

**A. MALUENDA & CO., PLAINTIFF AND APPELLANT, VS.
GEETRUDIS ENRIQUEZ Y VILLANUEVA ET AL., DEFENDANTS AND
APPELLANTS; RAFAEL ENRIQUEZ Y VILLANUEVA AND LORENZO
ATIENZA, DEFENDAN...**

G.R. No. L-21119. February 19, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiff company seeks to recover damages on the ground that it was not given possession of the premises leased to it by virtue of the document Exhibit A, situated on Escolta Street, Nos. 80, 82, and used as a store. The amended judgment disposed of this litigation as follows, as appears from its dispositive part:

"The defendant Lorenzo Atienza is absolved from the complaint and the Enriquez defendants are sentenced to pay Maluenda & Co. as indemnity for damages the sum of P4,800, with the costs of the action. The complaint of G. Brimo is definitely dismissed.

The parties appealed from this judgment, the plaintiff, because it was not allowed the sum of P28,800; the defendants, because they were sentenced to pay the plaintiff the sum of P4,800; and the intervenor, because his complaint was dismissed.

From the record the following facts appear: On April 10, 1919, Rafael Enriquez executed in favor of the plaintiff company the deed Exhibit A, wherein he stated that on behalf of his coheirs and as administrator of the estate of the deceased Antonio Enriquez and Ciriaca Villanueva, he leased to A. Maluenda & Co., the herein plaintiff, the premises Nos. 80, 82, on Escolta Street, Manila, to be used as a store, at a rental of P1,000 per month, beginning the 1st of July of the same year, 1919, for the period of three years.

On the following day, April 11, 1919, the plaintiff lessor sublet one-half of the premises to Joseph G. Brimo for P500 per month for an identical period to that of the principal lease (Exhibit C).

On the 30th of the same month of April, 1919, the same Rafael Enriquez in the same capacity mentioned in the deed of April 10, 1919, aforesaid, and together with Nazario Constantino as representative of one heir, leased the whole property, including the premises Nos. 80, 82 aforementioned, to Lorenzo Atienza for the period of four years, beginning the 1st of May of the same year 1919 (Exhibit N). Lorenzo Atienza took possession of the property. But when July 1, 1919, came, the firm of Maluenda & Co. could not take possession of the premises Nos. 80, 82, leased to it, and never succeeded in doing so.

On September 23, 1919, the property was sold to Vicente Madrigal, through Jose Ramirez, by virtue of the deed Exhibit I, wherein none of the leases above-mentioned was respected. The purchaser, however, permitted the said premises, Nos. 80, 82, to remain in possession of P. B. Florence, who was occupying them since before, without vacating them on July 1, 1919, thus preventing the plaintiff A. Maluenda & Co. to occupy the same. Sometime after September 23, 1919, P. B. Florence paid for said premises a monthly rent of P1,800, and eighteen

months thereafter, the rent fell down to P1,400 per month.

On November 7, 1919, the plaintiff commenced this action with the result hereinbefore set out.

The questions raised on this appeal reduce to three principal ones; to wit, whether or not the plaintiff and the intervenor are entitled to recover damages; who are liable therefor; and the amount of the indemnity.

That the plaintiff is entitled to be indemnified, there can be no question—the law so provides (art 1556, Civil Code). The various propositions made to it by Attorney Gutierrez Repide, not entirely favorable, and for which reason they were rejected by it, do not destroy such a right.

The intervenor Brimo has likewise the right to be indemnified by virtue of the sublease made to him. His damages, however, are not directly recoverable from the defendants, for they are included in the damages that the plaintiff may recover, which is, on the one hand, creditor of said defendants, and, on the other, the one directly liable to the intervenor, in its capacity as sublessor. It is no argument to this right of the intervenor that he did not suffer any damage by not having been able to establish in the premises sublet to him a certain business he had in mind. Such damages, if any, are not recoverable being remote. Such damages, just as those of the plaintiff, are measured in this case by the benefit directly derived from the lease that they failed to obtain, for there is no sufficient proof of damages legally recoverable on account of proximate losses directly suffered (art. 1106, and others in harmony therewith, of the Civil Code).

