

RECAREDO F. PANDO, PLAINTIFF AND APPELLEE, VS. ANTONIO GIMENEZ ET AL., DEFENDANTS. ANTONIO GIMENEZ, APPELLANT.

G. R. No. 31816. February 15, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } This action was instituted for the purpose of foreclosing a mortgage executed by defendant Antonio Gimenez. Massy Teague was also impleaded for having purchased at public auction one of the mortgaged properties.

The answer of the defendant Teague set up a general denial and a special defense, which are not involved in this appeal.

Defendant Antonio Gimenez also filed a general denial, and raised four special defense, in his answer, to wit:

"As a first special defense said defendant alleges:

"1. That on the 27th day of October, 1924, said defendant Gimenez was indebted to the plaintiff in the sum of P8,000, and to secure the payment of the said amount duly made, executed and delivered a real estate mortgage in favor of the said plaintiff over the properties and leasehold rights mentioned in paragraph VIII of the plaintiff's complaint, and which contract of mortgage is evidenced by the document, Exhibit A attached to the complaint.

"2. That owing to the fact that said defendant was leaving the City of Manila in order to attend to his business in the Province of Cagayan, and at the special instance and request of the herein plaintiff, said defendant gave to the plaintiff the full control, and complete and absolute administration of the building and the parcel of land on which said building was erected, situated in Santa Mesa, District of Santa Mesa, mortgaged to the plaintiff, under the condition that said plaintiff would attend to the administration, care and preservation of the said building and the property leased from the Hacienda Tuason on which said building was erected, the payment of the premium on the insurance of this building, the payment of the taxes might become due on the said building, the payment to the lessor Hacienda Tuason of the rents of the leased property, and to collect the rents from the tenants of the said building.

"3. That the rents that would be collected from the said building, the plaintiff would apply the same to the payment of all the expenses necessary for the preservation and maintenance of the said building, the rents of the leased property, and the balance to be applied in payment on account of the interest that may become due in favor of the plaintiff under the mortgage.

"4. That in accordance with this agreement, the defendant gave, and the plaintiff took absolute control and possession and entered in the full administration of the said building and land since October 27, 1924, and up

to the present time.

"5. That in the course of the administration by the plaintiff of the said building and land leased from the Hacienda Tuason, said plaintiff failed and neglected to pay to the government of the City of Manila taxes due for several years on the said building and has also failed and neglected to pay to the lessor Hacienda Tuason the rents due for several years on the land leased and on which said building was erected.

"6. That by reason of this failure, neglect and abandonment by the plaintiff to pay the taxes due on the said building, the City of Manila, on November 23, 1926, sold at public auction the said building to satisfy the taxes then due on the same, which building was sold for the sum "of P244.50, and was bought by the other defendant Massy Teague, and since that time the said building was lost to the defendant Gimenez.

"7 That by reason of the failure, neglect and abandonment of the plaintiff to pay the Hacienda Tuason the rents due for several years on the leased property on which the building in question is erected, the said lessor cancelled the contract of lease of the defendant Gimenez, and has brought a suit against the said defendant Gimenez for desahucio in the municipal court of the City of Manila.

"As a second special defense, alleges that the building which was sold to the defendant Massy Teague is worth P11,000, and the leasehold right of the defendant which was cancelled by the Hacienda Tuason as above stated is worth P3,000.

'As a third special defense, alleges that by reason of the negligence, failure and abandonment of the plaintiff to properly administer the building and land in question and to pay the taxes due to the government and the rents due the lessor Hacienda Tuason, and as a result of which the defendant Gimenez has been deprived of the building, and his leasehold right was cancelled, said defendant has suffered irreparable damages in the sum of P14,000.

"And as a fourth special defense and by way of counter- claim and set-off against the claim of the said plaintiff, the defendant Gimenez alleges that he reproduces herein the first three special defenses heretofore mentioned, and that by reason of the negligent acts committed by the plaintiff in the administration of the said building and land which caused irreparable damage and prejudice to the defendant Gimenez, said defendant has suffered damages in the sum of P14,000.

"Wherefore, the defendant Gimenez by the undersigned attorneys, respectfully prays the court to render judgment in his favor and against the plaintiff, condemning the latter to pay the former the sum of fourteen thousand pesos P14,000), as damages suffered by the defendant Gimenez; and that should this court find that the said defendant Gimenez is liable to pay to plaintiff any sum of money under the mortgage, that this amount of P14,000 be set-off against the amount that might rightfully be found by the court to be due and owing by the defendant Gimenez to plaintiff, and that should there be a difference in favor of the defendant Gimenez, that the plaintiff be condemned to pay to the said defendant Gimenez the amount of such difference and for the costs of this action; and also asks for such other and further relief as may be proper and equitable under the premises." (Pages 23, 24, 25, 26 and 27, Bill of Exceptions.)

