action for their recovery should lie in his behalf. Such an action should always be brought against the tort feasor. A person who by an act or omission causes damage to another, when there concurs fault or negligence, shall be obliged to repair the damage done (Civil Code, 1902). Who should bring this action, the lessor or the lessee? In some cases, the lessor; in others, the lessee himself; but not the lessee against the lessor to the exclusion of the person who caused the damage. If it should be brought by the lessor, the lessee should get him to protect the latter in his peaceful enjoyment of the property as against the third person who disturbed such enjoyment; if the right of action pertains to the lessee himself, then the lessor can not even do this, because he can not take the lessee's defense upon himself in violation of the positive mandates of the law, for the reason that the law denies him personality for that purpose.

Account has not been taken of the provisions of article 1560, mentioned as an exception in the preceding quotation. This article prescribes as follows:

> "The lessor shall not be obliged to answer for the mere fact of a trespass (perturbacion de mero hecho) made by a third person in the use of the estate leased, but the lessee shall have a direct action against the trespasser."

Here below we quote Manresa's commentary on said article, with which we entirely agree:

> "*Reasons for the provision contained in article 1560*.—We already know what is understood by legal trespass and trespass in fact only. We likewise know that, according to the article we are now dealing with, the lessor is not liable for trespasses of this latter kind, although he is liable for trespasses in law (*de derecho*), pursuant to No. 3 of article 1554, the force of which has suffered no change by any subsequent article; and we now inquire into the reason for this distinction or, better stated, the reason for the non-liability of the lessor in trespasses in fact only.
>
> "A necessary condition of the enjoyment of the lessee, the chief feature of the lease, is the possession he must have of the thing; without that, there can be no enjoyment. True it is that the lessee does not hold such possession in the capacity of owner and that, therefore, he cannot and should not derive from it the effects which, under other circumstances, would ensue; but, after all, he is a possessor. If we carefully examine that relation of possession, we shall see that it is double; on the one hand, he possesses the thing as a condition of enjoying it while, on the other, he possesses his right to the enjoyment of the thing. In certain respects he holds possession of the thing in the name of its owner, in so far as this latter has not ceased to hold it for the purpose of prescription, for example, because he leases the property; but the possession of his *right* of use pertains to him in his own name, as acquired by virtue of a just title, that is, the contract of lease. If then, the trespass in fact only refers to the *use* of the thing, who but the lessee can have the personality to oppose it? It must be carefully noted that article 1560 speaks of trespass in fact only *in the use* of the property leased, and that if such trespass is translated into anything material which affects the property itself, then only in so far as it is a disturbance of the use of the property is it incumbent

upon the lessee to repel it.

> "True it is that, pursuant to paragraph 3, of article 1554, the lessor must maintain the lessee in the peaceful enjoyment of the lease during all of the time covered by the contract, and that, in consequence thereof, he is obliged to remove such obstacles as impede said enjoyment; but, as in warranty in a case of eviction (to which doctrine the one we are now examining is very similar, since it is necessary, as we have explained, that the cause of eviction be in a certain manner imputable to the vendor, which must be understood as saying that it must be prior to the sale), the obstacles to enjoyment which the lessor must remove are those that in some manner or other cast doubt upon the right by virtue of which the lessor himself executed the lease and, strictly speaking, it is this right that the lessor should guarantee to the lessee."

Briefly, if the act of trespass is not accompanied or preceded by anything which reveals a really *juridic* intention on the part of the trespasser, in such wise that the lessee can only distinguish the material fact, stripped of all legal form or reasons, we understand it to be trespass in fact only (*de mero derecho*).

The judgment appealed from is reversed, and it is hereby ordered that the complaint against the defendant lessors be dismissed, with the costs against the plaintiff and without special finding in this instance. To plaintiff is reserved the right allowed him by subsection 4 of section 127 of the Code of Civil Procedure. So ordered.

Torres, Moreland, and *Araullo, JJ.,* concur.
Trent, J., see dissenting opinion.

DISSENTING OPINION

TRENT, J.:

Plaintiff seeks to recover from his lessors for damages to his furniture and fixtures and for

interference with his business, suffered while alterations were being made in the building of which he was a tenant. Plaintiff occupied a portion of the first floor and the damages were occasioned by construction work on an additional floor, which necessitated cutting holes in the roof for vertical supports, through which rain entered the demised premises. Plaintiff conducted a saloon business therein, and the water stained the walls and furniture and gathered on the floor, making his place uninviting to his customers. As a consequence, certain repairs were necessary and his receipts fell off during the continuance of the alleged nuisance. There can be no question as to these facts, although the amount of the damages found by the trial court is excepted to.

