

IMPERIAL INSURANCE, INC., PLAINTIFF AND APPELLANT, VS. PELAGIO B. SIMON, DEFENDANT AND APPELLEE.

G.R. No. L-20796. July 31, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

Defendant-appellee was the lessee of the ground floor of a building in the corner of Nueva and Escolta Streets, Manila, which he used for haberdashery shop, known as "Simon's Haberdashery". He paid P1,800.00 a month as rentals. On September 13, 1961, plaintiff-appellant bought the property from the owner, for P340,000.00. On September 14, 1961, immediately after the sale, the former owner wrote appellee, informing him of the transaction and advising him—

"As new owners thereof, the said company has expressed its desire to occupy the whole premises, and has requested me to advise all my tenants of the termination of all my existing monthly lease contracts.

In this connection, therefore, I am taking this opportunity of advising you in writing that I am hereby terminating our monthly lease contract of the premises leased by you, effective one month from the date hereof."

Similarly, on the same date (September 14), the Imperial Insurance, informed appellee of the purchase of the property and advising him that as they had new plans for the occupancy of the building, they would appreciate if appellee could vacate the premises on or before October 14, 1961. Appellee failed to vacate the premises, so that on October 18, appellant insurance company sent him another letter reiterating, in effect, the previous demand to vacate the premises and at the same time demanding payment of the arrears in the rentals, covering five (5) months. Apparently, Pelagio Simon did not bother about the two letters, which prompted the insurance company to refer the matter to its lawyer. Under date of November 28, 1961, Atty. Amelito Mutuc wrote appellee, wherein he demanded the immediate payment of rentals in arrears amounting to P9,000.00, covering the period from June to October, 1961. He also stated:

"Formal notice is hereby made upon you to pay the aforesaid rentals in arrears as well as those that will accrue thereafter, and to vacate the premises five days from receipt hereof, other wise, much to our regret, we shall be constrained to follow the wishes of our clients and take court action against you without the benefit of any further notice. If you choose to ignore this letter, we shall take your silence as a refusal to settle your just obligations and as an indication that you desire to meet the same through court action."

Appellee replied to the above letter on December 9, 1961, the pertinent portions of which read:

"I was made to understand that the buyer of the building located at the corner of Escolta and Nueva streets, Manila, which is leased to me and subject of our communications, intends to have the same remodelled. Let me, therefore, make the offer to continue with the lease, paying the buyer a rental at the rate of P2,300.00, a month, or more depending upon the reasonable rate of rental that the premises could demand in its remodelled state, to take effect upon the availability for use of the same after its remodelling.

In the meanwhile, I earnestly request that you kindly cause giving me an extension of one (1) year, effective from the date of the alienation and/or sale of the premises in question. * * *. Please do not be apprehensive for damages representing the value of the use and occupation of the premises, because I am ready to pay in two weeks time the arrears in rental mentioned in your communication, and pay thereafter the monthly rental as it falls due."

On December 22, 1961, appellee paid the amount of P9,000.00, covering his arrearages from June to October, 1961. In the receipt evidencing said payment, the following undertaking appears:

"This payment is subject to the agreed condition that Mr. Pelagio B. Simon is still bound to pay the following rentals in favor of IMPERIAL INSURANCE, INC. up to the end of February, 1962, at which time the above-mentioned premises will be vacated by them in favor of IMPERIAL INSURANCE, INC.

November, 1961

P1,800.00

December, 1961

P2,300.00

January, 1962

P2,300.00

February, 1962

P2,300.00

P8,700.00

On January 12, 1962, appellee again paid for the November, 1961, rentals in the amount of P1,800.00. The receipt for such payment (Exh. F-1), contained the following:

"This payment is subject to the agreed condition that Mr. Pelagio B. Simon is still bound to pay the rental for the month of December, 1961, within one (1) week from the execution of this receipt, or on January 19, 1962, in the amount of P2,300.00

This payment is subject to the agreed condition, likewise, that Mr. Pelagio B. Simon is still bound to pay the following rentals in favor of IMPERIAL INSURANCE, INC., up to the end of February, 1962, at which time the above-mentioned premises will be vacated by him without any further extension of stay or period of grace

whatsoever.

January, 1962 P2,300.00

(Payable on or before February 5, 1962)

February, 1962 P2,300.00

(Payable on February 28, 1962)."

