

INMA ROHDE SHOTWELL, ASSISTED BY HER HUSBAND, ANSELMO M. SHOTWELL, PETITIONER, VS. MANILA MOTOR CO., INC.

G.R. No. L-7637. December 29, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal by certiorari under Rule 46 from a judgment of the Court of Appeals.

On 8 November 1948 Inma Rohde Shotwell, successor- in-interest of the late William H. Rohde, the lessor, sued the lessee and the assignee in the Court of First Instance of Manila to recover from them allegedly due and unpaid rentals from 1 January 1942 to 30 November 1945. After hearing, the Court rendered judgment—

* * * in favor of the plaintiff and against the defendant Manila Motor Co., Inc., ordering the latter to pay the former the sum of P175.00 (rental for the month of January 1945), with interest at the rate of six per centum per annum from the date of the filing of the complaint until fully paid; and declaring the contract of lease terminated as of the destruction of the buildings in February, 1945. The case against the defendant Chartered Bank of India, Australia & China is dismissed for lack of evidence. The payment of the rental due from the defendant Manila Motor Co., Inc., is suspended until the Moratorium Law has been lifted, unless the said defendant waives its right under said Law. With costs against the above named defendant.

From this judgment the plaintiff appealed to the Court of Appeals. The judgment appealed from was affirmed,

* * * with the only modification that the payment of the amount of P175.00 as rental of the property involved in this litigation for the month of January, 1945, is not suspended and should be made as soon as this decision becomes final. The costs are taxed against the appellants.

The findings of the Court of appeals are, as follows:

* * * on September 1, 1937, William H. Rhode, now deceased, father of plaintiff Inma Rohde Shotwell, and the Manila Motor Co., Inc., entered into a contract of lease for 14 years, covering three parcels of land together with all buildings and improvements thereon, situated on Ongpin, Manila, the buildings fronting on Tambakan alley (Exh. A same as Exh. 10), at a monthly rental of P1,050.00 for the first four years and P1,100.00 for the succeeding years. Two months and five days later, or on November 6, 1937, the Manila Motor Co., Inc. assigned, with the express consent of William H. Rhode (Exh. B), said lease to the defendant Chartered Bank of India, Australia & China under the following reservations:

"1.—That this assignment does not carry with it any of the liabilities and obligations undertaken - and assumed by the Manila Motor Co., Inc. in said lease; but that the Chartered Bank of India, Australia & China has the option at any time to undertake and assume the said liabilities and obligations upon written notice by registered mail to the lessor, William H. Rhode;

"2.—That this assignment shall in no way absolve or release the Manila Motor Co., Inc. from the obligations and liabilities it has contracted in said lease." (Exhibit B.)

There is no denial that the defendant Chartered Bank of India, Australia & China never exercised its option on

said lease, and in accordance with paragraphs 1 and 2 of the contract aforequoted, We declare that the assignment thereof Was made just to benefit said defendant Bank and not to work against it unless said Bank would have exercised the option. Consequently, the dismissal of the complaint with regard to this defendant was proper and is hereby affirmed.

As to the other defendant, the Manila Motor Co., Inc., the questions at issue to be determined are whether or not (1) the lease contract (Exh. A) was novated; (2) the destruction of the buildings of the leased properly during the battle of liberation in February of 1945, caused the termination of the lease; (8) the Executive Order on moratorium still affects the payment of any of the rentals that might be due the plaintiffs; and (4) there is any balance of the accumulated rentals of the premises that the Manila Motor Co., Inc. is bound to pay to the plaintiffs, with interests thereon from the filing of this action.

* * * * *

As held by the court a quo, "the main portion of the leased premises was sealed by the Japanese military forces, such that the defendant Manila Motor Co., Inc., was not able to continue engaging in automobile business during the Japanese occupation, and that the said main portion of the ground floor was occupied by the Central Garage which belonged to the then puppet government. A small portion of the groundfloor was occupied by the Manila Food Industry which was owned and operated by the defendant Manila Motor Co., Inc., through its president, Mr. Bachrach." It is part of the history of said occupation days that the rentals of all buildings in general were reduced at least to half, and the amount of P125.00 or P175.00 paid monthly by the defendant Manila Motor Co., Inc. must have been accepted by the lessor in full payment of said rentals, not only because the reduction thereof was in consonance with the general policy on rentals then prevailing, but because the lessor was unable to maintain the lessee in its right to occupy without hindrance the whole premises leased to the latter. Anyway, the plaintiffs have not proved that defendant Manila Motor Co., Inc. and plaintiffs' predecessor in interest, or Mrs. Isabel Salgado de Rohde, agreed that the reduced monthly rental of P125.00 or P175.00 that said defendant continued paying during the Japanese occupation was only in partial satisfaction of the monthly rental stipulated in the contract (Exhibit A), with the understanding that the balance would be fully liquidated after the war.