After trial, the Court of First Instance of Manila rendered a decision, dismissing the counterclaim presented by the defendant Antonio Gimenez, the dispositive part of which reads as follows:

"For the foregoing considerations, the court renders judgment, ordering Antonio Gimenez to pay Recaredo Pando eight thousand pesos (P8,000), Philippine currency, with annual interest at twelve per centum from June 1, 1928, until fully paid; two thousand three hundred and forty-four pesos and sixty centavos (P2,344.60) as accrued interest with legal interest thereon from the date of the complaint, May 19, 1928, until fully paid; and eight hundred pesos (P800) as the stipulated attorney's fees, and the costs; all of said sums to be paid within three months from the date hereof.

"Defendant Massy Teague is hereby authorized to pay to the plaintiff the amounts set forth in the preceding paragraph, if he so desires, in order to obtain the cancellation of the plaintiff's mortgage, and to acquire the properties of defendant Gimenez free of all liens and encumbrances, within the same three-month period from the date hereof.

"In case neither of the defendants pay to the plaintiff the foregoing amounts within the period named, the mortgaged properties shall be sold at public auction in accordance with the law, and from the proceeds of the sale, the aggregate sum of the aforementioned amounts shall be paid to the plaintiff, and the balance, if any, delivered to defendant Massy Teague, the present owner of the mortgaged property." (Pages 40 and 41, Bill of Exceptions.)

Antonio Gimenez, defendant, appealed from this decision and now makes the following assignments of error:

"I. The lower court erred in not finding that, after the execution of the contract of mortgage, Exhibit A, and just before the time said mortgage matured, the appellee and the appellant entered into an agreement by virtue of which;

"(a) The appellee assumed and took over the general administration (administracion directa) of the house No. 655 Santa Mesa, Manila, with the right to collect the rents of the said house;

" (b) But with the duty and obligation, that said appellee should pay the taxes owing or accruing on the said house to the City of Manila;

"(c) Should pay the rentals owing or accruing on the land occupied by said house to the owners of said land the 'Hacienda de Santa Mesa y Diliman', in accordance with the terms of the contract of lease; and

"(d) Should pay all other expenses necessary for the proper preservation and maintenance of said house, such as repairs and so forth, including the premium of the policy of insurance thereon and that the balance of said rents should be applied by him toward the liquidation of interest accruing under the mortgage.

"II. The lower court erred in not finding that the appellee violated his duty by neglecting and failing to pay the taxes on the house No. 655 Santa Mesa, to the Government of the City of Manila, which became due during the years 1925 and 1926, while said house was under his general administration, and that by reason of that failure to pay said taxes, said house was sold by public auction by the City of Manila to satisfy said taxes, and finally adjudicated to the defendant Massy Teague, the immediate consequence thereof being the loss to the appellant of all his rights, legal and equitable in the said house. "III. The lower court erred in not finding that the appellant had suffered damages for the loss of his said house No. 655 Santa Mesa, and that the appellee should be responsible to the appellant for all damages suffered by him.

"IV. The lower court erred in not finding that the appellee violated his duty by neglecting and failing to pay the rentals for the land occupied by said house No. 655 Santa Mesa, to the owners thereof, which rentals became due during the years 1925, 1926, 1927 and 1928, while the said land and house were under his general administration, and that by reason of that failure to pay said rentals, the owners of the land cancelled the contract of lease of the appellant, the immediate consequence thereof being that the appellant lost all his rights, use and enjoyment of said land for the remaining unexpired period of 26 years.

"V. The lower court erred in not finding that the appellant had suffered damages for the loss of his leasehold right, the improvements on the land and the use and enjoyment of said land for the remaining unexpired period of 26 years, and that the appellee should be responsible to the appellant for all damages suffered by him.

"VI. The lower court erred in not rendering judgment in favor of the appellant and against the appellee on the counterclaim for the damages suffered by the appellant for the total amount proven.

"VII. The lower court erred in not granting the motion for new trial."

In order to secure the payment of P8,000 which the defendant Gimenez owed the plaintiff, he mortgaged the house at No. 655 Santa Mesa, Manila, and the leasehold right on the lot upon which it stands (Exhibit A). It was agreed between them that the plaintiff would collect the rents of said house, in order to apply them to the payment of interest on the amount of the indebtedness. This was payable on October 27, 1925, but, in spite of nonpayment, the creditor, who is the plaintiff herein, did not foreclose the mortgage.