For failure on the part of Simon to pay the rentals for December, 1961, in the amount of P2,300.00, the attorneys of Imperial Insurance, demanded in writing for the immediate payment thereof, and again reminding appellee that he had only until the end of February, 1962 within which to vacate the premises. On January 18, 1962, in answer to the letter of demand, Pelagio Simon offered thru the lawyers of Imperial Insurance, a new settlement plan wherein he categorically stated that he was most willing to pay an increased rental of P2,300.00, provided he would be given a one (1) year extension (Exh. 3). Appellee, in spite of his willingness to pay the P2,300.00 increased rental, failed to remit the payment of December, 1961, which caused the counsel of Imperial Insurance to write him on January 29, 1962 (Exh. H), demanding the payment thereof and reminding him that he had only until the end of February, 1962 to vacate the premises, which period of stay will be without benefit of any period of grace. Another letter was addressed to appellee on February 15, 1962, (Exh. 1) having the same tenor as Exhibit H.

Notwithstanding the many demands, Pelagio Simon failed to pay the rentals for December, 1961, January and February, 1962, and refused to vacate the premises, which acts precipitated the filing of a complaint for Unlawful Detainer case, before the Municipal Court of Manila, on February 27, 1962, against Pelagio B. Simon, with the following prayer: To order said Pelagio B. Simon—

- (1) To vacate the premises he is now occupying at 313 corner Nueva and Escolta, Manila;
- (2) To pay plaintiff the rents in arrears in the sum of P4,600.00 corresponding the period from December, 1961 to January, 1962, inclusive;
- (3) To pay plaintiff an additional sum at the rate of P2,300.00 a month from February, 1962, until the premises are finally vacated; and
- (4) To pay attorney's fees in the amount of P1,500.00 and costs.

The Answer of Pelagio Simon to the complaint was with a counterclaim. As affirmative defenses, he claimed he had an existing express contract of lease with the pre-owner, the terms of which was a monthly rental of P1,8000.00, subject to renewal. The counterclaim was for P20,000.00 representing one-half of the value of the alleged improvements he had introduced; P6,000.00, allegedly the amount he paid for the right to occupy the premises from a previous occupant; and P1,500.00 by way of attorney's fees. After trial the municipal court Tendered judgment:

"* * *, ordering the defendant to vacate the premises described in the complaint, to pay the plaintiff the rents from December, 1961, up to the time when the said defendant shall have actually, vacated the premises in question, at the rate of P2,300.00 a month; plug the sum of P100.00 as and for attorney's fees; and the cost3 of the suit.

Defendant's counterclaim is dismissed."

On June 20, 1962, the defendant, now appellee Simon, appealed the above judgment to the CFI of Manila, where the complaint and Answer were deemed reproduced. The Counterclaim was contested in an Answer by appellant.

On August 14, 1962, the parties agreed to have the case submitted for decision, on the basis of their respective memorandum, together with the pleadings and documentary evidence. On August 15, 1962, however, a "Motion to Re-open Case and Set the Same for Hearing," obviously to introduced evidence to sustain his counterclaim, was presented, which, as stated, had been dismissed by the municipal court. On August 18, the lower court entered an order, denying the motion to re-open. On November 6, 1962, the trial court rendered judgment, the pertinent portions of which read:

"The claim of the defendant that he was giving an extension of one year as part of the condition when he paid the amount of P9,000.00, representing back rentals from June, 1961 up to October, 1961, does not find support in the evidence. On the contrary, the demand letter of plaintiff's counsel are very specific that he was given only until February, 1962 to occupy the premises under a new rate of rental which the plaintiff fixed at P2,800.00 monthly, effective December, 1961. Whether the defendant paid this rate or not, it is clear that it would not be of much help to him since the basis of the complaint is the termination of the contractual relationship on a month-to-month basis between plaintiff and the defendant. The only hope to which the defendant can cling as the last straw appears to be the provisions of Article 1687 of the New Civil Code.* * *:

* * * * *

Under this provision, the defendant cannot be summarily ejected from the premises at the whim and caprice of the plaintiff after occupying the premises for well over 11 years and spending considerable sums in the remodelling to make the same suitable to his purpose. * * *.

* * * * *

In consideration of the many years of occupancy of the premises by the defendant and the big amount of money spent by him in the improvement of the said premises, it is but just and proper that he should be given the benefit of the provisions of Art. 1687 of the New Civil Code as well as the reimbursement to him by the plaintiff of. one-half of the said expenses, to wit, P20,000.00. * * * * *

No change in the structure of the property having been shown by plaintiff, the claim for increased monthly rental of P2,300.00 does not appear to be justified.

FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered as follows: (a) The defendant shall continue to occupy the premises in question at the rate of P1,800 per month for two years from the date this decision shall have become final. (b) The plaintiff shall reimburse him for improvements in the amount of P20,000, plus the amount of P1,000 by way of attorney's fees, and the costs of this action."

After the motion to reconsider the above judgment was denied, the instant appeal was interposed, direct to this Court. Appellant Imperial Insurance Company, alleges that the trial court erred—

- (1) In applying Article 1687 to the facts of this case;
- (2) In granting two (2) years period, computed from the finality of judgment, to occupy the premises in question;
- (3) In fixing P1,800.00 as the monthly rental for the two (2) years duration; and
- (4) In ordering appellant to pay appellee P20,000.00 supposedly one-half (1/2) of the value of improvements introduced in the leased premises, and in making appellant liable for attorney's fees.

