

PEDRO CUI, PLAINTIFF AND APPELLANT, VS. SUN CHAN (ALIAS SANCHAY), DEFENDANT AND APPELLEE.

G. R. No. 16224. March 27, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This case deals with the rescission of a contract of rent by reason of a breach of one of the clauses agreed upon between the lessor and the lessee.

The trial court found as a finding of fact that the defendant, without the permission of the plaintiff, made some additions to the property on the rear end consisting of two awnings. The defendant did not appeal from the judgment, and we do not therefore have to discuss this aspect of the case.

As conclusion of law, the court decided that, while the defendant has made constructions upon the property without the permission of the plaintiff, the latter, nevertheless, has no right to rescind the lease, under clause (d) of the contract. The plaintiff appealed from this judgment by filing the corresponding bill of exceptions and the case has been transmitted to this court.

The appellant alleges that the court below erred: (1) In interpreting subdivision (d) of the first paragraph of the contract in the sense that said subdivision permits the lessee to do any work upon the property without the consent of the lessor; and (2) in not finding that, even supposing said subdivision (d) permits the construction of an improvement, it does not permit the construction of work detrimental to the property as that constructed by the defendant.

The clause of the contract which gave rise to this case is as follows:

"(D) Sun Chan (the lessee) also binds himself not to make any construction upon the property without the permission of the lessor, and in case he should do so, making any improvement thereon, it shall in all cases be for the benefit of the property, without any right to ask for reimbursement for its cost."

Without deciding whether or not the preceding clause of the contract of lease constitutes an obligation with a penal clause, we believe that even in this class of obligations the penalty, the object of which is to secure compliance with the obligation, cannot, as a general rule, serve as a defense for the purpose of leaving the principal obligation unfulfilled, for the reason that the creditor may, at his option, exact the fulfillment of the obligation or the payment of the penalty, according to article 1153 of the Civil Code.

But the question for decision in this appeal is whether the lessor has the right to rescind the contract on account of noncompliance with one of its clauses on the part of the lessee.

It is axiomatic in law that compliance with what is lawfully agreed upon is obligatory, and for this reason a breach of any of the conditions of a contract of lease is considered as a cause for ouster and therefore of the rescission of the contract, as prescribed in article 1569, case No. 3, of the Civil Code.

The fact that the contracting parties did not expressly provide for the rescission on account of the breach of the clause in question does not affect the resolution of the case, for the reason that the obligations arising from the contract of lease being reciprocal, such obligations are governed by article 1124 of the Civil Code, which declares that in this kind of obligations the power to resolve it in case one of the obligors should not fulfill his part is implied.

In accordance with said article 1124 the injured party may choose between exacting the fulfillment or the resolution of the obligation, with the obligation to pay damages and interest in either case. The lessor could have asked for the fulfillment of the obligation not to construct any work upon the property without his permission, and in such case it would have been necessary to undo all that was done, destroying the constructions in order to leave the property in its original condition; but as he made use of the right of option granted him by law by instituting the present rescissory action, the court must decree the resolution which he asks unless there be causes justifying it to fix a term.

In view of the finding of fact made in the judgment appealed from and not discussed by the parties; and by virtue of the legal provisions herein cited, it should be declared, as we now do, that the appellant has the right to rescind the contract in question and, therefore, the judgment appealed from is reversed, and we declare the contract to be resolved. The second assignment of error need not be discussed. It is so ordered, without any special pronouncement as to costs. So ordered.

Mapa, C. J., Araullo, Street, and Malcolm, JJ., concur.

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