

ENRIQUE LEGARDA KOH, PLAINTIFF AND APPELLEE, VS. LUCIO ONGSIACO, DEFENDANT AND APPELLANT.*G.R. No. 11106. January 27, 1917*

Ponente: TORRES, J.

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This appeal by bill of exceptions was taken by counsel for the defendant from the judgment of April 5, 1915, in which the trial court condemned the defendant to pay the plaintiff the sum of P1,020, the amount of the profits the latter failed to collect, and to pay the costs of the trial.

On December 16, 1914, plaintiff Enrique Legarda Koh filed a complaint, dated December 15, 1915 [1914], in the Court of First Instance of Manila against Lucio Ongsiaco, alleging that he had leased the apartments (accesorias) Nos. 511 and 513 on Calle Santo Cristo, district of Binondo, Manila, owned by the defendant, for the term of one year counting from December 1, 1913, extendible for one year more; that, notwithstanding that the plaintiff had informed the defendant, prior to December 1, 1914, that he desired to lease the said properties for another year, to wit, until December 1, 1915, the defendant, unlawfully, against the will of the lessee and to his injury and prejudice, seized and took possession of the accesorias, camarin and bodega leased by the plaintiff; that the latter was thereby unable to sublease the same to other persons as he had contracted to do; and that by such unlawful seizure and taking possession he had suffered damages amounting to the sum of P3,000. Plaintiff therefore prayed the court to render judgment against the defendant, ordering the latter to pay to him the said amount of damages together with the costs.

On December 17, 1914, counsel for the defendant, in answer to the aforementioned complaint, denied each and all the allegations therein contained and, in special defense, set forth that it was true the plaintiff had leased the properties specified in the complaint from December 1, 1913, at a monthly rental of P240; that the term of the lease was extendible for an indeterminate period of time, at the will of the parties, as shown in the lease contract which was attached to his answer and made a part thereof; and that as the defendant and the plaintiff had not come to an agreement with respect to the extension of the said lease, the defendant took possession of the properties on December 1, 1914. Said counsel therefore prayed that his client be absolved from the complaint with the costs against the plaintiff.

After trial and the introduction of evidence by both parties, the court rendered the judgment aforementioned, to which the defendant excepted and in writing moved for a reopening of the case and a new trial. This motion was overruled, exception was entered by the defendant and, upon presentation of the proper bill of exceptions, the same was approved and transmitted to the Clerk of this Court.

The defendant unquestionably leased the apartments or accesorias, together with the warehouse or bodega in the rear, situated at Nos. 511 and 513 Calle Santo Cristo, Binondo, to the plaintiff Enrique Legarda Koh for the fixed and determined period of one year from December 1, 1913, which term, according to the copy of the said contract of lease, Exhibit 1, was to be extendible at the will of the parties.

The questions, then, submitted to the decision of this court are whether the plaintiff-lessee was or was not entitled to the agreed extension of the term of the lease and to continue to lease the said properties under the said contract of lease at the expiration of the term of one year fixed therein; and, if so, whether the plaintiff is or is not entitled to recover losses and damages occasioned through his failure to collect a greater rental by subrenting the said two apartments and the warehouse connected therewith.

The record shows that on November 14, 1913, the defendant Lucio Ongsiaco executed a written contract, Exhibit 1, whereby he leased to the plaintiff Legarda Koh the apartments Nos. 511 and 513 Calle Santo Cristo, at a rental price of P120 for each door or apartment. The fourth condition of the said contract reads as follows:

"The term of the said contract shall be that of one year, counting from the 1st of December of the present year (1913), which term shall be extendible at the will of both parties."