The defendant lessors seek to avoid responsibility for these damages by reason of a contract of lease of other portions of the same building to the proprietors of a hotel, one of the conditions of which was that the hotel company should erect an additional story to the building, which should revert to the lessors at the expiration of the lease; and a contract made by the hotel company with a building contractor for the performance of the work agreed upon in the contract of lease.

The lease of the hotel company is subsequent in point of time to the plaintiff's lease by approximately two and a half months, and plaintiff testified that, although he was notified of the contemplated alterations, he did not see the plans for the work nor approve of them in any particular. Plaintiff's lease contains a covenant guaranteeing him the quiet and peaceful possession of the demised premises. He promptly notified his lessors of the interference with and damage to his business and notified them several times during the continuance of the nuisance which lasted about two months, but nothing was done to abate the same.

Article 1558 of the Civil Code provides that a tenant must permit the lessor to make urgent repairs. The alterations and additions to the building in question were not within the class of repairs contemplated by this article. Article 1560 provides that the lessor shall not be liable for the trespass of a third person, while article 1554, paragraph 3, obligates the lessor to maintain the lessee in the peaceful enjoyment of the demised premises during the life of the lease. The question presented by the facts of this case appears to be whether the acts complained of were a mere trespass of a third person or an infraction of the lessor's covenant of peaceful possession. Manresa, edition 1911 (Vol. 10, p. 525), states that there is but little jurisprudence on the covenant for peaceful possession, which article 1554 makes a part of every contract of lease of real property. He does say, however, that the renting of an upper floor for the establishment of an industry which renders inconvenient or makes impossible the use which a prior tenant makes of the first floor constitutes a violation of this

covenant on the part of the landlord. Scævola (Vol. 24, p. 521) says of this covenant:

> "An alteration in the peaceful enjoyment would be that occasioned by the lessor in undertaking to make in the thing leased repairs not excepted by article 1558, provided that he did it against the will of the lessee."

The covenant for peaceful enjoyment is as common in America as it is under the Spanish law.

> "The principal covenant on the part of a landlord is that his tenant shall have the quiet and peaceful possession of the premises during the continuance of the lease. The law supposes that when a man makes a lease, he has a good title to the land, and, consequently, power to lease it; and an engagement to this effect on the part of the lessor is therefore always implied." (1 Taylor's Landlord and Tenant, sec. 304.)

The cases are numerous, and we shall only cite a few late and well-considered ones.

In Miller *vs.* Fitz Dry Goods Co. (62 Neb., 270) plaintiffs were lessees of office rooms on the second floor, and the defendant was the tenant of the ground floor. The latter erected show cases and signs about and in front of portions of the stairway leading to the upper floors, partially obstructing the same. An injunction perpetually restraining the defendant from maintaining these obstructions was approved by the appellate court, which said:

> "It can make no difference that in this case the landlord attempted to give the defendant authority to maintain the obstructions. He had no right to interfere with the plaintiff's easement (of access to their premises), and could give none to others."

Sherman *vs.* Williams (113 Mass., 481; 18 A. R., 522) was an action to recover damages for breach of the lessor's covenant for quiet enjoyment in a lease of a building situated in Boston. Parties named Dutton acquired an adjoining estate, and, with the consent of the lessors, built a brick wall encroaching" on the demised premises. The court said:

> "Upon the facts stated in the report, it appears that the party wall between the demised premises and the adjoining estate, belonging to the Duttons, was built in part upon the land under the eaves in the rear of the brick building included in the lease to the plaintiffs. This wall was built by the Duttons under an agreement with the defendants, and by their authority, and for their benefit. This authority was given under an assumption of right, and by a formal agreement to which the plaintiffs were not parties. The act of the Duttons in building the wall act of the defendants done under an assumption of title, and is a breach of the covenant for quiet enjoyment. The defendants covenanted against their own acts, and the Duttons built the wall on the demised premises by their authority. It was not the act, therefore, of a stranger, but of the lessors."

In Patley *vs.* Egan (200 N. Y., 83) the defendant was the owner of two buildings in the City of New York, which, on their adjacent sides, were supported by a common wall. After leasing the third floor of one of these buildings to the plaintiff, the defendant undertook to remove the other building and erect a new one in place thereof, entering into a contract with a contractor for the work. An excavation for the foundation of the new building was made along the wall of the demised premises, and, at first, this wall was shored up; but the shores were later all taken down, as a result of which the wall and a large portion of the building occupied by the plaintiffs collapsed and injured the plaintiffs' goods.

> "Unquestionably the respondent owed the duty not to disturb the appellants in their possession and enjoyment of the premises which he had leased to them by any such operations as he undertook on the adjoining lot, and for his violation of this obligation he might have been held liable independent of any negligence. * * * Ordinarily the respondent might reply, as he does attempt to, that he discharged his obligations by securing a competent independent contractor and that thereby he has been relieved from responsibility for any negligence except of himself which is not shown to have existed. That defense, however, is not available in this case. The respondent's duty to protect his tenants from disturbance in the course of his building operations was of a personal character and he could not discharge it by delegating those operations even to a competent independent contractor."

