

**LOPEZ INC., REPRESENTED BY DAVID DE LEON IN HIS CAPACITY AS
IN-CHARGE, PLAINTIFF AND APPELLANT, VS. PHILIPPINE & #038;
KASTERN TRADING CO., INC., DEFENDANT AND APPELLANT.**

G.R. No. L-8010. January 31, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

There is no serious dispute as to the basic facts in this case, at least not as regards those for purposes of this decision. Before the last (Pacific) war the defendant corporation Philippine & Eastern Trading Co., Inc., as lessee was occupying two doors with mezzanine of what is known as the Lopez building in the City of Baguio, belonging to the plaintiff corporation Lopez Inc. of which Atty. Eugenio Lopez was then the President. Defendant was paying P160 monthly rental and the lease was from month to month. Said two doors were used as a store. During the bombing of the City of Baguio during the first months of 1945 by the American Air Forces in trying to liberate the city from the Japanese occupation forces the Lopez Building including the two doors in question were burned and seriously damaged leaving only the concrete walls and framework. After liberation, because the Lopez Inc. did not rehabilitate the building, the defendant corporation desiring to resume the lease and use the premises for commercial purposes as it did before the war thought of rebuilding it. One Mr. Macario Rebodos, Vice-President of the defendant, went to Manila to confer with Atty. Eugenio Lopez, President of the plaintiff, about the rehabilitation of the premises but he failed to see him on three occasions that he looked for him in the city. So, according to Rebodos, he left a letter for Mr. Lopez with an inmate of the house. Said letter was never answered by Attorney Lopez. The defendant proceeded to repair or rebuild the two doors spending the amount of P14,583.45. Said improvements were introduced with the knowledge of Mr. Joseph K. Icard, agent for the plaintiff. Later, an agreement was entered into between the plaintiff and the defendant whereby the latter re-occupied the premises paying a rental of P300 a month.

In 1947 the defendant failed to pay the monthly rentals for the months of February to September of said year, amounting to P2,200. It seems that the defendant company although admitting its delinquency was of the belief that inasmuch as it had the right to be reimbursed in the sum of P14,583.45, value of the improvements introduced by it, the amount of its delinquency (P2,200) could well be charged against it and so it (defendant) need not pay the monthly rentals until the value of the improvements had been exhausted. Because of defendant's refusal to pay the delinquency the plaintiff brought an action of ejectment in the Municipal Court of Baguio to have the defendant vacate the premises pay the back rentals with legal interest, plus P300 incurred by the plaintiff for the institution of the suit.

From the judgment rendered by the Municipal Court for the plaintiff ordering the defendant to vacate the premises, to pay P2,200 as back rentals and to pay the monthly rents of P300 from October 1, 1947 until the premises were vacated, the defendant appealed to the Court of First Instance of Baguio. After hearing, said court rendered judgment with the following dispositive part:

"For all the foregoing considerations, the Court orders the defendant Philippine & Eastern Trading Corporation

to vacate the premises immediately. It also orders it to pay the plaintiff the sum of P300 monthly rental of the premises in question from the date of this decision until the premises are completely vacated the defendant. Said defendant, however, is not obliged to pay the said P300 monthly in cash. It has the right to set off against rental, part of the value of the improvements. Regarding the P2,200, back rentals, the court also declares that this sum is already by a part of the amount of the value of the improvements, as stated above, so that the defendant is free from paying it in cash. The right of the defendant corporation to file a suit against plaintiff corporation to recover the remainder of the value of improvements of P14,583.45, after deducting all the back rentals due to plaintiff and the rentals which may become due later, is hereby reserved to said defendant corporation. No special pronouncement as to costs."

From said judgment both parties appealed to the Court of Appeals but said Tribunal later certified the appeal to this Court as involving only questions of law.

The theory of defendant-appellant, apparently sustained by the trial court is that under Article 453 of the old Civil Code defendant was a possessor in good faith and as such introduced the improvements valued P14,583.45 and had the right to retain, the premises until it was reimbursed the said amount by the owner of the property.