The record further shows that about the 7th or 8th of December, 1914, the plaintiff went to Ongsiaco's house and urged him to execute a new contract for the lease of his properties for another year, in accordance with the clause providing for the extension of the term of the contract, Exhibit 1; that the defendant agreed to do this, telling the plaintiff to return on the following day and to leave with defendant the copy of the said contract Exhibit 1 which the plaintiff was carrying; that the latter did so, but the said copy was not returned to the plaintiff; that in spite of the fact that he went several times to the lessor's house the defendant always avoided meeting him so that, before the plaintiff had finished his negotiations for the renewal of the contract, the defendant's caretaker of said properties, Juan de los Santos, notified the sublessee of the said apartments that from the month of December, 1914, the rental of P325 should be paid to the defendant and not to the plaintiff; that this was in fact done, the sublessee refusing to pay the said rental to the plaintiff; that the plaintiff, therefore, deposited the sum of 1*240, the rental price he was paying, in court and filed his complaint in these proceedings.

As the plaintiff had no copy of the contract of lease, Exhibit 1, having left his with the defendant—a statement which was not contradicted by the defense—the only proof of the said contract is the copy furnished by the defendant himself. Said copy says that the said lease shall be extendible at the will of both parties. The plaintiff admitted the genuineness of his signature to the lease contract and also the authenticity of this document, with the exception of the words at the will of both parties contained in the fourth paragraph thereof—these having been inserted by someone without his knowledge and consent. In effect, the defendant's only witness, the caretaker of the defendant's properties, testified that it was he who inserted the said words, at the will of both parties, adding them to the end of the fourth paragraph after the document had already been executed and had been certified to before the notary, though this witness furthermore said that the plaintiff's copy also bore the same interlineation, and that it was made with the plaintiff's knowledge and consent.

The words added at the end of the fourth paragraph are not initialed by the person who wrote them, nor do they appear to have been written with the concurrence of both parties, inasmuch as the signature of the persons affected by the said change do not appear on the margin. The omission is contrary to the custom usually observed in drawing up documents, for, when a written contract is amended by inserting an addition or making any alteration by hand, the parties should write their initials on the margin of the document opposite the place where the amendment was made, or should mention it at the end of the document in token of their consent. As this requisite was not complied with in the contract in question it must be concluded that the amendment was made without the plaintiff's consent. Therefore in the original and true contract stipulated between the parties it was covenanted that the term of the lease should be that of one year, counting from December 1, 1913, and that this term should be extendible. (Exhibit 1.)

According to article 1091 of the Civil Code, obligations arising from contracts have legal force between the

contracting parties and must be fulfilled in accordance with their stipulations. Therefore, if the defendant bound himself to lease his properties for the period of one year, which term should be extendible, it is evident and strictly in accord with justice that the plaintiff-lessee has a right, at the termination of the first period of one year, to have the said contract of lease renewed in fulfilment of the stipulated extension of the term of the lease; otherwise, the clause contained in the document Exhibit 1, that the lease at its termination would be extendible, would be worthless.

The defendant-appellant is wrong in his contention that the renewal or extension of the contract depended solely upon himself, notwithstanding the stipulations contained in said contract, inasmuch as the renewal and continuation of the lease could not be left wholly to the plaintiff's free will, without counting on the defendant's consent—a consent expressly granted in the promise that the term would be extended, which term, although its duration was not fixed, should be understood to be for another year, a period equal to and not greater than the term of the lease.

When a contract of lease provides that the term thereof is extendible, the agreement is understood as being in favor of the lessee, and the latter is authorized to renew the contract and to continue to occupy the leased property, after notifying the lessor to that effect. The lessor, can withdraw from the said contract only after having fulfilled his promise to grant the extension of time stipulated therein, unless the lessee has failed to comply with or has violated the conditions of the contract. It is not necessary that the extension be expressly conceded by the lessor because he consented thereto in the original contract.

The plaintiff-lessee, therefore, had a right to continue to lease the defendant's two apartments until November 30, 1915.

The fact that the plaintiff only paid the sum of P240 per month as rental for the two accesorias and the bodega, and that he subleased these properties to the Chinaman Yu Tek for the sum of P325 per month is unquestioned. The plaintiff-lessee therefore made a net profit of P85 every month. The trial judge, taking this sum as a basis, found that for the twelve months ending December 1, 1915, the plaintiff had been injured in the amount of P1,020, the net value of the profits which he was unable to collect through the fault of defendant and he therefore ordered the latter to pay this amount to the plaintiff.