Article 1687 of the New Civil Code provides:

"ART. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if rent is to be paid daily. However, even though a monthly rent is paid, and no period for the

lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month."

Notwithstanding the provisions of the above cited article, We are of the opinion and so hold, that the same cannot benefit the appellee. In the first place, he has not inter posed the particular provision as a defense in his Answer to the complaint, and therefore, has been deemed waived. It is elementary that all defenses available, but not inter posed are deemed waived. Under this circumstance, the trial court should not have applied the provision *motu proprio*. In the second place, the article could not have contemplated the unwarranted extension of a period of lease by virtue of its mandate, thus making the terms of the contract indefinite until after judicial intervention (*Prieto vs. Santos*; *Prieto vs. Gaddi*, 52 Off. Gaz., 6899). It was never denied that immediately after the purchase of the property by the appellant, the previous owner thereof and the new owner, formally informed the appellee of the termination of the lease. Appellee himself had asked for only one year extension from the purchase and expressly committed to pay P2,300.00 monthly rental. Manifestly, not only one (1) year had lapsed since then.

There is no legal and factual basis for that portion of the decision, giving appellee two (2) years period to occupy the premises to start from the finality of the judgment it must be noted that appellee was only asking for a year extension from the date of sale of the property to appellant. The lower court did not indicate what provision of law would support such holding. We also find the fixing of the monthly rentals for the two years that were yet to come, at P1,800.00, arbitrary, since appellee himself made it clear in his letters that he was willing to pay P2,300.00. In the very receipts for the payments made by appellee, it is evident that starting from December, 1961., he was to pay P2,300.00. This amounted to a recognition that the premises was worth that much in rentals. The above circumstances, coupled with the fact that the assessments on the property had increased since, the increase in the rentals is justified. It will be noted in this connection, that appellee had succeeded in prolonging his stay in the premises, not only for one (1) year, but much longer. If he did not agree to pay the increased rentals, he was free to fold his tent and leave the building. Having occupied the premises until the present, he should pay P2,300.00 per month, until he vacates the same.

The fact of the decision ordering the appellant to pay P20,000.00 to appellee, supposedly 1/2 the value of improvements allegedly introduced, is next in discussion. There are two reasons why the lower court erred in adjudging the amount to appellee. First, there is no evidence whatsoever showing that there were such improvements existing in the premises and that the value is P40,000.00. When counsel for Simon wanted to re-open the case, in order to introduce evidence in connection with his counterclaim, which was dismissed by the municipal court, one item of which is the alleged improvements, the CFI denied the motion. Since there was no trial, where evidence could have been adduced to determine if such improvements were made and what is the value thereof, there existed nothing upon which to base the award of P20,000.00. Second, even if there was such evidence, still appellee cannot be entitled to the same. Before a lessee can be entitled to the payment of one-half the value of improvements introduced by him, he must show that the same were made in good faith; are useful, suitable to the use for which the lease is intended, without altering the form or substance of the premises. Should the lessor refuse to reimburse the one-half, the lessee could remove the improvements. (Art. 1678.) In the case at bar, appellee has not proved any of the stated requirements. Furthermore, it has been held that a lessee cannot pretend to act in good faith, in making improvements. Knowing that his occupation of the premises continued only during the life of the lease contract and that he must vacate the premises upon termination of the lease, or even earlier, if he violated the terms thereof, he is deemed to have introduced the improvements at his own risk. He cannot recover their value, much less retain the premises until reimbursement is made (*Lopez, Inc. vs. Phil. & Eastern Trading Co., Inc.*, 52 Off. Gaz., 1452). Under the aegis of the above circumstances, therefore, We find

that appellant is not liable to appellee for any amount in connection with any improvement existing in the premises. We also do not see any valid reason for the award of attorney's fees in favor of appellee. On the contrary, it is Our belief that appellant was forced to institute the case at bar to protect its interests, for failure of appellee to satisfy appellant's plainly just and damandable claim (par. 5, Art. 2208), which had compelled plaintiff-appellant to litigate or to incur expenses (par. 11, supra).

PREMISES CONSIDERED, the decision appealed from should be, as it is hereby MODIFIED. The defendant-appellee Pelagio B. Simon is ordered to vacate the premises immediately upon finality of this decision; to pay to appellant Imperial Insurance, Inc., the amount of P2,300.00 monthly starting from December, 1961, until he vacates the premises, with legal interest thereon; and to pay appellant the further sum of P1,500.00 as attorney's fees. Appellant is relieved from any liability, arising from the judgment appealed from, in favor of appellee. Costa against defendant-appellee.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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