

MANUEL RIOS AND PACIENCIA REYES, PLAINTIFFS AND APPELLANTS, VS. JACINTO, PALMA Y HERMANOS, S. C, RAFAEL PALMA, AND PERFECTO JACINTO, DEFENDANTS AND APPELLEES.

G. R. No 23893. March 23, 1926

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the City of Manila by Manuel Rios and wife, Paciencia Reyes, for the purpose of recovering the sum of P23,300, with legal interest, and costs, as damages alleged to have been incurred by the plaintiffs by reason of breach of a contract of lease. The defendants named in the complaint are the firm of Jacinto, Palma y Hermanos, S. C, as lessee, and Rafael Palma and Perfecto Jacinto, general partners in the same firm. Upon hearing the cause the trial court absolved the defendants from the complaint and the plaintiffs appealed.

No transcript of the oral testimony appears in the record, with the result that our review of the case will be limited to the questions of law arising upon the facts found by the trial court, in connection with the letter (Exhibit K) referred to in the opinion.

It appears that by contract dated September 1, 1920, the plaintiffs, as owners of a parcel of land on Gagalangin Street, Tondo District, Manila, let the same, with the improvements thereon, to the firm of Jacinto, Palma y Hermanos, S. C, for the term of fifteen years at a monthly rental of P400 payable in advance during the first ten days of each month. Among the provisions contained in this contract we note clause 9, which is to the effect that the terms and conditions of the contract shall be obligatory upon and redound to the benefit of the persons composing the lessee firm, their heirs, executors, administrators, successors, and assigns, as well as the successors and assigns of the lessors. The lessee entered upon the possession of the leased premises upon the date above stated; and the payment of the agreed rental was continued until November and December of the year 1923, for which months the rent fell into arrears.

Meanwhile several successive reorganizations of the lessee firm had been effected as follows: The first lessee, Jacinto, Palma y Hermanos, S. C, was succeeded by the firm of P. & F. Jacinto, and the latter in turn by the firm of Palma Brothers & Co., Ltd., to be itself again succeeded by Palma & Co., a corporation. The plaintiffs were informed of these changes in the personality of the lessee and, as the trial court found, acquiesced therein.

In view of the default in the payment of the monthly rental for the months of November and December, 1923, Mr. Gregorio Araneta, as attorney for Manuel Rios, addressed a letter, on December 27, 1923, to Rafael Palma, as partner in the original firm and its former manager. In the course of this letter the writer asked Mr. Palma, in case the lessee could not continue to pay the rent, to return the property at once to Rios, "without prejudice to ulterior responsibility for damages for breach of contract." The writer added that Rios desired prompt action in the matter and that he must have possession of the property on or before the 29th of the month, otherwise he would be compelled to begin a detainer suit.

In response to this demand the occupant, Palma Bros. & Co., Ltd., or Palma & Co., or whoever had actual possession, vacated the premises on December 29, giving notification to the plaintiff Manuel Rios, who at once assumed possession. We gather from the record that the rent for November and December, 1923, has subsequently been paid; but the premises appear to have been entirely vacant during the months of January and February, 1924, and for this period no compensation has been paid to the plaintiffs by any one. Beginning with March, 1924, the property was let by the plaintiffs for a term of three years, renewable for another three, to the firm of Walter A. Smith Co., Inc., upon the best terms then procurable in the market, which was at a monthly rental of P250.

In this court the plaintiffs, as appellants, have assigned error, among other things, to the failure of the trial court to give judgment for the sum of P800, the stipulated rent for January and February, 1924, and for the further sum of P22,500, being the difference between the amount which the lessee had agreed to pay during the twelve years that the lease was to run from the time when the plaintiffs resumed possession and the amount which, during the same period, the plaintiffs would obtain from the new lessee, or others, at the rate of P150 a month.

The firm of Jacinto, Palma y Hermanos, S. C., allowed a default judgment to be entered in this case for its failure to answer, but the individual defendants interposed an answer relying upon two special defenses which will be examined in turn. It is first claimed that the original lessee and the partners in that concern were discharged by a novation of the original contract whereby the lessee was changed and a new debtor substituted for the original debtor. We are of the opinion that there is no merit in this defense and that the facts found by the trial court are not sufficient in law to show a discharge of the parties liable upon the original lease. What appears to have occurred, and what the court found, was that the plaintiff Bios said that it was all right when told of the successive changes in the personality of the lessee, and he seems to have been content to receive the monthly rent from anybody who wanted to pay it.

