

JOSE M. NAVA AND MARIANO N. NAVA, JR., PLAINTIFFS AND APPELLANTS, VS. PRESENTACION HOFILEÑA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 27764. December 31, 1927*

Ponente: OSTRAND, J.

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In or about the year 1900 Juan de Leon, Francisco Villanueva, Espiridion Guanco, and Benito Lopez formed a partnership for the publication of the newspaper "El Tiempo" in the municipality of Iloilo. Juan de Leon invested P3,500 in the enterprise and each of the other partners contributed P500. Benito Lopez died in 1908 and his widow Presentacion Hofileña and minor sons, Eugenio and Fernando, succeeded to his interest in the newspaper. The widow afterwards married Daniel Evangelista. Juan de Leon died in 1919 and Jose B. Magalona was appointed administrator of his estate.

On March 24, 1921, the herein plaintiffs Jose M. Nava and Mariano N. Nava, jr. entered into a contract of lease with Francisco Villanueva, Jose B. Magalona, and one Vicente Lopez, the latter as the attorney-in-fact of Presentacion Hofileña. The contract provided among other things that the plaintiffs should have the absolute control and administration of "El Tiempo" for the term of 5 years; that during that period they were to have the use of the printing press and type of the "El Tiempo" as well as of the offices of the paper. Provisions were also made for extensions of the term of the contract. On September 26, 1921, Espiridion Guanco and Presentacion Hofileña, for herself and as guardian of Eugenio Lopez and Fernando Lopez, filed a complaint against the herein plaintiffs praying for the rescission of the contract of lease. This action was numbered 4265 in the Court of First Instance and was dismissed on June 19, 1924.

In the meantime Presentacion Hofileña, personally and as guardian of Fernando and Eugenio Lopez, brought an action (civil case No. 4319 of the Court of First Instance of Iloilo) against Francisco Villanueva, Espiridion Guanco and Jose B. Magalona, the latter as administrator of the estate of Juan de Leon, praying that a temporary receiver be appointed to take charge of the property of the partnership above-mentioned and that upon final hearing, the receivership be made permanent, with instructions to the receiver to make an accounting of the business, to proceed to the liquidation of the same and to distribute the assets of the partnership, if any remained after paying the liabilities. On November 9, 1921, Mariano N. Nava, jr. and Jose M. Nava filed a motion protesting against the appointment of a receiver on the ground that it would deprive them of the possession of the property leased, and asked that they be permitted to intervene in the case.

On December 31, 1921, Judge Gutierrez David issued an order granting the petition for the appointment of a receiver and in the same order authorized the Navas to intervene. On February 14, 1922, Potenciano T. Treñas was appointed receiver and on March 29th of the same year, the plaintiff Presentacion Hofileña filed a motion praying that the Navas be ordered to turn the property held by them under the contract over to the receiver. The Navas protested but on May 4, 1922, Judge Santamaria granted the motion of March 29th, and ordered that the

property be delivered to the receiver. Exception to this order was taken by the intervenors and a bill of exceptions filed, but on June 20, 1920, Judge Cayo Alzona ruled that Judge Santamaria's order of May 4th was not appealable and refused to approve the bill of exceptions. No exception appears to have been taken to this ruling.

On September 13, 1924, the intervenors filed a complaint in intervention in which they quoted the contract of lease executed on March 24, 1921, and among other things alleged that Presentacion Hofileña, acting in connivance with Francisco Villanueva and the administrator of the estate of Juan de Leon, brought the action for the appointment of a receiver for the sole purpose of depriving the intervenors of the use of the "El Tiempo" enterprise with its accessories; that since July 9, 1922, said intervenors had by reason of the appointment of the receiver, been deprived of their rights under the contract of lease; that Presentacion Hofileña as well as Francisco Villanueva, Espiridion Guanco, and the administrator of the estate of Juan de Leon had full knowledge of the terms of said contract and that it was not executed by them or by their consent; that the acts of the plaintiff and the aforesaid defendants constituted a violation of the conditions of the aforesaid contract; and that through the appointment of the receiver, the intervenors were unjustly and against their will deprived of their rights under the contract and by reason thereof suffered damages in the amount of P29,269.24. The intervenors therefore prayed that it be declared that the appointment of the receiver was improvidently made and that judgment be rendered against the plaintiff and the aforesaid defendants for damages in the sum of P29,269.24.

In an order dated September 30, 1924, Judge Leopoldo Rovira held that there was no sufficient reason for an intervention in the receivership case inasmuch as the claims of the intervenors could best be litigated in a separate action for damages and his honor therefore dismissed the complaint in intervention, without prejudice to the right of the intervenors to prosecute their claims in a separate action. Though this ruling was clearly erroneous no exception was taken thereto and no appeal was attempted.

In a so-called decision dated October 2, 1924, Judge Fernando Salas approved the sale of the property of "El Tiempo" to Concepcion de Arroyo for P550, likewise approved the accounts of the receiver, declared the partnership dissolved, and ordered the receiver to distribute the funds remaining after the payment of the expenses of the receivership, said remaining funds amounting to P140 according to the receiver's account. As far as the record shows, there has been no formal discharge of the receiver.

