

VIVENCIO CERRANO, PLAINTIFF AND APPELLEE, VS. TAN CHUCO, DEFENDANT AND APPELLANT.*G.R. No. 12907. August 01, 1918*

Ponente: FISHER, J.

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This is an action by plaintiff for damages alleged to have been caused by the breach of a contract for the hiring of a casco. The trial court gave judgment for plaintiff. Defendant excepted to the judgment, moved for a new trial, excepted to the order denying the motion, and brought the case to this court by bill of exceptions.

The facts established by the evidence are that during the month of January, 1916, the defendant, who was then the owner of casco No. 1033, rented it to the plaintiff at a monthly rental of P70. The contract was made in Manila, and the casco was delivered to the plaintiff in this city. There was no express agreement as regards the duration of the contract. The rent was payable at the end of each month. Some time during the month of May, 1916, the defendant notified plaintiff that in "the following month it would be necessary to send the casco to Malabon for repairs. Plaintiff then informed the defendant that he would like to rent the casco again after the repairs had been completed. Defendant indicated that he was willing to rent it, but would expect P80 a month for it. Plaintiff contends that it was agreed that he was to take the casco at the increased rental while defendant insists that his offer to lease it at the higher rate was never accepted. It is admitted, however, that there was no agreement between the parties concerning the length of time for which the hire of the casco was to continue. It is contended on behalf of plaintiff, and denied by defendant, that according to the custom prevailing in the port of Manila, a contract for the rental of a casco, when made by the owner, is deemed, in the absence of an express stipulation to the contrary, to run from the date of the contract until the casco has to be docked for its annual overhauling and repair. In this case it is contended by plaintiff that the contract of hire was to commence as soon as the casco came off the dock and that its term was to be ten months, this being the period which is ordinarily allowed from one docking to another. Defendant, on the contrary, contends that in the absence of an express stipulation regarding the duration of the hire, it is deemed to be from month to month when a monthly rental is agreed upon.

The casco was taken to Malabon by plaintiff in June, 1916, and delivered at the shipyard selected by defendant. The casco remained there, undergoing repairs, until the 24th of July, 1916. About one week before the end of the repair period defendant sold the casco to Siy Cong Bieng & Co. J. Santos, the man who had been employed by plaintiff as patron of the casco while it was in his possession, upon hearing that it had been sold to Siy Cong Bieng & Co. went to the office of the latter in Manila, and asked for employment in the same capacity. He received from Siy Cong Bieng & Co. P5 on account of his wages, and was instructed by them to go to Malabon and bring the casco to Manila, which he did, Siy Cong Bieng & Co. supplying the launch by which the casco was towed. Upon the arrival of the casco in Manila, however, the plaintiff, claiming that he was entitled to the possession of the casco under his contract with the defendant, regardless of its sale to Siy Cong Bieng & Co., induced Santos to refuse to take orders from the new owners. The result was that Siy Cong Bieng & Co. were obliged to bring an action of replevin against Santos for the recovery of the possession of their casco. The sheriff

took possession of the casco under a writ of replevin, but redelivered it to Santos upon a delivery bond executed by the present plaintiff and his wife as sureties. After the casco had been in possession of Santos for some three months, the replevin suit was submitted to the court for decision upon a written stipulation in which it was admitted that the casco was the property of Siy Cong Bieng & Co. at the time the suit was commenced, and that the "illegal detention" of the casco by Santos had caused damages to Siy Cong Bieng & Co. in the sum of P457.98. Upon this stipulation judgment was entered for the delivery of the casco to Siy Cong Bieng & Co. and for P457.98 as damages. Cerrano, the plaintiff in the present action, paid the judgment in favor of Siy Cong Bieng & Co. in the replevin suit, for which he had become liable under the terms of the delivery bond. The evidence shows that Santos was only a nominal defendant in the replevin suit, which was entirely controlled by the present plaintiff. In addition to paying the judgment for damages rendered, in favor of Siy Cong Bieng & Co. in the replevin suit, the present plaintiff, Cerrano, paid P500 to the attorney employed by him to defend that action on behalf of the nominal defendant, Santos. Plaintiff testified that the average profit derived by him from other cascos rented by him during the period during which he contends he should have had possession of the casco in question was P60 a month for each casco. Upon these facts, the trial court held that the defendant had rented the casco in question to plaintiff for a term of ten months, and for the breach of the contract he was liable to plaintiff in the sum of P600 for the loss of the profits he would have derived from the use of the casco, and that he is also liable to plaintiff for the sum of P457.98 paid by him as damages to Siy Cong Bieng & Co. in the replevin suit, and for the sum of P500 paid to the attorney employed by Cerrano to defend Santos in that action.