"Necessary expenditures shall be refunded to every possessor but only the possessor in good faith may retain the thing until they are repaid to him.

"Useful expenditures shall be paid the possessor in good faith with the same right of retention the person who has defeated him in his possession having the option of refunding the amount such expenditures or paying him the increase in value which the thing has acquired by reason thereof." (Article 453, old Civil Code.)

The trial court held that said improvements were introduced in good faith and so the defendant had a right to reimbursement by the plaintiff-owner; however, from the time that said defendant was notified by the plaintiff to vacate the premises for failure to pay the rent, it ceased to be a possessor in good faith, and inasmuch as said failure or delinquency justified the termination of the lease, said defendant having lost the right of retention, must vacate the premises but that it must be reimbursed the value of the improvements introduced by it to be determined in a separate action, for the reason that the defendant in its answer to the suit filed in the Municipal Court reserved its right to file the corresponding action for the recovery of said amount.

According to the record on appeal the defendant not only failed to perfect its appeal from the judgment of the Municipal Court because it did not file a "sufficient bond to answer for the rents, damages, and costs up to final judgment" but also neglected to pay the rent corresponding to the month of October, 1947 pending appeal and so plaintiff filed a motion for execution of the judgment and for the dismissal of the appeal. The trial court in its order of November 14, 1947 refused to grant the motion and gave the defendant "until 9:00 o'clock in the morning of November 17, 1947 to deposit all the rentals due the plaintiff to date in accordance with the decision of the lower court on appeal to this Court." This order of the trial court is now assigned as error by plaintiff-appellant.

As regards the failure of defendant-appellant to deposit with the court the rents fixed and ordered to be paid, in the judgment on appeal as they became due, thereby justifying the execution of the judgment, we agree with plaintiff-appellant. The provisions of Rule 72, section 8, of the Rules of Court, are mandatory and the Court of First Instance has no discretion in the matter and is not warranted in extending the time for making such payment. We have a long line of decision on this point (*Lapuz vs. Court of First Instance*, 46 Phil., 77; *Cunanan vs. Rodas*, 78 Phil., 800; *Galewsky vs. De la Rama*, 79 Phil., 583; and *Pañgilinan vs. Peña*, 89 Phil., 122). For this reason the trial court should have ordered the execution of the judgment of the Municipal Court.

As regards the introduction of the improvements by the defendant, as already stated, Mr. Rebodos failing to see Atty. Lopez in Manila, according to him, left a letter for Atty. Lopez supposedly advising him of the introduction

of said improvements. Attorney Lopez in his deposition said that he never received said letter. On the other hand, he said that he had a conference with Mr. Leopoldo Mabansag, President of the defendant corporation wherein Mabansag agreed that his company waived any right to reimbursement for the value of said improvements. The trial court rejected this evidence or testimony because it involved a supposed admission made by a person now dead, for Mabansag died before the filing of the suit. The trial court further said that it was highly improbable that anyone of sound mind would introduce valuable improvements just to renounce it later in favor of the owner. In rejecting this testimony the trial court must have had in mind Rule 123, section 26 (c) of the Rules of Court which reads as follows:

"Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person or against a person of unsound mind upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind;"

However, the present action was not exactly brought against the executor or administrator or other representative of Mr. Mabansag but rather against the corporation of which he was the President and so said Rule 123, section 26 (c), is not applicable. On the other hand in the case of *Fortiz vs. Gutierrez Hermanos*, 6 Phil., 100, this court said:

"It appeared that Miguel Alonzo Gutierrez, with whom the plaintiff had made the contract, had died prior to the trial of the action, and the defendants claim that by reason of the provisions of section 83, paragraph 7, of the Code of Civil Procedure (equivalent to section 26[c], Rule 123 of the Rules of Court), plaintiff could not be a witness at the trial. That paragraph provides that parties to an action against an executor or administrator upon a claim or demand against the estate of a deceased person cannot testify as to any matter of fact occurring before the death of such deceased person. This action was not brought against the administrator of Miguel Alonzo nor was it brought against a partnership which was in existence at the time of the trial of the action, and which was a juridical person. The fact that Miguel Alonzo had been a partner in this company, and that his interests therein might be affected by the result of this suit, is not sufficient to bring the case within the provisions of the section above-cited.