The foregoing facts lead to the conclusion that the lessor, Ongsiaco, violated the fourth paragraph of the contract of lease by refusing to comply with the agreement to extend the lease and, notwithstanding that the plaintiff in his pleadings did not deny under oath the authenticity and due insertion in the contract Exhibit 1 of the phrase at the will of both parties, yet the defendant in allowing evidence to be presented at the trial with regard to whether the said phrase at the will of both parties was written in the contract before or after the document had been signed by the contracting parties and ratified by them before the notary and as to whether they were inserted with the plaintiff's knowledge, consented to the questions being submitted to the court and waived his right to claim that the said phrase was written in the contract with the actual knowledge and consent of the plaintiff lessee.

"If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed." (Civ. Code, art. 1281.)

"In order to judge as to the intention of the contracting parties, attention must principally be paid to their acts, contemporaneous and subsequent to the contract." (Civ. Code, art. 1282.)

The contracting parties agreed that Enrique Legarda Koh should lease the properties of Lucio Ongsiaco for the term of one year and that this period should be extendable, as the length of the extension was not fixed, it must be understood that the renewed period should be for at least one year. The contracting parties stipulated that the

one-year period, at its expiration, might be extended as is so stated in the written contract, and no reason has been advanced by the lessor to justify any failure to comply with the said stipulation, to the lessee's detriment.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

Carson, Trent, and Araullo, JJ., concur.

[February 27, 1917]

DECISION ON MOTION FOR REHEARING.

Torres, J.:

Counsel for the defendant-appellant has moved for a rehearing in the present case on the ground that there was no agreement between the contracting parties to extend the term of the contract of lease at the expiration of the first year, and that the word "extendible" which appears in the fourth paragraph of the contract, does not mean, and cannot be construed to mean, that the power to extend the term of the lease is an exclusive privilege of the lessee.

The word "extendible," contained in the contract executed between the plaintiff and the defendant, means that the term of the contract could be -extended and is equivalent to a promise to extend made by the defendant to the plaintiff-lessee, and, as a unilateral stipulation, obliges the promisor to fulfill his promise. Both the defendant Ongsiaco and the plaintiff Legarda Koh testified that the contract was extendible at the expiration of its term, and the lessee, accepting the promise, acquired the right to demand its fulfillment by virtue of the special and obligatory juridic relation established between them.

The plaintiff-lessee, after notifying the lessor that he wished to continue the contract, by virtue of the word "extendible" acquired the right to elect between continuing his occupancy of the properties in accordance with the lease, a promise for the extension of the term of which was made him, and of giving them up by refraining from demanding the fulfillment of said promise. Therefore, the right arising out of the grant of the extension of the term of the lease is understood as having been created in favor of the lessee, who is entitled to require that the lessor fulfill his promise—a unilateral one contained in the contract and accepted by the lessee. The consequence of that promise is that its fulfillment shall depend solely on the will of one of the contracting parties, the one to whom the promise was made. Such a concession cannot be considered as anomalous and opposed to the principles of law touching contracts, inasmuch as the lessor was entirely free to make or not to make the promise, within the most ample liberty enjoyed by every citizen in the exercise of his rights; but once the promise was made and the contract was made to read that the term of the latter should be extendible, the lessor cannot be permitted afterwards to evade fulfillment of this obligation which he freely assumed, for, as law 1, title 1, book 10, of the Novísima Recopilación says: "When it appears that a person wishes to bind himself in favor of another by some promise, or by a contract, or in some other manner, he will be held to comply with what he obligated himself to perform, and he will not be heard to except on the ground that there was no stipulation that amounted to a formal promise made in accordance with law, etc." This law is one of those on which the provisions of the Civil Code now in force are based.

Article 1255 of the said Code provides:

"The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order."

It was covenanted that the term of the contract should be extendible, and this promise must be complied with by

the person obligated; but as he refused to do so voluntarily, the courts have had to require his compliance with the stipulations which in all contracts are the law.

On the foregoing grounds the defendant's motion is denied and he must abide by this decision. So ordered.

Carson, Moreland, Trent, and Araullo, JJ., concur.

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