It has been stated before that the buildings on the property leased were totally destroyed in the battle for the liberation of Manila in February of 1945, and the next question for Us to pan upon and, decide is whether such destruction caused the termination of the lease. The old Civil Code prescribes: ,

"Art. 1543. In the lease of things one of the parties thereto binds himself to give to the other the enjoyment or use of a thing for a definite period and for a certain price",

and two of the duties or obligations of the lessor are:

"2. To make thereon, during the lease, all repairs necessary in order. to keep it in serviceable condition for the purpose for which it was intended; and

"3. To maintain the lessee in the peaceful enjoyment of the lease during the entire term of the contract." (Art. 1554.)

When the contract of lease (Exhibit A) was entered into between William H. Rohde and the Manila Motor Co., Inc., there were already buildings on the land, and We believe with the trial judge that said defendant would not have entered into the contract were it not for the suitability of those buildings which it could and did use in its automobile business, and that the conditions of the lease would have been different if there were no such buildings thereon. As the record shows, the reason on the part of the Manila Motor Co., Inc., to enter into that contract on September 1, 1937, was "that these buildings were substantial and the improvements were suitable for the business in which we were going into, selling and repairing automobiles" (t. s. n. p. 908).

It is true that according to the terms of the contract (Exhibit A), the lessee had the right to make alterations and

improvements in the buildings now situated on the above described premises, as it may desire and may replace all or any of said buildings with a new building or buildings of equal or greater value, and that all the repairs and renewals shall be for the account of the lessee which shall keep the premises in reasonable good repair, but these covenants which certainly were made for the benefit of the Manila Motor Co., Inc., do not and could not bind the lease to make any renewals if the latter did not so desire. Moreover, the repairs and renewals referred to in the contract were those to be carried out before the expiration of the term or other determination of the lease, which were to become the property of the lessor, and it certainly would be most unfair to give any other interpretation to the contract, for it would be tantamount to transferring the losses of the owner and the lessor for the destruction of the buildings, which he ' or his successors-in-interest could have claimed from the War Damage Commission, to the shoulders of the lessee that was not at fault in the devastation caused by the ravages of war. If under the obligation "to make all repairs necessary in order to keep the property leased in serviceable condition for the purpose for which it was intended" (Art. 1554, No. 2, of the Civil Code), the lessor cannot, be compelled to rebuild the property destroyed by fortuitous event (*Lizarez vs. Hernaez*, 40 Phil. 981), We do not see any reason why the lessee could be obliged to make the renewal, replacement or rebuilding: of the improvements for the benefit of the lessor in order to make the lease continue in operation under circumstances that might be disadvantageous to the lessee, when the contract itself left that reconstruction or replacement at the will of the latter. Article 1568 of the old Civil Code prescribes that: "If the thing leased should be lost or either of the contracting parties fails to comply with his undertaking, the provisions of Articles 1182 and 1183 and of Articles 1101 and 1124 respectively shall be observed,"

and Article 1182 provides that:

"An obligation which consists in the delivery of a determinate thing shall be extinguished if such thing should be lost or destroyed without fault on the part of the debtor and before he is in default (*mora*)."

In this connection appellees' counsel quotes the following from *Manresa*: "There is no room for doubt that the loss of the thing extinguishes the lease contract * * * " and that "by loss of the thing shall be understood not only its material and complete destruction, but also such essential change of condition or state that renders it unfit for the purpose to which it was being used" (*Translation-Appellees' brief*, p. 111). Such being the case, We cannot declare that the lower court committed the second¹ of the errors assigned to it, and, consequently, the defendant-appellee, the Manila Motor Co., Inc., cannot be held liable for any rents after the liberation of the City of Manila, or from February 1 to November 30, 1945, as pretended by appellees.