But by reference to clause 9 of the contract, it will be seen that the lessors really had no choice in their attitude to these changes. It was there stipulated that the provisions of the lease should be obligatory upon and redound to the benefit not only of the persons composing the lessee firm but their assigns. The transfer of the lease was therefore anticipated in the lease and stipulated for, and the lessors had no right to complain as the leased premises passed from one entity to another. The contract, however, does not stipulate that the original lessee should be discharged by any such assignment, and an agreement to this effect cannot be implied from the mere forced acquiescence of the lessors in the transfer of the lease. Under article 1204 of the Civil Code the only situation where a novation having the effect of extinguishing a prior obligation will be implied, in the absence of express stipulation, is where the new and old obligations are incompatible in every respect. In the case under consideration the new obligation assumed by the successive entities taking over the lease was not at all incompatible with the continued liability of the original lessee. It is a very common thing in business affairs for a stranger to a contract to assume its obligations; and while this may have the effect of adding to the number of persons liable, it by no means necessarily implies the extinguishment of the liability of the first debtor, (*Michigan Stove Co. vs. A. H. Walker & Co.*, 150 Iowa, 363; Ann. Cas. 1912D, 505; *Testate Estate of Mota vs. Serra*, 47 Phil., 464.)

The second ground of defense to the action is, in the opinion of the majority of the members of the court, of a more meritorious character. This defense is planted upon the fact that after the default occurred in the payment of rent for the months of November and December, 1923, the lessors voluntarily, and upon their own demand, resumed possession of the premises. It is insisted for the defense that this relieved the original lessee and all other persons liable upon the lease from any liability for future rent and therefore from any liability for damages that may have accrued, or might accrue, to the lessors during the remainder of the term of the lease. The situation is one that must be considered in the light of certain provisions of the Civil Code, to which attention will be directed.

In article 1124 of the Civil Code it is declared that an obligation may be resolved if one of the obligors fails to comply with that which is incumbent upon him; and it is declared that the person prejudiced may elect between exacting the fulfilment of the obligation (specific performance) and its resolution, with compensation for damage and payment of interest in either case. This general principle is substantially reproduced in the special provisions of the Civil Code dealing with the rights and obligations of lessors and lessees. In the first paragraph of article 1555 it is declared to be the duty of the lessee to pay the price of the lease in the manner agreed upon. In article 1556 the failure of the lessee to comply with this obligation is declared to be a ground for the rescission of the contract and the recovery of damages, or the latter only, leaving the contract in force. It will thus be seen that the lessor is permitted to elect between the two remedies of (1) rescission, or resolution, with damages and (2) specific performance, with damages. It will be noted that he is not entitled to pursue both of these inconsistent remedies; and slight advertence to the logic of the situation will teach us that, in estimating the damages to be awarded in case of rescission, those elements of damages only can be admitted that are compatible with the idea of rescission; and of course in estimating the damages to be awarded in case the lessor elects for specific performance only those elements of damages can be admitted which are compatible with the conception of specific performance. It follows that damages which would only be consistent with the conception of specific performance cannot be awarded in an action where rescission is sought.

In the case before us the lessors clearly elected to resolve or rescind the contract. Now it is an inseparable incident of resolution or rescission that the parties are bound to restore to each other the thing which has been the subject matter of the contract, precisely as in the situation where a decree of nullity is granted. In the common case of the resolution of a contract of sale for failure of the purchaser to pay the stipulated price, the seller is entitled to be restored to the possession of the thing sold, if it has already been delivered. But he cannot have both the thing sold and the price which was agreed to be paid, for the resolution of the contract has the effect of destroying the obligation to pay the price. Similarly, in the case of the resolution, or rescission, of a contract of lease, the lessor is entitled to be restored to the possession of the leased premises, but he cannot have both the possession of the leased premises for the remainder of the term and the rent which the other party had contracted to pay. The termination of the lease has the effect of destroying the obligation to pay rent for the future.

