ALBERTO E. MALICSI, PLAINTIFF AND APPELLEE, VS. ROSALIA A. CARPIZO, ADMINISTRATRIX OF THE ESTATE OF TAN GUAN, DEFENDANT AND APPELLANT.

G. R. No. L-17493. May 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On March 19, 1958, plaintiff Alberto Malicsi filed with the Court of First Instance of Zamboanga City a complaint (docketed as Civil Case No. 717) against defendant Rosalia Carpizo (administratrix of the estate of Tan Cuan) alleging, inter alia, that on April 6, 1951, plaintiff and the deceased Tan Cuan entered into a Contract of Lease for a period of seventeen (17) years, covering a portion of Lot No. P. L. 6, Plan 11-10173, Case 7880, situated in Zamboanga City, covered by TCT No. T-6370 of the Register of Deeds of Zamboanga City, which portion contains 180 square meters, more or less, valued at P5,400.00 and is situated along Guardia Nacional St., at a monthly rental of P200.00, payable in 10 days of each succeeding month; that after the death of Tan Cuan in May, 1955, defendant continued making intermittent rental payments; that despite repeated demands, defendant failed to pay and refuses to pay the monthly rentals for January and February, 1958; and that the violation by defendant of the terms in the lease agreement has compelled plaintiff to employ counsel to enforce his rights for a stipulated fee of P500.00 for all his services. Plaintiff prayed that judgment be rendered canceling (rescinding) said Contract of Lease; that defendant be ordered to vacate the premises in question and pay to plaintiff the accrued rental of P400.00 for the period from January and February, 1958, with interest thereon from the date of the filing of the complaint; and that defendant be ordered to pay to plaintiff rental at the rate of P200.00 up to the time she vacates the property, P500.00 as attorney's fees, and costs.

To this complaint, defendant filed her answer on April 7, 1958, wherein she admitted the existence of the Contract of Lease, but denied her failure to pay the rental and asserted that the same has been paid in advance for at least P700.00 in the form of rentals collected by plaintiff from a restaurant at the rate of P70.00 a month for ten (10) months, to which defendant claims she was entitled. As special defenses, defendant alleged that the money of the administration has been deposited with the Clerk of Court of Zamboanga City and nobody could make withdrawals therefrom, because of a certiorari case with prohibition pending before the Supreme Court, filed by one Tan Gin San against defendant. By way of counterclaim, defendant prayed that plaintiff be ordered to pay to her P700.00 corresponding to the 10 monthly rentals of said restaurant and the sum of P25,000.00 as moral damages and P3,000.00 as attorney's fees. (To this counterclaim, plaintiff filed his answer on April 16, 1958).

Issues having been joined, the case was tried and, after trial, the court, on March 16, 1960, rendered a decision in favor of plaintiff and against defendant, in part reading:

> "After plaintiff completed the submission of his evidence, defendant offered no evidence in support of her defense and admitted her account with the plaintiff, but at the same time, reiterating her promise to pay all the rentals due the plaintiff by installments.

> "After defendant manifested that she was not submitting any evidence for the defense, plaintiff submitted documentary evidences; the contract of lease which is marked as Annex 'A' of the complaint and which for purposes of , identification was marked as Exhibit 'A' for the plaintiff; Exhibit 'B', a petition of the defendant in Special Case No. 411 asking this Court to allow her to withdraw the sum of P1,800.00 to cover rents from the months of January, February, and March inclusive; to pay rentals on the lot belonging to Mrs. Julia Spirig Suter; Exhibit 'C' an order of the Court allowing defendant to withdraw Pl.800.00 to pay rentals due to Mrs. Julia Spirig Suter from the months of January, February, and March inclusive; Exhibit 'C-1', 'C-2', and 'C-3', which are excerpts from the report submitted by defendant in Special Case No. 411 in her capacity as administratrix of the estate of the late Tan Cuan showing payments made by her to Mrs. Julia Spirig Suter. With the submission of these exhibits together with the testimony of the plaintiff, the plaintiff rested his case. Both parties then manifested that they were submitting this case for the decision by this Court without further argument and without the submission of any memorandum.
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> "WHEREFORE, In view of the foregoing, the Court renders judgment in favor of the plaintiff and against the defendant declaring the contract of lease dated April 6, 1951 marked as Annex 'A' of the complaint and identified as Exhibit 'A' for the plaintiff as canceled and ordering the defendant in her capacity as administratrix of the estate of the late Tan Cuan to vacate the premises in question within 30 days from receipt of this decision; to pay to plaintiff the accrued rentals of P400.00 for the period of January and February, 1958 with 6% interest thereon from the date of the filing of the complaint; to pay to plaintiff rentals at the rate of P200.00 monthly up to the time defendant vacates the premises; to pay to plaintiff P500.00 as attorney's fees; and to pay the costs of these proceedings. The counterclaim filed by the defendant is hereby ordered dismissed. "So ordered."

Her motion for reconsideration of said decision having been denied by the trial court, defendant appealed directly to this Court.

Appellant claims that the trial court erred in declaring the Contract of Lease in question as cancelled (rescinded). It is urged that a lease contract is not one of those declared rescissible under Article 1381 of the Civil Code. The claim is devoid of any merit. Paragraph (5) of this same article expressly includes "all other contracts specially declared by law to be subject to rescission". And, Article 1659 of the same Code expressly provides, among others, that if the lessee should not comply with his obligation of paying the price (rental) of the lease according to the terms stipulated), "the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force". In the instant case, appellant failed and refused to pay the monthly stipulated rental of the property subject matter of the aforementioned lease contract for the months of January and February, 1958. Consequently, appellee had the right under said provision of the Civil Code to bring, as he did, the present action for rescission of said Contract of Lease, and the trial court correctly declared the rescission thereof. Appellant claims that she had not defaulted in the payment of said rental as no demand to make payment was made on her by appellee. This is a question of fact which can not be raised here and the finding of the lower court to this effect is binding on us.

Appellant next contends that appellee's claim for unpaid rentals is one for money arising out of an express contract, and should, therefore, be filed as a claim against the estate of the late Tan Cuan of which she is administratrix. Again, the contention is untenable. Section 1, Rule 88, of the Rules of Court, provides:

> "SECTION 1. Actions which may and which may not be brought against executor or administrator.—No action upon a claim for the recovery of money or debt or interest thereon shall, be commenced against the executor or administrator; but actions to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him." (Italics supplied.).

The present action, it is to be noted, is principally to rescind the lease contract and to recover the possession of the

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real property subject of the lease, and only secondarily to recover the rentals due and unpaid. Consequently, the action falls within the purview of the last clause of the above-quoted provision which can be commenced against the administratrix. Besides, only money claims accruing before the decedent's death may be filed against his estate. The late Tan Cuan with whom appellee had entered into the Contract of Lease in question on April 6, 1951, died on May 1, 1955, and appellant administratrix of his estate, continued paying the rentals due the appellee under said contract until January, 1958 when she started defaulting. The rents accruing after May 1, 1955 (date of Tan Cuan's death) can not, therefore, be properly filed against his estate under said Section 1, Rule 88, of the Rules of Court.

Wherefore, finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs against the defendant-appellant. So ordered.

Bengzon, CJ., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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