On March 7, 1925, the Navas brought the present action. The complaint is somewhat vague and uncertain and is in effect merely a reproduction of the complaint in intervention in case No. 4319, the receivership case. Its first two paragraphs are devoted to naming the parties plaintiffs and defendants and stating the capacities of the latter. Paragraph 3 gives the names of the original owners of "El Tiempo" and the proportionate shares of each of the partners and paragraph 4 states the name of the enterprise. Paragraph 5 states that after the death of Benito Lopez, one of the owners, the business continued. In paragraph 6 it appears that three of the owners or their representatives leased the business to the plaintiffs, and the contract of lease is quoted in full in the same paragraph. In paragraphs 7, 8, and 9 it is alleged that one of the lessors, Presentacion Hofileña, and her husband Daniel Evangelista, became offended by a news item published in "El Tiempo" in regard to an altercation in which Daniel Evangelista was involved, and that impelled by their indignation Presentacion and her husband brought an action against the herein plaintiffs for breach of contract but knowing that they had no chance to win, the action was abandoned. Paragraph 10 is to the effect that the plaintiffs complied with their contract from April 1, 1921, until July 9, 1922, when they unjustly and through the fault of the defendants were deprived of the use of the "El Tiempo" enterprise with all its accessories. In paragraph 11 it is alleged that with the object of prejudicing the plaintiffs' interests, the defendant Presentacion Hofileña, personally and as guardian of her minor children, in connivance with Francisco Villanueva and the administrator of the estate of Juan de Leon, Jose B. Magalona, filed a complaint praying for the appointment of a receiver, their purpose being to thereby deprive the plaintiffs herein

of the use of the "El Tiempo" property; that Francisco Villanueva and Espiridion Guanco declared their conformity with the complaint and that Jose B. Magalona as administrator of the estate of Juan de Leon allowed himself to be declared in default, all of these actions being calculated to facilitate the execution of the plans of Presentacion Hofileña. Paragraph 12 of the complaint repeats the charge of collusion in bringing about the receivership or in not opposing it and states that the delivery of the "El Tiempo" enterprise into the hands of a receiver constituted an infraction of the conditions of the contract of lease. In paragraph 13 it is alleged that by reason of the complaint filed in the receivership case for no other purpose than to deprive the herein plaintiffs of the use of "El Tiempo" and its accessories, said plaintiffs have been deprived unjustly and against their will of such use, notwithstanding the fact that the contract of lease was still in force, and that by reason thereof the plaintiffs have suffered damages in the sum of P29,376.20 for which they seek judgment.

After various demurrers and answers presented by the defendants, the case was finally set for hearing on November 8, 1926. Before trial, counsel for the defendants moved that the case be dismissed on the ground that it was an action for damages caused by the appointment of the receiver in case No. 4319 and that under section 177 of the Code of Civil Procedure, such damages should have been ascertained and decreed against the plaintiffs in the original case; and that therefore the court was without jurisdiction to pass upon the matter in a separate action. On December 31, 1926, Judge Santamaria in a lengthy decision granted the motion and ordered the dismissal of the complaint without costs. From this order the plaintiffs appealed.

The appellants' principal contention, and the only one worthy of consideration, is that the present action is not to be regarded as merely one for damages sustained by reason of the appointment of the receiver, but that it must be considered as an action against the lessors for breach of the lease contract and that, if so, the action is not barred by the failure to litigate the claim in the receivership case.

This contention would be perfectly valid if the complaint had been so drawn as to set forth a cause of action against the lessors on their implied warranty of the lessees' peaceful possession of the leased property during the term of the lease. But such can hardly be said to be the case here; the burden of the complaint is that the damages occurred through the appointment of the receiver, and in reality a cause of action is stated only against Presentacion Hofileña. It is true that it is alleged in paragraphs 11 and 12 of the complaint that Francisco Villanueva, Jose B. Magalona, and Espiridion Guanco acted in connivance with Presentacion Hofileña and that they thereby breached the contract of lease, but the facts set forth do not justify this assertion. That they did not oppose the appointment of the receiver was not a breach of the contract; the appointment would not necessarily deprive the lessees of the possession of the property leased, and it may be taken into consideration that the partnership was dissolved ipso jure upon the death of Benito Lopez in 1908; that the partnership affairs, therefore, should have been settled long before the receivership case in question was brought; and that it often is convenient to appoint a receiver in the settlement of such affairs. The ouster of the lessees was the act of the receiver under orders of the court and the damages therefor were exactly of the kind that should have been determined in the receivership case and there decreed against the plaintiff and her sureties in accordance with the last clause of section 177 of the Code of Civil Procedure; that clause is mandatory in its terms and leaves no alternative. It follows that the court did not err in holding that the cause of action stated in the complaint is barred.

The plaintiffs were ousted from their possession of the leased property and probably suffered not only inconveniences but also losses; and if they were without fault and the contract of lease is valid, they would, as has already been intimated, have a cause of action upon the implied warranties of the lease. Under ordinary circumstances, we might therefore have been justified in remanding the case to the court below for an amendment of the complaint and for new trial. But it is to be observed that the plaintiffs never applied for leave to amend and that the validity of the lease may possibly be open to question.

The estate of Jose de Leon held a seven-tenths interest in the property and while the lease was signed by the administrator in representation of the estate, it does not appear that he was legally authorized to encumber the property with a lease for a term greatly in excess of the time allowed by law for the settlement of the estate. It may also be noted that the interests of Espiridion Guanco were not represented in the execution of the lease and that the other partners, Francisco Villanueva and the heirs of Benito Lopez, owned together only a one-fifth interest in the property.

The judgment appealed from is in accordance with the law and is hereby affirmed with the costs against the plaintiffs. So ordered.

Johnson, Street, Malcolm, Johns, and Romualdez, JJ., concur.

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