The damages or indemnity conceded in case of resolution by article 1124 and the damages conceded by article 1556 in case of the rescission of a lease have reference to the damages for the default which gave rise to the right to terminate the lease. In a case of the kind now before us it would cover rent in arrears and damage done by the lessee to the leased premises or other special damages in particular cases resulting from nonperformance of the lessee's obligation. By no reasonable interpretation of these provisions can the indemnity or damages be understood as extending to rent for the future, inasmuch as the termination of the lease abrogated liability for future rent.

It is interesting to observe that the very point under consideration was passed upon by the creators of the Civil Code, while that work was in progress of making; and the manner in which the articles which we have been discussing are expressed demonstrates an intention to eliminate damages in lieu of future rent when the lessor elects to rescind. In this connection it appears that the Project of the Civil Code of 1851 expressly declared, in article 1480, that if the contract of lease should be resolved for default of the lessee, he should be required, in addition to other damages inflicted upon the lessor, to pay the agreed rental for the whole period of time that might elapse until another lease should be made. This provision was not incorporated in the ultimate Civil Code; and this is a good indication that the authors of the Code thought it unwise to place this liability upon the lessee. (10 Manresa, 2d ed., 546.)

The jurisprudence of the common law will be found to be in harmony with the conclusion reached above; for the

situation with which we are confronted is that which is called in the common law a surrender, and by the consensus of authority a surrender has the effect of abrogating the liability of the lessee for future rent. (35 C. J., 1095; 16 R. C. L., 973.) We are not unmindful of the fact that American and English decisions contain authority to the effect that when a lessee abandons the leased premises and the lessor resumes possession for the protection of his property, the obligations of the lease still remain in force; and the lessor has a right, if he so elects, to hold the lessee responsible under his contract until the termination of the lease. But this doctrine is properly confined to cases of abandonment by the lessee, and the damages there awarded are in effect given in lieu of specific performance. In the case before us there was no abandonment by the lessee, and the intervention of the lessor to resume possession was purely voluntary.

At first blush it might appear that the case would perhaps be affected by the reservation contained in the demand of plaintiffs attorney for the surrender of the premises, in which he stated that the demand was without prejudice to ulterior responsibility for damages. But a moment's reflection ought to show that the right of action here reserved must be understood as having reference to such damages as might be recoverable in law, consistently with the election of the plaintiffs to rescind the contract. From what has been said it follows that the judgment absolving the defendants from the complaint must be affirmed; and it is so ordered, with costs against the appellants.

Johnson, Villamor, Johns, and Villa-Real, JJ., concur. Ostrand, J., with whom concur

OSTRAND, J., with whom concur AVANCEÑA, C. J., MALCOLM, and ROMUALDEZ, JJ., dissenting:

I dissent and think judgment should have been given the plaintiffs for the loss of profits suffered by them during the period from January 1, 1924, until the time of the trial of the case by reason of the defendants' breach of the contract of lease.

The facts are not in dispute. The defendants failed to pay rent for two months in violation of the terms of the lease. That gave the plaintiffs the right to demand its resolution or rescission (Civil Code, arts. 1555 and 1556). On December 27, 1923, Mr. Gregorio Araneta, as attorney for the plaintiff Rios, wrote the defendant Palma the following letter (Exhibit K):

"December 27, 1923

"Sr. Don Rafael Palma

"553 Leroy, Manila

"MY DEAR COMPAÑERO: I have the honor to return to you the documents and the receipt that you were so kind to send me along with your letter of the 21st instant. By the receipt of October 1st, this year, I see that Mr. Rios has continued dealing with Messrs. Jacinto, Palma y Hermanos, S. C, which is the entity that has entered into the contract with him. Inasmuch as you were a collective partner of Jacinto, Palma y Hermanos, S. C, I think that you cannot evade the responsibility that as such partner will attach to you on account of the said contract, and that is why I pray you, to see to it immediately, that the property be returned to Mr. Rios, in case you should be unable to continue paying the rents, without prejudice to the responsibility for damages for non-compliance with the contract.

"My client desires that prompt action hereon be taken, that is to say, that he be given possession of the premises on or before the 29th of this month, as otherwise we shall be compelled to file an action for unlawful entry and detainer.

"Your affectionate compañero and yours truly,

(Sgd.) "GREGORIO ARANETA"

As will be seen, the defendants were offered the alternative of either paying the rent or else resolve the contract of lease without prejudice to their responsibility for damages. The defendants chose the latter alternative and turned the leased property over to the plaintiffs on January 1, 1924.

