

JAI-ALAI CORPORATION OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. LUIS CHING KIAT BIEK, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-7969. March 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

On March 30, 1949, plaintiff Jai-Alai Corporation filed in the Court of First Instance of Manila the present action against the defendants Luis Ching Kiat Biek, Ricardo Chung and "Ricardo Chung, Ching Kiat Biek & Co., Ltd.", a limited partnership known under the business name and style of "Casino Royale & Co., Ltd.", for the recovery of damages in the total amount of P390,000.00. The complaint alleged, among other things, that in the latter part of 1947, preparatory to the reopening of its stadium at Taft Avenue, Manila, for the exhibition of jai-alai games, plaintiff invited proposals for the lease of three of its four bars and restaurants therein, known as the Keg Room, Bamboo Bar and Popular Bar located, respectively, on the ground, second and third floor; that on January 6, 1948, defendants submitted a bid for the lease not only of the bars and restaurant mentioned, but also of the Sky Room, a night club, restaurant and bar on the fourth floor; that plaintiff started negotiations with them and later defendants agreed, among other things, to operate as concessionaires the bars, restaurants and night club covered by their bid for a period of 5 years, in consideration of rentals equivalent to 10% of the gross daily sales with a guaranteed minimum annual rental of P78,000.00, and 20% of the gross sales in the Sky Room from 6 p.m. until closing time; that defendants likewise agreed "to invest in the finishing of the interior of the said bars, restaurants and night club, as per the plans, and specifications, of plaintiff's architect, a minimum of P130,000.00, and to equip the same with full equipment, furniture and fixtures at a minimum investment of P115,000.00 all of which were to become the property of plaintiff at the expiration of the five year term of the contract"; that defendants, after commencing operation of the bars, restaurants and night club complained that they were incurring losses and that the cost of finishing the interior of the bars and restaurants would exceed considerably the minimum amount they agreed to invest, and therefore requested plaintiff to assume the cost in excess thereof; that the plaintiff, heeding the request, agreed to assume payment of the additional cost but only in the amount of P130,000.00 to be raised by defendants by means of a loan the payment of which would be amortized with the rentals due to plaintiff from defendants; that defendants on subsequent dates requested further modifications, of the contract, principally the reduction of the yearly rental from P78,000.00 to P60,000.00, threatening that, otherwise, they would not abide by the contract and would instead return the leased premises; that on January 15, 1949, defendants closed the Sky Room nightclub despite plaintiff's admonitions that such act would constitute a violation of the contract; that plaintiff, to minimize damages, took back the concessions; and that as a consequence of the unjustified breach and abandonment of the contract plaintiff suffered damages in the amount of P390,000.00, representing the minimum total of the stipulated 5 years rental at the rate of P78,000.00 per annum.

In their answer filed April 26, 1949, defendants denied most of the allegations of plaintiff's complaint. By way of special defenses, it is alleged that the bid submitted by defendants was accepted by plaintiff and constituted the

contract between them; that pursuant to said contract, defendants with plaintiff's knowledge and consent took possession of the premises, reconstructed and equipped the same as per plans submitted by plaintiff, spending therefor the approximate sum of P456,547.90 upon plaintiff's assurance that it would assume payment of the excess over the amount of P250,000.00, which they agreed to invest; that from the beginning, with threats of cancelling the contract, plaintiff interfered with the management and operation of the concessions by defendants; that plaintiff failed to furnish elevator services, or to install airconditioning units in the concessions, or to provide a check room in the Sky Room premises as agreed upon; that on or about January 16, 1940, because of the threat of plaintiff's employees to go on strike and of plaintiff's continued violation of the contract, which made it difficult and impossible to continue operating the concessions, defendants suspended operations in the Sky Room that on or about January 24, 1949, much to defendants' surprise plaintiff took over the entire concessions; that plaintiff thereafter operated or relet the concessions for its own account to a third party for valuable consideration, in spite of defendants' protest; and that the aforementioned, acts of plaintiff constituted a wanton violation of the contract which completely relieved defendants of liability especially as to future rents. By way of counterclaim, defendants, demanded payment of P415,804.85 representing the total amount invested by them in the rehabilitation of the concessions in question, less the rentals in arrears due the plaintiff; P6,666.66 per month as the reasonable rental value of the improvements; equipments and other properties in the concessions; P130,000.00 as damages for the losses incurred due to plaintiff's interference and failure to provide the necessary facilities; and P570,000 for unrealized profits from January 24, 1949 until ten years thereafter.

On May 6, 1949, plaintiff filed an answer to defendants' counterclaim, denying liability and reiterating the allegations in its complaint. This was later amended by plaintiff by inserting therein a counterclaim of its own, alleging that under the contract between the parties, all equipment, furniture and fixtures, etc., installed by defendants for the rehabilitation of the concessions shall become its property upon the expiration of the contract; and that in breaching the contract, defendants caused plaintiff to suffer damages in the sum of P350,000 representing the value of the improvements and equipments. Answering the counterclaim, defendants denied the allegations therein and reproduced the special defenses in their answer.