The first question which arises on this appeal is whether it was agreed between the plaintiff and defendant that the casco was to be leased to the former again after it had been repaired. It is contended by defendant that while he offered to rent the casco to plaintiff for P80 a month, this offer was never accepted. We are of the opinion, however, that the evidence sustains the conclusion of the lower court that it was understood between the parties, when the casco was taken to Malabon in June, that plaintiff was to have it again at the increased rental as soon as the contemplated repairs had been completed. That such was the understanding is shown by the fact that plaintiff paid for the towage of the casco to the dry dock at Malabon; that he left his equipment in it; and that his patron stayed with the casco in Malabon during the time it was on the dock. There can be no doubt, in our opinion, that the casco had been rented to plaintiff, and that its sale to Siy Cong Bieng & Co. was a breach of the contract.

Having concluded that the casco was under hire to plaintiff at the time it was sold and delivered to Siy Cong Bieng & Co. by defendant, the next inquiry relates to the duration of the term. Plaintiff contends that in accordance with the custom of the port of Manila it was to be ten months from July 24, 1916, when the repairs were completed. Defendant contends that in the absence of an express agreement for a definite period, when a monthly rent is reserved, it is to be understood that the hiring is from month to month. The court below found that the custom of Manila with regard to such agreements is as contended by plaintiff. The evidence on this subject is very conflicting and unsatisfactory, however, and is not sufficient, in our judgment, to warrant a finding of the existence of such a custom. There is no definite season of the year, of necessity, when cascos are docked, nor is it possible, in the nature of things, that the length of time which must transpire from one overhauling to another can be fixed and invariable with respect to any particular vessel. It must depend, of course, upon the age and condition of the vessel. If any such custom in fact existed it would produce the absurd result that in one case the parties might be bound for a year or more while in the next a contract in the same terms might not last a month. Furthermore, there is obviously no definite standard by which to determine the precise period at which it becomes necessary to dock a casco. One owner might deem it essential to dock his casco and have her overhauled, while the same casco in the hands of another owner might be kept at work for several months more. The uncertainty and the unreasonable character of the alleged custom are such that we should be unwilling to fasten it upon the port of Manila upon evidence so unsatisfactory as that relied upon in this case.

There being no rule of law, expressly applicable to the hiring of personal property in general or of vessels in particular, by which the duration of such a contract is to be determined, and no local custom having been satisfactorily proved, we are required to apply the general principles of law. (Civil Code, art.. 6.) Under this authorization we may adopt and apply by analogy the general rules established by the Code relating to the lease of real property. We find that article 1581 of the Civil Code provides that when no definite agreement has been made regarding its duration, the lease of a house is deemed to have been made from day to day, from month to month, or from year to year, according to whether a daily, monthly, or yearly rent is to be paid. That is to say, this article establishes the reasonable presumption that one who agrees to pay a monthly rent intends that his tenancy is to endure for a like period, subject to indefinite tacit renewals at the end of each month as long as the arrangement is agreeable to both parties. We are of the opinion that a similar presumption arises under similar conditions with respect to the hire of personal property, in the absence of special circumstances showing a contrary intention. This is the rule of the French law, stated by Dalloz (Jur. Gen., vol. 30, p. 482) as follows:

"In the absence of any circumstance * * * which indicate (s) that it was the intention of the parties that the bailment should continue for a definite term, if a chattel—a horse, for example—is hired by the day or by the week, the bailment ceases at the end of each day, or of each week, if either of the parties so desires * * *."