However, because the evidence sought to be introduced by plaintiff was only in the form of deposition and Attorney Lopez did not testify as a witness in the hearing and, subjected to cross-examination by defendant's counsel and also by the court, we can well disregard this evidence and consider that there was no definite understanding or agreement between plaintiff and defendant as to who should eventually pay for said improvements.

Before we conclude, we believe it not only advisable but necessary to clear and resolve the misconception about the scope and extent of the rule or law on a possessor in good faith, under which the defendant and in a way even the trial court had labored. As we have already said, they both thought that a lessee may be considered a possessor in good faith and that improvements introduced by him on the leased premises are to be regarded as made in good faith. This rule or principle contained in the civil law refers only to party who occupies or possess property in the belief that he is the owner thereof and said good faith ends only when he discovers a flaw in his title so as to reasonably advise or inform him that after all he may not be the legal owner of said property. This principle of possessor in good faith naturally cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased property. Neither can he deny the ownership or title of his lessor. Knowing that his occupation of the premises continues only during the life of the lease contract and that he must vacate the property upon termination of the lease or upon the violation by him of any of its terms, he introduces improvements on said property at his own risk in the sense that he cannot recover their value from the lessor, much less retain the premises until such reimbursement. His right to improvements introduced by him is expressly governed by

Articles 1573 and 487 of the old Civil Code which reads as follows:

"Article 1573. A lessee shall have, with respect to useful and voluntary improvements, the same rights which are granted to usufructuaries."

"Article 487. The usufructuary may make on the property held in usufruct any improvements, useful, or recreative, which he deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements should it be possible to do so without injury to the property."

In the case of *Fojas vs. Velasco*, 51 Phil., 520, this Court said:

"The case is governed not by articles 361 and 453 of Civil Code as contended by appellants but by articles 1573 and 487 of the same Code, as indicated by appellees. In this connection need only be recalled that the lessees have been holding the la under a rental contract. Accordingly, upon termination of the le the right of the lessees with respect to improvements placed by then on the leased property is determined by article 487, which entitles them to remove the improvements, provided they leave the property in substantially the same condition as when they entered it. (*Alburo vs. Villanueva*, 7 Phil., 277; *Cortes vs. Ramos*, 46 Phil., 184; *Rivera vs. Trinidad*, 48 Phil., 396.)"

Then in the case of *Rivera vs. Trinidad*, 48 Phil., 896 this Court ruled:

"While a tenant was in possession of property under a verbal agreement for occupation for an indefinite time upon payment of a fixed compensation per month the property was sold and the purchaser filed an action for unlawful detainer. Held: That the defendant must be considered as tenant from month-to-month and upon a lease terminable without the necessity of special notice upon the expiration of any month and that the plaintiff was entitled to recover possession.

"The rights of the defendant with respect to the improvements made on the property by him must be governed by Article 487 in relation with Article 1573 of the Civil Code. Under Article 487 the defendant is entitled to remove improvements made by himself so far as it is possible to do so without injury to the property; and this means that he may remove the improvements provided he leaves the property in substantially the same condition as when he entered upon it. Articles 361 and 463 of the Civil Code, which define the rights between the owner of land and builders of improvements thereon in good faith, are not applicable as between landlord and tenant, since the Code supplies specific provisions designed to cover their rights. Besides the tenant cannot be said to be a builder in good faith as he has no pretension to be owner. (*Manresa Com, ed., Vol. 4, p. 445*)."

In view of the foregoing, the decision appealed from is hereby modified to the effect that defendant-appellant is not entitled to reimbursement for the value of the improvements introduced by it; that it is ordered to pay to plaintiff-appellant the amount of P2,200, with interest at the legal rate from the date of the filing of the complaint; and to pay the amount of P300 per month until it actually vacates the premises. Defendant-appellant is however given the right to remove the improvements introduced by it without injury to the property, under the provisions of Article 487 of the old Civil Code. No costs.

Parás, C. J., Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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