After trial, which took more than 4 years, the lower court on December 22, 1953 found for the defendants and sentenced plaintiff corporation to pay to defendants Luis Ching Kiat Biek and Ricardo Chung or to defendant co-partnership the sum of P338,704, plus legal interest thereon from January 24, 1949, until the said sum is fully paid; to pay fully the account of defendants with Gonzalo Puyat & Sons in the sum of P53,048.50; and to pay the costs. From that judgment, plaintiff has appealed directly to this Court.

The evidence adduced at the trial, as found by the trial court, clearly established that plaintiff corporation through its general manager, Luis de Leon, accepted defendants' bid for the lease of the bars and restaurants in its stadium. Soon thereafter, with plaintiff's knowledge and consent, defendants started the repair and rehabilitation of the bars and restaurants covered by their bid and purchased the necessary furniture, equipment and utensils. In the course of the reconstruction and rehabilitation, they discovered that to follow the plans and specifications proposed by plaintiff's architect, they had to spend a total of P461,566.22, and inasmuch as they agreed to invest only the maximum amount of P245,000.00, exclusive of P5,000.00 for the uniforms of personnel, they suggested, as a matter of equity, that plaintiff assume the cost in excess of the said maximum amount. Plaintiff's executive committee agreed under certain conditions, among them, that defendants shall raise the extra amount needed by negotiating a loan therefor, the payment of which shall be guaranteed by the corporation; that defendants shall pay the interest on the said loan: and that the loan shall be paid with amounts due the corporation from defendants as rentals. Accepting the conditions defendants borrowed from Mrs. Teresa de Leon, wife of Manager Luis de Leon of the corporation, through their parents, who signed the corresponding promissory note of accommodation, as insisted by the lender. Defendants also had to obtain credit from Mañalas and Da. Silva and Gonzalo Puyat &

Sons.

Not long after the acceptance of defendants' bid plaintiff proposed a modification of its terms regarding the Sky Room, so that instead of 10% provided for in the bid, it would be entitled to 20 % of the gross sales therein. The modification proposed by plaintiff was accepted by defendants on the condition that the 20% rate will be applicable only to sales after 6 p.m. and the said rate may be decreased as business conditions demand.

The lower court further found that during defendants' operation of the bars and restaurants they were constantly handicapped and embarrassed by undue acts of interference in the management and operation of the concessions by the officers of plaintiff. Plaintiff's officials, notwithstanding the protests and pleadings by defendants, refused to desist from such interference which proved prejudicial to the latter; and instead, on January 24, 1949, plaintiff took over the concessions, operated the Sky Room, and leased for P3,000.00 monthly the other rooms and bars for its own account to a third party. Thereafter, plaintiff started negotiations with defendants for the refund of their investment but while the negotiations for amicable settlement or compromise were taking place, plaintiff filed the present action.

From the foregoing facts, the trial court in the decision complained of ruled that it was the bid, exh. J, which was accepted by plaintiff and modified only by two subsequent amendments mutually agreed upon by the parties, and not the document exh. K, which constituted the agreement between the parties. It also found that plaintiff terminated said contract by taking over the management and operation of the concessions pursuant to the right it reserved for itself under the "Terms for Bids" to cancel the concession at any time, for or without cause upon the reimbursement to the bidder of the inventoried cost less depreciation computed at 20% per annum.

After going over the record, we find no reason for rejecting the findings of the court below. The questions raised hinge on credibility, and it is well-settled that in the absence of compelling reasons, its determination is best left to the trial judge who had the advantage of hearing the parties testify and of observing their demeanor on the witness stand.

Plaintiff, in contending that it is exh. K which embodies the agreement between the parties, insists that Mrs. Gertrudes C. Chung alias Mrs. Ricardo Chung was the general manager of the defendant partnership authorized to negotiate with plaintiff, and that defendants are now estopped from denying her authority in signing the contract exh. K. But as observed by the trial court, exh. K appears to be only a draft of the alleged contract with numerous alterations, in different hands and inks or pencils. It does not bear the signature of any of the parties including plaintiff itself or its representative. The signature "Ricardo C. Chung" under the typewritten words, "Mrs. Ricardo Chung" was not proved to be that of one duly authorized to sign in behalf of any of defendants. Moreover, Mrs. Gertrudes C. Chung and Mrs. Ricardo Chung are two different persons, the former being the Filipina wife of defendant Ricardo Chung's father and office manager in charge of personnel of Casino Royale, Inc., Ltd., while Mrs. Ricardo Chung, the checker, is the Chinese wife of the defendant Ricardo Chung. Neither of them was mentioned as party to the alleged contract, nor had either of them been shown to have been authorized to sign it.

In any event, whether the contract between the parties be the bid, exh. J, or the draft, exh. K, the fact remains that the concession was cancelled by plaintiff, and in such as eventuality it is stipulated under both documents that plaintiff shall refund to defendants the inventoried cost of equipment and improvements less depreciation at 20% per annum.