For default in the payment of taxes for the years 1925 and 1926, the house was on November 23, 1926 sold at public auction, and, for failure to exercise the right of legal redemption, the City of Manila, the attachment creditor and vendor of the property, executed a final deed of sale in favor of the purchaser, the other defendant Massy Teague. Furthermore, for default in the payment of the rents due on the lot of said house for the years 1925 to 1928, the Santa Mesa estate, the lessor of said land, cancelled the lease on July 13, 1928, pursuant to the terms of the contract.

The appellant Gimenez contends that the plaintiff was responsible for the delinquency in the payment of both the tax on the house and the rent of the lot, which caused him the loss of the said house and the leasehold right on the lot, because the plaintiff was at that time in charge of tile administration of the premises with the obligation, to attend to the payment of the tax and the rents. The plaintiff denied that he had such obligation, alleging that his duties were confined to the collection of the rents of the house in order to apply them to the payment of the interest on the mortgage.

Such was in fact the original agreement; but the appellant asserts that it was modified by the letter Exhibit 1, quoted below:

" Manila, October 29,1925

"Mr. Antonio Gimenez

"A. Lama, San Juan del Monte

"Esteemed Don Antonio : Yesterday Mrs. Xaudaro came to pay me the rents for the months of July and August, and forty pesos on account of September, saying that she did not pay the balance of the rent for that month and the rent for the whole of October, because your wife had demanded the delivery of the difference, or P90. I am surprised at such a procedure, since you yourself authorized me one year ago to collect the rent from Mr. Xaudaro and I have done so up to date.

"Mrs. Xaudaro has also informed me that, upon your demand, they would leave the chalet next month and it appears that this, too, was done using me as a shield, which is another surprise to me.

"I believe, Mr. Gimenez, that the best thing would be for you to turn over the chalet to me, since the period has expired, so that I may take direct charge of the administration of the premises.

"Yours very truly,

(Sgd.) "R. PANDO"

(Page 63, record.)

The appellant testified further, that when he turned over the administration of the property to the plaintiff, it was agreed that the plaintiff "would keep the property in good condition of repair, pay the insurance and other expenses inherent in the preservation of the building, such as land taxes," and "would pay the rents of the land upon which the property is situated** (transcript of the stenographic notes, page 6). These points have not been contradicted by the plaintiff.

Taking into account the language of the letter Exhibit 1 and the appellant's unimpeached testimony, we are constrained to hold that it has been proved by a preponderance of evidence, that even though at first the plaintiff had only undertaken to collect the rents of the house, later on, towards the end of October, 1925, he assumed the obligation to pay both the tax on the house, and the rent of the lot.

As to the consideration contained in the judgment appealed from to the effect that, in view of the reduction of the rent of the house in May, 1926, the plaintiff would not have accepted the administration under the conditions alleged by the defendant-appellant, it must be remembered, that the plaintiff took over such complete administration months before such reduction of rents, and it does not appear that the reduction was foreseen.

From all these circumstances it follows that the administration of the property in question assumed by the plaintiff toward the end of October, 1925 is antichretic in character, and therefore justice and equity demand that application be here made of the Civil Code provisions touching the obligations of the antichretic creditor, to wit:

"The creditor is obliged to pay the taxes and charges which burden the estate, in the absence of an agreement to the contrary.

"He shall also be obliged to pay any expenses necessary for its preservation and repair.

"Any sums he may expend for such purposes shall be chargeable against the fruits." (Art. 1882, Civil Code.)

These obligations arise from the very nature of the covenant, and are correlated with the plaintiff's acquired right to take charge of the property and collect the fruits for himself. Hence, the illustrious Manresa, explains the basis of this article 1882 in the following terms:

"The right which the creditor acquires by virtue of anti-chresis, to enjoy the fruits of the property delivered to him, carries two obligations which are a necessary consequence of the contract, because they arise from its very nature."

And the plaintiff having failed in his obligation to pay the tax on the house and the rent of the lot, he is by law required to pay indemnity for damages (article 1101, Civil Code).

Considering the evidence of record as to the value and condition of the house and the improvements made by the appellant upon said lot, as well as the other circumstances of the case the total amount of the damages sustained by said appellant must be fixed at P5,000.

Wherefore, the judgment appealed from is modified, and it is held that the appellant, Antonio Jimenez, is entitled to recover from the plaintiff the sum of P5,000 and it is so ordered; and the judgment appealed from is hereby affirmed in all respects consistent with the present decision, without express pronouncement of costs.

Johnson, Street, Malcolm and Ostrand, JJ., concur.

Villamor, Johns and Villa-Real, JJ., dissent.

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