

BRAULIO STO. DOMINGO, PLAINTIFF AND APPELLEE, VS. CHUA MAN, DEFENDANT AND APPELLANT.*G. R. No. L-9998. February 28, 1959*

Ponente: LABRADOR, J.

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Appeal from a decision of the Court of First Instance of Rizal, Hon. Nicasio Yatco, presiding, declaring a contract of lease rescinded and cancelled, ordering the lessee-appellant to pay back rental amounting to P7,710, with 12% interest annually from February 10, 1953 until fully paid, and liquidated damages of P2,000, and to deliver possession of the land subject of the lease, together with the improvements thereon. The appeal was made directly to this Court as only questions of law are raised on the appeal.

It appears that on September 20, 1952 plaintiff leased two parcels of land containing an aggregate area of 4,028 square meters in San Juan, Rizal to the defendant. The purpose of the lease was to enable the defendant to construct a building thereon of strong materials in which the lessee was to maintain and operate a "cabaret". The contract expressly provides that it shall take effect on January 1, 1953 and terminate in fifteen years, with an extension of the period of lease by five years if agreed upon by the parties. The lessee bound himself to pay a monthly rental of P300.00, payable in advance within the first five days of each month, to insure the building after its construction for P40,000.00 and, if the building is destroyed within five years, to construct another building with the proceeds of the insurance policy; if destroyed between the fifth and eleventh year, the proceeds of the policy shall be divided equally between them; and if destroyed after the tenth year the lessor shall receive the full amount of the proceeds of the policy to the exclusion of the lessee. It was further agreed that in the maintenance and operation of the cabaret the lessee shall observe and comply with all regulations; that the lessor shall have the right to hire and dismiss minor employees; that the lessee shall pay all the taxes and services and that upon termination of the lease because of the expiration of the term or for any other causes, the lessor shall become the absolute owner of the building erected with all the improvements (R. A. Nos. 16-17,) etc.

The Court found that at the time of the filing of the action on September 13, 1954 lessee had paid only P1,000.00 and had also failed to pay the taxes due on the land and the building and that plaintiff was forced to pay P303.70 therefor. The defendant failed to appear at the hearing although he had filed an answer in which he alleged as a special defense that the parties to the lease had intended that the rights and obligations between them could not arise unless the intended operation of the cabaret could materialize. The basis of this special defense is the contract itself, as defendant was not present at the trial to prove such alleged understanding between the lessor and the lessee.

On this appeal the said issue is again raised by the lessee (1st and 2nd assignments of error). However, this defense cannot excuse him from the payment of rents, for the following reasons: (1) the contract expressly contains no clause upon which the said defense could be predicated and, on the other hand, it expressly provides that it shall become effective on January 1, 1953; (2) the trial court found that when the lessor demanded payment of rentals, lessee replied asking for an extension for payment and not for the reason claimed by him in his special

defense. (Decision, R. 0. A. p. 53; Exhs. "C" and "D", Brief for Appellee, pp. 19-20). These letters of the defendant indicate that rents are to be paid even if the cabaret could not be made to operate.

In the third assignment of error, lessee-defendant argues that in sentencing him to pay back rentals and taxes, with 12% interest thereon, to the lessor-plaintiff, as well as in ordering the rescission of the contract, the trial court was enforcing very onerous terms of the contract, in violation of Article 1378 of the Civil Code. The payment of the rentals from January 1, 1953, as expressly agreed upon in the contract, can not be said to be onerous; as lessee-defendant had erected on lessor-plaintiff's property, he should pay for the use and occupancy of the leased premises. Neither can the payment of interest on the back rentals and taxes by the lessee-defendant be considered unreasonable. The agreement is very clear on this point (par. 11, Contract of Lease, p. 19, Record on Appeal.) However, we find that the payment of liquidated damages of P2,000 may be considered onerous. The failure of the common plan to operate the cabaret appears to be a common error both on the part of the lessor-plaintiff and the lessee defendant. We agree that it is onerous to require the payment of liquidated damages when both parties had committed the same error as to the possibility of a business being established. The liquidated damages assessed by the trial court should, therefore, be eliminated.

The most important portion of the decision, which has attracted attention of the court, is the return of the land and the improvement existing thereon, without payment therefor. The improvement consists of a building worth P80,000. The return is apparently authorized by paragraph 7 of the Contract, which provides as follows:

"That at the termination of this lease contract, either because of the expiration of its term or for any other lawful causes, the Lessor shall be the absolute owner of the building described above together with all other improvements that the Lessee may erect on the leased premises, without giving the Lessee any indemnification whatsoever."

We believe that a literal enforcement of this provision of the contract would be unconscionable. Because of the error attributable both to the lessor as well as the lessee that the plan to operate the cabaret could not materialize, to require the lessee to lose the improvement valued at P 80,000 would be unconscionable, if not iniquitous. We believe we must exercise the discretion granted Us by Article 1229 of the Civil Code, which provides:

"Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable."

Instead of enforcing the contract literally, we believe that Article 1678 of the Civil Code should, instead, be applied, such that the lessor-plaintiff would pay one-half of the value of the building erected on his land, or if he refuses to make such payment, that the lessee-defendant be allowed to remove the improvements that he had erected at his own expense.

For the foregoing considerations, the decision appealed from should be modified to read as follows: (1) that the contract of lease be rescinded for failure of the lessee-defendant to pay the agreed rentals within a reasonable time and the lessee-defendant be ordered to return the leased premises; (2) that the lessee-defendant be ordered to pay to the lessor-plaintiff back rentals from January 1, 1953 to the date of the removal of the building or to the time lessor-defendant manifests his intention to keep the building, with interest at the rate of 12% yearly for every year of delinquency; (3) that the lessee-defendant shall pay to the lessor-plaintiff the amount of taxes advanced by the plaintiff, or the sum of P303.70, with 12% interest yearly from the date of payment; (4) that the lessor-plaintiff be required to pay one-half of the value of the building, which is P40,000, to the lessee-defendant, in case he should elect to keep the building erected on his land, and in case of his refusal to pay the said amount to the lessee-defendant, that the latter should have the authority to remove the construction within a reasonable period of

time and at his own expense; and (5) that the sum of P1,000.00 paid by lessee-defendant be deducted from the rentals fixed in par. (2) hereof. No costs. So ordered.

Paras C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion and Endencia, JJ., concur.

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