In Northern Trust Company *vs.* Palmer (171 111., 383) the lessor entered into a contract

with certain parties to rebuild the south wall of a building occupied by the plaintiff as his tenant. The contract required the contractors to take precautions not to unnecessarily injure the inside of the building, and to provide the necessary supports for it during the reconstruction of the wall. Nothing was said in the contract about protecting the tenant, and no provision was made with the contractors to secure her consent. The court said:

> "Parsons, in his work on contracts (Vol. 1, p. 531), says: 'There is an implied covenant on the part of the lessor to put the lessee into possession, and that he shall quietly enjoy.' Hawley could not, by contract, authorize the Florsheims, without the consent of his tenant, Fenton, to take down and erect a new wall to the building, the necessary or probable effect of which would be to injure the tenant in her rightful and quiet possession, without being liable, jointly or severally with the Florsheims, the other wrong doers, for damages."

In Wertheimer *vs.* Saunders (95 Wis., 673) a landlord, although not required under the lease to make repairs, gratuitously undertook to put a new roof upon the leased building, at the request of his tenant. The contract was let to an independent contractor, who took off during one day a large section of the old roof, notwithstanding that the weather looked threatening. It commenced to rain before the section in question was recovered, thereby causing damage to the tenant's goods. The court said:

> "In Bower *vs.* Peate (1 Q. B. Div., 321-326) it was laid down that 'A man who orders work to be executed, from which, in the natural course of things, injurious consequences must be expected to arise unless means are adopted by which they may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot relieve himself of his responsibility by employing some one else—whether it be the contractor employed to do the work from which the danger arises, or some independent person—to do what is necessary to prevent the act he has ordered to be done from becoming wrongful. There is an obvious difference, between committing work to a contractor to be executed, from which, if properly done, no injurious consequences can arise, and handing over to him work to be done, from which mischievous consequences will arise, unless preventive measures are adopted. While it may be just to hold the party authorizing the work, in the former case, exempt from liability for injury resulting from negligence which he had no reason to anticipate, there is, on the

> other hand, good ground for holding him liable for an injury caused by an act certain to be attended with injurious consequences, if such consequences are not in fact prevented, no matter through whose fault the omission co take the necessary measures for prevention may arise.' Here the removal of the roof was by the direction and authority of the defendants, and at the request of the plaintiff, and the injury resulted from what the defendants procured their contractors, under them, to do, and the alleged negligent manner of their doing it. It is manifest that the removal of the old roof, in order to put on a new one, necessarily exposed the property of the tenant, the plaintiff, to injury from the elements; and the duty, as already stated, was cast on the defendants to see that reasonable care was taken to avert such result. The argument of counsel for the defendants wholly ignores the existence of such duty on the part of the defendants, and its bearing, and erroneously assumes, as we think, that the action is to charge the defendants solely on the ground of the collateral negligence of the contractors."

The plaintiff's lease in the case at bar did not call for the alterations and additions which were the means of producing the damages complained of. Has such been their character, then the liability of the lessors might be placed in a different light. They were not necessary as repairs caused by ordinary wear and tear of the leased premises, for these were, under the lease, to be made by the lessee. Nor, as I have said, can they be classed as urgent repairs, under the provisions of article 1558, necessary for the preservation of the building. They were entirely outside the plaintiff's lease, were undertaken at defendants' express request, and were ultimately to inure to their benefit as a permanent improvement to the property. It seems clear, therefore, that in undertaking these alterations, or in authorizing others to undertake them, the lessors should have taken precautions to see that their covenant for the peaceful and quiet possession of the plaintiff should not be violated. The record shows that no mention was made of the plaintiff in the contract with the hotel people, nor in the contract with the contractor who actually performed the work, and further, that he was not consulted as to the manner in which the work should be performed. More than this, on being informed of the damages being sustained by the plaintiff during the progress of the work, the defendants made no attempt to prevent a continuance of the disturbance. The defendants could not thus disregard their agreement to maintain the plaintiff in the undisturbed possession of the demised premises, and shift their responsibility to those who were undertaking the alterations to the building for their ultimate benefit. A number of cases are cited by the appellants, but I agree with the trial court that they are not

in point. I am, therefore, of the opinion that the defendants are liable under the provisions of paragraph 3 of article 1554 for the damages caused the plaintiff. Under the provisions of article 1556 of the Civil Code, the plaintiff was at liberty to rescind the contract or demand indemnity for losses and damages, leaving the contract of lease in force. He has elected the latter course.

As to the amount of damages allowed by the trial court, I think the evidence fully justifies the amounts allowed for the various items. The judgment should, in my opinion, be affirmed.

Date created: May 29, 2014