

ANGELA MONTENEGRO, PLAINTIFF AND APPELLEE, VS. CONSUELO ROXAS DE GOMEZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 38085. November 13, 1933*

Ponente: IMPERIAL, J.

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The plaintiff herein brought this action against the defendants to rescind a contract of lease entered into by them, to have both parties render an accounting of the monies each party might have collected, received and spent in connection with the contract of lease in question, mutually reimbursing what is due to each other, and to obtain an indemnity for damages amounting to P10,000 from the aforesaid defendants.

The defendants herein appealed from the judgment rendered by the Court of First Instance of Manila declaring the contract in question rescinded, and ordering the plaintiff herein to render an accounting of all the rentals she might have collected from the tenants and of all the expenses incurred by her in the upkeep of the building, fifteen days after the date the judgment became final, with the costs against the aforesaid defendants.

The defendant Consuelo Roxas de Gomez was and is the present owner of the property known as the "Paris Building" situated at Nos. 26 to 36 Escolta, Manila. It was leased by B. A. Green but his contract of lease expired on May 31, 1930. On June 5th of the same year, the plaintiff and the defendant, represented by her attorney in fact Manuel Martinez Llanos, executed the deed, Exhibit B whereby the defendant leased the building in question to the plaintiff for the period of three (3) years from June 1, 1930, at a monthly rental of P4,000, payable at the end of every calendar month. At that time the building was being occupied by various tenants among whom were B. A. Green, G. C. Sellner and Sta. Ana Subdivision of the Manila Improvement Co., Inc., of which said B. A. Green was the president, who, for a long time had leased and occupied the rooms of the upper floor facing the Escolta, and a small room between the lavatory and the main stairway. The defendant's attorney in fact should have delivered the possession of the whole building to the plaintiff herein on June 5th, the date of the execution of the contract, but due to certain oppositions on the part of various tenants, the greater portion of the building was not delivered to the said lessee until the 20th of the said month. On this last date, however, the whole building was not delivered to the plaintiff herein because B. A. Green, G. C. Sellner and Manila Improvement Co., Inc., stubbornly opposed the delivery of the rooms they were then occupying. The lessee informed the defendant's attorney in fact of this difficulty, who, addressed communications to B. A. Green requiring him to deliver the rooms which, he, Sellner and Manila Improvement Co., Inc., were detaining. Green remained firm in his opposition thereto on the ground that he was the former lessee and that he had applied by letter for a renewal of his contract of lease, which was denied him. Considering Green's attitude as a disturbing factor, the plaintiff herein instituted ejectment proceedings against him in the municipal court of the City of Manila. She likewise instituted similar actions against ether tenants thereof. Notwithstanding all these difficulties, the plaintiff herein, desiring perhaps not to violate the terms of her contract of lease, continued paying the monthly rental of P4,000 corresponding to the months of June, 1930, to October, 1931, inclusive, to the defendant's attorney in fact. Not until the complaint against the defendants herein was filed did she fail to pay the rent corresponding to the months of November and

December, 1931, amounting to P8,000. The defendant herein, or rather her attorney in fact, also instituted judicial proceedings against the plaintiff herein for the purpose of ejecting her from the building in question and recovering the rents due and unpaid.

The trial court rendered judgment in favor of the plaintiff based on the ground that inasmuch as the whole building was not delivered to her, the contract should be rescinded.

In their brief, the appellants assign the following alleged errors, to wit:

"I. The trial court erred in not giving the public instrument of lease, Exhibit B, conclusive probatory value evidencing delivery of the property in question from the date of the execution thereof.

"II. The trial court erred in holding that the lessors did not deliver the possession of the property, which is the subject matter of the lease, to the lessee.

"III. The trial court erred in holding that the plaintiff is not estopped from asking the rescission of her contract of lease with the defendants.

"IV. The trial court erred in declaring the contract of lease, Exhibit B, rescinded.

"V. The trial court erred in denying the defendants' motion for a new trial and in not dismissing the instant complaint, with the costs against the plaintiff."

We are of the opinion that the resolution of the present case depends particularly upon whether or not the whole building under lease was delivered to the lessee in order that she might have the full enjoyment thereof to which she was entitled. The records show that the greater portion of the building in question was delivered to and received by the lessee not later than June 20, 1930, but that the rooms or offices occupied by B. A. Green, G. C. Sellner and Manila Improvement Co., Inc., have never been placed in the possession of the said lessee. If this is true, it is evident that the plaintiff herein has the right to the remedy of rescission prayed for in her complaint in accordance with the express provisions of article 1556 of the Civil Code which grants to the lessee, among other things, the right to rescind the contract of lease when he is not placed in the material possession of the property which is the subject matter of the lease. The appellants, however, contend that the execution of the contract is equivalent to delivery of the possession thereof. This would be true if the records did not show that in reality the lessee did not obtain the material possession of the whole building. It should be noted that the Civil Code does not provide that the execution of the deed is a conclusive presumption of the delivery of possession, but confines itself to providing that the execution thereof shall be equivalent to delivery, which means that the disputable presumption established therein can be rebutted by means of clear and convincing evidence, as in the case under consideration.

The other point raised by the assignments of error is that referring to the alleged estoppel attributed to the lessee herein. It is contended that she cannot consistently question the fact of the consummation of the contract of lease nor ask for the rescission thereof on the ground that, even granting that she had not been placed in the material possession of the whole building in question, she had been paying the stipulated rent until November 1, 1931. Without indulging in a lengthy discussion of the merits of such contention, we are of the opinion that such acts do not constitute the defense invoked. A preponderance of the evidence shows that if the lessee continued paying the rent as she in fact did, it was only for the sole purpose of not violating any of the terms of the contract affecting her. However, her acts cannot, in justice, be construed as a waiver of her right to ask for the rescission of the contract on the grounds hereinbefore stated.

Wherefore, all the important questions raised in the present appeal are deemed definitely settled, and finding that the judgment appealed from is in accordance with the law and the findings of the court, it is hereby affirmed, with

the costs against the appellants. So ordered.

Malcolm, Villa-Real, Abad Santos, and Hull, JJ., concur.

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