The part of the decision that suspends the payment of the rental due from the defendant Manila Motor Co., Inc., until the moratorium would be lifted, unless the said defendant waives its right under such law, was in accordance with previous decisions of the Supreme Court, but the doctrine has been recently changed (*Royal L. Rutter vs. Placido 3. Esteban*—SC-G. R. L-3708, May 18, 1953, and other decisions that followed), and there is now no reason for such suspension. Defendant-appellee Manila Motor Co., Inc. is, therefore, in duty bound to pay the sum of ₱ 175.00 as rental of the premises for the month of January, 1945. Anyway, said defendant in its answer admits its obligation to pay that rental for said month.

The Court of Appeals found that there were buildings on the land when the contract of lease (Exhibit A) was entered into between William H. Rohde and the Manila Motor Co., Inc. and that the reason the latter entered into such lease contract was "that these buildings were substantial and the improvements were suitable for the business in which we were going into, selling and repairing automobiles;" and both the trial and appellate Courts are of the opinion "that said defendant would not have entered into the contract were it not for the suitability of those buildings which it could and did use in its automobile business, and that the conditions of the lease would have been different if there were no such buildings thereon."

The destruction of the buildings during the battle for liberation in February 1945 terminated the lease contract.

Article 1568 of the Civil Code provides:

If the thing leased should be lost or either of the contracting parties fails to comply with his undertaking, the provisions of Articles 1182 and 1183 and of Articles 1101 and 1124 respectively shall be observed.

Article 1182 of the same Code provides:

An obligation which consists in the delivery of a determinate thing shall be extinguished if such thing should be lost or destroyed without fault on the part of the debtor and before he is in default (mora).

The petitioner contends that the destruction of the buildings has not terminated the lease contract because not only the buildings but also the land on which they had been erected formed part of the consideration or causa of the contract of lease. But the buildings and the land constitute an indivisible unit and the destruction of the buildings has extinguished the obligation or terminated the lease contract. The stipulation on the rebuilding of the destroyed improvements is potestative on the part of the lessee. The latter, is not bound to do so.

The Court of Appeals found that in view of the sealing of a large part of the leased premises by the Japanese military forces; occupation of a large part of the ground floor by the Central Garage owned and operated by the then puppet Government, a small part only of the ground floor having been left in possession of the Manila Food Industry which was owned and operated by the Manila Motor Co., Inc.; and the reduction at least to half of the rentals then prevailing, the amount of P125 or P175 paid monthly by the defendant Manila Motor Co., Inc. must have been accepted by the lessor in full payment of the rentals. The trial court found "that the monthly rental during the Japanese occupation was reduced by mutual agreement between the lessor and the lessee from P1,100 to P125 or P175." On appeal, the Court of Appeals found that "the evidence on record fully justifies the conclusions arrived at by the trial judge as stated in the paragraph preceding the dispositive part of the decision quoted above." In view of this agreement the point whether the sealing and occupation of a large part of the leased premises by the Imperial Japanese Army and by the Central Garage of the Japanese-sponsored Government was just a mere trespass (perturbacion de mero hecho) or juridical disturbance (perturbacion de derecho) need not be passed upon.

The Court of Appeals found that, with the express consent of William H. Rohde, the lessor, the Manila Motor Co., Inc., the lessee, assigned said lease to the defendant Chartered Bank of India, Australia & China, under the following terms and conditions:

- That this assignment does not carry with it any of the liabilities and obligations undertaken and assumed by the Manila Motor Co., Inc. in said lease; but that the Chartered Bank of India, Australia & China has the option at any time to undertake and assume the said liabilities and obligations upon written notice by registered mail to the lessor, William H. Rohde;
- That this assignment shall in no way absolve or release the Manila Motor Co., Inc. from the obligations and liabilities it has contracted in said lease. (Exhibit B.)

and that the Bank did not exercise its option to under take and assume the liabilities and obligations of the Manila Motor Co. For that reason the Bank cannot be held liable for any amount of rental allegedly due from and unpaid by the lessee to the lessor or his successor-in- interest.

Finding no error in the judgment under review we affirm it, with costs against the petitioner.

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

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