The persons liable for these damages are those who, either personally or through their representative, made the lease to the plaintiff, and then sold the property to Vicente Madrigal. They are the persons mentioned in the judgment as "the Enriquez defendants." Some of them question the sufficiency of the representative authority of Rafael Enriquez to execute said contract of lease. The evidence, however, shows that Rafael Enriquez had sufficient authority to do so.

As to the defendant Lorenzo Atienza, the record shows that he should not be responsible for said damages. His intervention in the lease in favor of the plaintiff did not amount to a subrogation into the rights and obligations of Enriquez with respect to the plaintiff. It must not be forgotten that the lease of the whole property in favor of Atienza had no legal effect from July 1, 1919. As Atienza's title was ineffective in this regard, it cannot constitute a ground for such a subrogation. The letters between Rafael Enriquez, Lorenzo Atienza, and the plaintiff are not sufficient to set aside the contract of lease executed by Enriquez in favor of the plaintiff, or to establish a contract of sublease between Atienza and said plaintiff, or to create reciprocal rights and obligations between these two last parties as lessor and lessee. It must be borne in mind, moreover, that while the liability of the Enriquez defendants began to exist on July 1, 1919, by not delivering to plaintiff the premises leased, but hindering it, as a matter of fact, with the lease executed in favor of Atienza, it was seriously aggravated by the absolute sale of the property to Madrigal.

If before this sale there could not have been, under the facts proven, a subrogation of rights and obligations on the part of Atienza with respect to the plaintiff, much less could there have been after such a sale wherein, in view of the circumstances shown by the record, it cannot be claimed, as nobody does, that Atienza was subrogated into the rights and obligations of the Enriquez people as sellers. As to the amount of the damages, it must be taken into consideration that in the instant case they are, as above stated, such profit as the parties prejudiced failed to realize and would have directly made had the premises in question been delivered to them. The evidence does not show positive damages consisting in the proximate losses directly sustained, with the exception of the profit not received, which was just alluded to. And this direct benefit not obtained consists in the difference between the rent of the premises under the contract with the plaintiff, and the true rental value of said premises. This is the measure of damages which, under the law and the facts, must control the fixing of the amount of the indemnity.

The evidence shows that the premises aforesaid rented for P600 a year. Later on, when the property was bought by Madrigal, the rent rose to P1,000 per month. After six months the rent rose again to P1,800 per month, which lasted eighteen months, at the end of which, the monthly rent fell down to P1,400. The excess of these rents over that stipulated between Enriquez and the plaintiff company represents in this case the reasonable amount of the damage suffered. There was no such excess from July 1, 1919, until six months after the purchase of the property by Madrigal, because it was only after that time that the premises began to bring a higher rent than that stipulated between Enriquez and the plaintiff. But six months after September 23, 1919, that is to say, from April, 1920, inclusive, the premises produced, over the rent stipulated, P800 per month for eighteen months, that is, P14,000. During the remaining nine months of the lease, the premises gave P400 more per month, that is, P3,600. The total of these two series of rents, that is, P18,000, constitutes the whole amount of the damages for which the Enriquez defendants are liable. The fact that for sometime the plaintiff paid a higher rent for another place than that agreed upon with Enriquez for the premises in question, cannot change the measure of damages above indicated. The rent of a property different from that covered by the contract, although it be identical to the one in question in many respects, cannot be taken as a basis for fixing the true rental value of the premises in question. There can be no two places entirely identical, for while in personal property the location is not always an essential element for determining its value, that is not the case, however, with real property in which its location is taken into account to fix its value. And two different places cannot have the same location at the same time.

The case of *Lim vs. Granados*, R. G. No. 19004[1] as well as that of *Lim Julian & Co. vs. Lopez*, R. G. No. 19083,[2] are similar to the one before us in that in both cases the same measure of damages herein announced was adopted; that is to say, the difference between the rent actually obtained from the property and that stipulated in the contract of lease that was broken.

For the foregoing, the judgment appealed from is modified, the defendant Lorenzo Atienza is absolved from the complaint, and the other defendants are sentenced to pay as damages the sum of P18,000, of which one-half shall be paid to the plaintiff company, and the other half to the intervenor, without express pronouncement as to the costs in this instance. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Ostrand, and Johns, JJ., concur.

[1] Promulgated March 27, 1923, not reported.

[2] Promulgated December 21, 1922, not reported.

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