The plaintiffs were unable to find a new tenant until March 1, 1924, when the property was leased to Walter A. Smith, Inc., for the period of three years at a rental of P250 per month, P150 less than that which the plaintiffs would have received under the former lease. On April 4, 1924, the plaintiffs brought the present action for damages alleged to have been suffered by reason of the defendants' breach of contract. For the determination of the defendants' responsibility for damages, we have only to follow the plain provisions of the Civil Code. Articles 1124, 1555 and 1556 of that Code read as follows:

"ART. 1124. The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him is deemed to be implied.

"The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for damages and payment of interest in either case. He may also demand the resolution of the obligation even after having requested its fulfillment, should the latter be found impossible.

"The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation.

"This is understood to be without prejudice to any rights acquired by third persons in accordance with articles 1295 and 1298 and with the provisions of the Mortgage Law.

"Art. 1555. It shall be the duty of the lessee:

"1. To pay the price of the lease in the manner agreed upon;

"2. To use the thing leased as a diligent father of a family would, applying the same to the use agreed upon, or, in default of an agreement, to the use which may be inferred to have been intended from the nature of the thing leased, according to the custom of the country;

"3. To pay the expenses of the execution of the instrument containing the contract.

"ART. 1556. Failure on the part of the lessor or lessee to comply with the obligations mentioned in the next preceding articles shall be ground for the rescission of the contract and the recovery of damages, or the latter only leaving the contract in force."

From the articles quoted it is clear that award of damages to the prejudiced party is one of the legal consequences of the resolution or rescission of a contract. The measure of damages in cases of breach of contract is thus stated in article 1106 of the Civil Code:

"The payment of damages shall include not only the amount of the loss which may have been suffered, but also, that of the profit which the creditor may have failed to realize, * * *."

It seems to me that the language of the Code is so clear and explicit that there is no room for special judicial interpretation. The defendants breached the lease. Acting on the suggestion of the plaintiffs' attorney, they elected to discontinue payment of rent and to resolve the contract subject to their liability for damages. Under the Code, the damages included not only the amount of the loss which the plaintiffs might until then have suffered, but also that of the loss of profits which they have failed to realize by reason of the breach of the contract and its consequent resolution. Up to the time of the resolution they had suffered no damages, properly speaking; the two months' rent then overdue was a contractual obligation on the part of the defendants and not a liability *ex delicto*. But it is not disputed that the plaintiffs eventually suffered a loss of profits due to the resolution of the contract.

The defendants' lease called for payment of rent at the rate of P400 per month; the plaintiffs were unable to obtain another tenant until two months after the resolution of the lease, thus suffering a loss of P800 during that period; from March 1, 1924, until the month of November of the same year, when the case was tried, they received only P250 per month in rent entailing a loss in the amount of P1,350 for that period. These losses have been fully proven and it does not appear that the plaintiffs did not use due diligence in endeavoring to minimize them. Adopting as a criterion the provisions of article 1106, *supra*, the total amount of the damages proven is therefore P2,150 for which the plaintiffs are in my opinion clearly entitled to judgment.

From the fact that the framers of the Civil Code did not incorporate therein the provision in the Project of 1851 to the effect that a tenant breaching his lease should upon its resolution pay in addition to other damages the agreed rental for the whole period of time that might elapse until another lease should be made, the court draws the inference that it was the intention to eliminate loss of future rents as an element of damages. This inference is, I think, wholly unwarranted. On the contrary, the intention was evidently to place contracts of lease on a level with other contracts in that respect and apply the same rule to all. The principle underlying that rule was stated in a better and more accurate form in the Code and the incorporation therein of the language of the Project of 1851 was not only unnecessary but would also have been likely to cause confusion.

There is, as far as I can see, no reason whatever why in regard to damages for its breach, a contract of lease should not be considered in the same light as any other ordinary contract and such was evidently the view of the authors of the Civil Code.

The theory that damages for loss of profits suffered subsequent to the rescission of a lease, but before the expiration of its original term, are incompatible with the idea of rescission, is entirely new and in direct conflict with the views expressed by this court in the case of *Yunti vs. Dy-Yco* (6 Phil., 352). It is also out of harmony with all other cases upon the subject of damages for breach of contract in this jurisdiction and cannot be good law.

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