

MARIA PATERNO, ET AL., PLAINTIFFS AND APPELLEES, VS. JAO YAN, DEFENDANT AND APPELLANT.

G.R. No. L-12218. February 28, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Involved in this direct appeal from a decision of the Court of First Instance of Manila is the applicability of the Statute of Frauds to the lease agreement relied upon by the appellant.

By a notarized contract under date 3 June 1948, the appellees, represented by their attorney-in-fact, Martina Paterno, leased to the appellant Jao Yan a parcel of land situated at a corner of Escolta Street and Plaza Moraga, of the City of Manila, covered by Transfer Certificate of Title No. 7768. The lease was to be for a period of seven (7) years, commencing on the 15th day of July, 1948. The lessee bound himself to construct a building "to be made of strong wooden materials" on the leased premises, which would become property of the lessors at the termination of the lease; to pay P5,500.00 monthly rental, and all taxes, charges, and assessments on the building.

By complaint dated 20 May 1955, subsequently amended on 20 September 1955, the lessors filed action to recover from the lessee rentals in the sum of P23,250.00 due for the months of March to June, 1955 and the first days of July, 1955; P7,680.00 for real estate taxes and penalties due on the building for the years 1953 to 1955; P2,500.00 attorney's fees; and for the recovery of the building constructed on the leased land.

Defendant lessee averred, in his answer, that the original written contract had been orally extended from seven (7) to ten (10) years, in consideration of his constructing a semi-concrete building (instead of the wooden one originally contemplated), as he actually had done, at a costs of P13,000.00, higher than the original wooden structure would have cost; that the rentals due had been retained by him because of plaintiff's refusal to recognize the modified contract; that plaintiff's maliciously garnished the rents due from his sublessees; and prayed for judgment compelling plaintiff's to recognize the modified contract and to pay him damages, material and moral.

At the trial, defendant offered testimonial evidence to support claim that the original written contract had been subsequently modified by oral agreement between the parties in the manner alleged in the answer; he also submitted documents filed with the City Engineer's office, regarding the semi-concrete building, conformably to the modificatory oral agreement. The Court below sustained the plaintiff's objections to such evidence and excluded it on the ground that the acceptance was barred by the Statute of Frauds (Rule 123, sec. 21 (a) and (c), Rules of Court), and rendered judgment for the lessors as prayed for in the amended complaint. Defendant duly appealed.

We are of the opinion that the lower Court committed reversible error in excluding appellant's oral evidence.

It is established doctrine in this jurisdiction that partial performance takes an oral contract out of the scope of the Statute of Frauds (27 C. J. 206; *Hernandez vs. Andal*, 78 Phil., 196). With particular reference to contracts over real property, this Court has decided that where an oral contract of sale has been partially executed by payment of

the price, oral testimony is admissible to evidence the existence of the contract (*Almirol and Cariño vs. Monserrat*, 48 Phil., 67). The rule is entirely applicable to contracts of lease, and the weight of authority supports the doctrine that—

"The taking of possession by the lessee and the making of valuable improvements, and the like, on the faith of the oral agreement, may operate to take the case out of the prohibition of the statute, for it would be a gross fraud to permit the lessor in such a case to avoid the lease." (49 Am. Jur. p. 809, sec. 106, and cases cited.)^[1]

Its likewise the rule that—

"The expenditure of money by a tenant in making improvements on the premises on the faith of an oral agreement for a lease for a further term, may be viewed not only as constituting in itself an act of part performance but as furnishing strong if not conclusive evidence that possession is continued under the oral contract and not as a tenant holding over under the original lease." (49 Am. Jur. 810; 33 A. L. R. 1489, 1501)

Accordingly, in *Read Drug & Chemical Co. to Nattans* 129 Md. 67, 98 Atl. 158, it was held that a parol agreement of a landlord to extend a lease for a specified term of years and at a specified rental, provided the tenant made certain extensive repairs to the property, was enforceable notwithstanding the Statute of Frauds, where the tenant fully performed his part of the agreement. This is precisely the case before us. The written contract of lease called for the erection, by the tenant, of a building of strong wooden materials, yet it is not contested that what he actually did construct on the leased lot was a semi-concrete edifice, at a much higher cost. Since this modification is plainly referable to the oral agreement as claimed, and the same can not be explained on the record except as executed in reliance on the verbal modification of the original lease, and in performance thereof, as contested by the appellant, we are of the opinion that the Court below should have accepted and taken into account the offered testimony on the extension and modification of the original terms of the lease, instead of declaring the same unenforceable under the Statute of Frauds. Of course, the lessors are entitled to controvert the evidence of the lessee with proof of their own; but we are not here concerned with questions of weight of evidence, but of admissibility. Indeed, the Court below made no pronouncements on the credibility of the proffered evidence, obviously because it was deemed useless since the testimony was rejected.

As to the argument of appellees that the non-admission of the oral evidence can not be considered because it was not specified as an error, it is enough to note that the appellant has assigned as error the lower court's holding that the oral modification of the lease was unenforceable under the Statute of Frauds. Since, under the new Civil Code (Art. 1403, par. 2), this unenforceability result from the inadmissibility of oral evidence to prove the agreement unless a written memorandum thereof is produced, the assignment of error made includes the issue of admissibility of testimonial evidence. At any rate, it is within the discretion of the appellate court to consider an unassigned error that is closely related to an error properly assigned (*Hernandez vs. Andal*, 78 Phil., 196, 209-210).

Under the circumstances, we are of the opinion that the interest of justice would be best served by a new trial.

Wherefore, the decision appealed from is hereby reversed and set aside, and the records are ordered returned to the Court of origin, with instructions to proceed to a new trial in conformity with this decision. Costs against appellees in this instance. So ordered.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

[1] See also *Shaughnessy vs. Eidsmo*, 166 A. L. E. 335; *Mobley vs. Harkins*, 148 A. L. R. 88; *Rowland vs. Cook*, 101 A. L. R. 180.

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