Our conclusion is, therefore, that under the terms of his contract the defendant was bound to deliver the casco to plaintiff for one month from the date upon which the repairs were ended, but was under no obligation to renew the contract at the end of the month. By selling the casco to Siy Cong Bieng & Co. he broke his contract with plaintiff and is responsible for the damages caused by his failure to give plaintiff possession of the casco for the term of one month. The only evidence on this subject is the testimony of plaintiff to the effect that his average profits from the rented casco were P60 a month. The appellant contends that this does not furnish the proper measure of damages, but that plaintiff's right is limited to the recovery of the difference between the contract price at which the casco was hired by him and such higher rate as he might have been compelled to pay for the hire of a similar casco in the open market to take its place. Defendant further contends that it was the duty of plaintiff to endeavor to obtain another casco at the best rate possible, as soon as he was notified that defendant would not perform his contract, and that the burden rests upon plaintiff to show that he did so. We are of opinion that the plaintiff is entitled to recover, as damages for the breach of the contract by the defendant, the profit which he would have been able to make had the contract been performed. He has testified, without contradiction, that the average net profit made by him from the casco in question during the time it was in his possession was P60 a month. During this period he was paying rent for it at the rate of P70 a month. Under the terms of the contract now under consideration he was to have paid P80 a month for it, which we must assume would have reduced the profit to P50 a month. Article 1106 of the Civil Code establishes the rule that prospective profits may be recovered as damages, while article 1107 of the same Code provides that the damages recoverable for the breach of obligations not originating in fraud (dolo) are those which were or might have been foreseen at the time the contract was entered into. Applying these principles to the facts in this case, we think that it is unquestionable that defendant must be deemed to have foreseen at the time he made the contract that in the event of his failure perform it, the plaintiff would be damaged by the loss of the profit he might reasonably have expected to derive from its use.

When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied all remedy for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. As stated in Sedgwick on Damages (Ninth Ed., par. 177) :

"The general rule is, then, that a plaintiff may recover compensation for any gain which he can make it appear with reasonable certainty the defendant's wrongful act prevented him from acquiring, * * * (See also *Algarra vs. Sandejas*, 27 Phil. Rep., 284, 289; *Hicks vs. Manila Hotel Co.*, 28 Phil. Rep., 325.)

The uncontradicted testimony of the plaintiff as regards the profits earned by him in the past from the use of the casco in question is, in our judgment, sufficient to justify the conclusion that had defendant complied with his agreement, plaintiff would have earned a net profit of P50 from the use of the casco in the month during which he was entitled to its possession. It is contended by defendant, however, that "it must be presumed" that plaintiff could have secured another casco at the same price had he looked for it. It is a well recognized principle of law that damages resulting from avoidable consequences of the breach of a contract or other legal duty are not recoverable. It is the duty of one injured by the unlawful act of another to take such measures as prudent men usually take under such circumstances to reduce the damages as much as possible. (*Warren vs. Stoddart*, 15 Otto, 224; *Baird vs. U. S.*, 21 L. ed. [17 Wallace], 519, No. 1.)

It is equally well settled, however, that the burden of proof rests upon the defendant to show that the plaintiff might have reduced the damages. (*Sedgwick on Damages*, Ninth Ed., par. 227.) In this case the defendant has made no effort whatever to show that any other similar cascos were in fact available to plaintiff, or the price at which he would have been able to obtain the use of one. In the absence of evidence it will not be presumed that plaintiff could have secured another casco at the same price had he looked for one.

It is contended by appellant that the trial court erred in holding him liable for the money which plaintiff expended in connection with the litigation between *Siy Cong Bieng & Co.* and *J. Santos*. We are of the opinion that this point is well taken. The contract of lease or hiring does not create a right in rem in favor of the lessee, except in the case of a recorded lease of real estate. It is admitted that the casco was sold to *Siy Cong Bieng & Co.* and that *Santos'* attempt to retain possession of it against the lawful owners by whom he had been placed in charge of it, was unlawful. The present plaintiff was not a party to that suit. In becoming a surety upon *Santos'* bond and in paying the attorney employed to defend the latter he acted voluntarily and officiously. If he is unable to recover from *Santos* the money paid by him upon latter's account—as to which the record is silent—that fact will not justify us in imposing the burden of repaying this money upon the defendant. The latter is liable for the damages which he might have foreseen as those reasonably to be anticipated as the natural and probable consequence of the breach of the contract, but the damages suffered by plaintiff by reason of his voluntary assumption of the liability incurred by *Santos* by reason of his unlawful attempt to withhold possession of the casco from its owners, by whom he was put in charge of it, are not attributable to defendant and he is not responsible for them. The proximate cause of the loss incurred by plaintiff as a result of his voluntary assumption of liability for the unlawful acts of *Santos* was not the breach of his contract by defendant herein, but plaintiff's own imprudence.

The judgment of the lower court is therefore reversed, and it is adjudged and decreed that the plaintiff recover from defendant P50 as damages, and his costs in the Court of First Instance. No costs will be allowed in this court. So ordered.

Arellano, C. J., Carson, Street, and Avanceña, JJ., concur.

Torres, J., dissents, with whom concurs Malcolm, J.

DISSENTING OPINION

TORRES, J., dissenting:

I am of the opinion that the judgment appealed from should be affirmed.

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