That defendants never abandoned the concessions cannot be doubted. The parties were trying to come to terms on some disputes and defendants were operating the concessions when plaintiff took over and terminated the lease, contract. The Sky Room was closed, it is true, but only temporarily and because of the strike of the employees. It would be strange, indeed, for defendants to invest hundreds of thousands of pesos in the concessions only to

abandon them after operating for only about 6 months and consequently lose or forfeit all they had spent for the equipments and improvements. Defendants could not prevent the taking over by plaintiff because in their bid, as already stated, they agreed to the reservation by plaintiff of the privilege to cancel the contract at any time, for or without cause upon reimbursement of the inventoried cost less depreciation at 20% per annum.

Plaintiff's counsel also claims that the trial court erred in not permitting him to cross-examine defendants or to examine his witnesses in rebuttal. It is argued that the true defendants and concessionaries with whom plaintiff dealt were defendants' fathers, Chung Kiat Kang and Ching Leng and that plaintiff's counsel was misled by defendants' counsel during the hearing of the motions for postponement. The motions for postponement, however, were heard long after the action had been filed, and naturally plaintiff's counsel had had full opportunity to examine the evidence. The bid submitted by defendants as early as January 6, 1948 was signed by them in their own names. It is established that plaintiff contracted with said defendants and awarded the concessions to them. Plaintiff knew that as early as April, 1948, defendants organized a partnership duly registered with the Securities Exchange Commission with themselves as the only general partners. Plaintiff also knew of the respective fathers of herein defendants, as shown by its guaranty dated December 28, 1948 (about a year after the submission of the bid) to the payment of the promissory note obtained by defendants through their fathers from Mrs. Teresa de Leon. In that document, which was prepared by plaintiff alone, the fathers of defendants, Chung Kiat Kang and Ching Leng, are referred to as the concessionaires, but this is explained by the fact that, as already stated, they, signed the promissory note for the accommodation of defendants as required by Mrs. de Leon. The alleged confusion, therefore, was nonexistent, so that there was no need for the presentation of rebuttal evidence to clarify the matter. It should here be stated that the trial court; nevertheless, allowed plaintiff's counsel to present rebuttal witnesses, who had previously testified, only it did not allow him to examine them on matters which did not constitute proper rebuttal evidence.

As to, plaintiff's claim that the lower court erred in denying its motion for continuance as well as that to amend pleadings to bring in indispensable and necessary parties, suffice it to say that the motion for continuance was merely to bring another rebuttal witness. Its denial, therefore, was proper. It is significant to note that then General Manager Luis de Leon, with whom, according to defendants they dealt and who informed them that their bid had been accepted, was never presented as a witness. With respect to plaintiff's other motion to bring in new parties defendants (herein defendants' fathers), we, likewise, find that the trial court did not err in denying the same. The motion was made 5 years after the filing of the complaint and when the trial was already on rebuttal stage. It was also unnecessary since the persons proposed to be brought in were not really indispensable parties.

The record shows and it is not disputed that the defendants invested the total of P461,566.22 of which P245,000 plus P5,000 for uniforms, was exclusively for their account, while the overage of P211,566.22 was assumed by the plaintiff corporation to be amortized with rentals due from defendants. Plaintiff obligated itself to reimburse P245,000 plus P5,000 spent for uniforms, minus depreciation at 20% per annum. Since only almost 6 months of the term had elapsed the depreciation should be only for 1/2 year or 10%, or P25,000. Consequently, defendants should be refunded P225,000, which, added to P211,566.22, the overage which should be fully refunded, and to P15,299.85, accounts payable to them as per exh. 9-B, aggregate P451,866.07. Plaintiff should, however, be given credit for the amounts mentioned in exhs. 9 and 9-A, "Statement of Accounts", after making the necessary adjustments as follows: (1) P49,927.51 for percentages due plaintiff on the gross income of the concessions from May to December, 1948 after deducting from the amount of P55,475.01 claimed as percentages by plaintiff the overcharge of 10% for the Service Bar in the sum of P5,547.50; (2) P3,500 for the cash advance for the piano paid by plaintiff; (3) P6,685.47 for the consumption of water, electric fluid and telephone fees, after deducting P4,456.97 as overcharge of 40% of the total bill in the amount of P11,142.44, because plaintiff itself shared in the use of said utilities; and (4) P53,048.60, the amount which is due from defendants to Gonzalo Puyat & Sons, but

payment of which was assumed and started by plaintiff, according to the testimony of plaintiff's own accountant.

The total of said amounts for which plaintiff should be credited is P113,161.48, and deducting said sum from the aggregate amount of P451,866.07 due defendants, there is a balance of P338,704.59 which plaintiff should have refunded to defendants when it took over the concessions and terminated the lease contract on January 24, 1949.

Finding no error in the judgment appealed from, we hereby affirm it, with costs against plaintiff-appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.
Barrera, J., took no part.

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