

JOSE CARDELL, PLAINTIFF AND APPELLEE, VS. RAMON MASERU ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4102. October 26, 1909*

Ponente: JOHNSON, J.

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On the 25th day of June, 1906, the plaintiff commenced an action entitled "Jose Cardell, plaintiff, vs. Ramon Mañeru et al." in the Court of First Instance of the city of Manila, which action was based upon the failure on the part of the defendants to comply with a certain contract of rent for the use and occupation of a certain house for a period of three years, which contract of rent began to run from the 1st day of September, 1901. The plaintiff alleged that the said contract was entered into between the plaintiff and the said Ramon Mañeru, as the legal representative of una sociedad colectiva bajo la razon social de "Ayesa y Compañia," propietaria de la fbrica de tabacos denominada "El Aguila Real."

A reading of the said contract of rent (Exhibit B) shows that the same was executed by the said Ramon Mañeru, as the legal representative of said sociedad, in favor of the plaintiff. By the terms of the contract, the real defendant (Ayesa y Compañia) obligated itself to pay to the plaintiff as rent for the use of said house, the sum of P500 per month, payable in advance within the first five days of each month, and also the taxes upon the said rented property, as well as the water and the electricity used in said property. The defendant was also obligated by the terms of said contract to conserve the rented property in good condition during the period of the contract. The plaintiff alleged that the defendant (Ayesa y Compañia) occupied the property in question until the 31st day of January, 1906, when it moved out of the property and left the same unoccupied, and thereafter failed to pay the rent under the terms of the contract, as well as the taxes and the water.

The defendants, Alejandro and Eusebio Sanchez and Isidro Bilbao, were served with a copy of the complaint and were required to answer the same, which they did on the 21st of August, 1906. Later the attorneys for these said defendants made a motion for permission to withdraw the defense which they had interposed against the complaint, which motion, upon due hearing, was granted by the lower court on the 6th day of October, 1906.

On the 10th day of September, 1906, Ramon Mañeru duly filed his answer to the said complaint, presenting a general and a specific denial.

On the 21st day of August, 1906, the defendant, Luis Beliso, presented his answer to the complaint, admitting some of the facts alleged by the plaintiff, but denying that La Sociedad de Ayesa y Compañia was the owner of the fabrica de tabacos denominada "El Aguila Real." and for a special defense alleged the following facts:

"(a) That the partnership Ayesa and Company was dissolved on or about the 26th of July, 1904, and the partnership Maneru y Beliso then and there established for the purpose of operating the cigar factory 'El Aguila Real.'

"(b) That subsequently, that is to say, on or about the 31st day of January, 1905, the said partnership Mañeru y Beliso was reorganized and converted by Ramon Mañeru and the defendant herein, the only parties in interest

in the concern, into a joint stock company called 'El Aguila Real' which likewise engaged in operating the cigar factory of the same name.

"(c) That on or about the 1st day of January, 1906, the said defendant Luis Beliso sold his interest or share in the aforesaid cigar factory 'El Aguila Real' to Isidoro Bilbao and Eusebio Sanchez, who are also made defendants in this case, and who took over the rights and obligations that belonged or might pertain to the respondent in the said company.

"(d) That the plaintiff knows and is fully informed of the fact that the partnership Ayesa and Company had ceased to exist, having latterly and finally been converted into a joint stock company called 'El Aguila Real.'

"(e) That the original rent of the building in question was, by mutual consent of the parties, reduced to the sum of four hundred (P400) pesos per month.

"(f) That the above-mentioned building is yielding at the present time more than it did when occupied by the said cigar factory.

"In view of all the foregoing the defendant prays the court to enter judgment in his favor, absolving him of the complaint with the costs against the plaintiff. He likewise prays for any other just and equitable remedy in the premises."

On the 13th day of July, 1906, the defendant Benjamin Ayesa presented his answer in the words following:

"That he has no interest in the object of the complaint mentioned.

"By virtue thereof he prays the court to order that he be excluded therefrom as a defendant."

After hearing the evidence adduced during the trial, the lower court rendered a judgment against the defendant, Ramon Mañeru, Benjamin Ayesa and Luis Beliso, and each of them, for the sum of P1,371.71, with interest thereon at the rate of 6 per cent per annum since the 30th day of June, 1906, and for the costs of this action.

From this judgment of the lower court the defendant, Luis Beliso, appealed to this court and made the following assignments of error:

"(1) The court below erred in holding that Ayesa and Company occupied the house, subject to the lease, until the 31st of January, 1906.

"(2) The court below erred in holding that the rental for the month of January had not been paid.

"(3) The court below erred in holding that there was not sufficient evidence to infer that the persons who form the joint stock company 'El Aguila Real' were bound to the plaintiff by virtue of the said lease contract.

"(4) The court below erred when inferring that Luis Beliso was still bound to the plaintiff for the supposed violation of the said lease contract."

In the first assignment of error above noted the appellant alleges that the court committed an error in holding that the defendant, Ayesa y Compañia, occupied the house in question until the 31st day of January, 1906. The appellant, Luis Beliso, evidently bases this assignment of error upon the ground that Ayesa y Compañia was dissolved on the 2d day of November, 1904, and thereafter ceased to exist. The facts seem to be as follows:

(1) On or about the 26th day of June, 1904, Benjamin Ayesa, Luis Beliso, and Ramon Mañeru organized una sociedad mercantil regular colectiva bajo la razon social de "Ayesa y Compañia" for the manufacture and sale of tobacco and cigars (Exhibit A), por medio de la fabrica titulada "El Aguila Real" Each of the members of this company contributed to the capital stock the sum of P5,000.

(2) On the 10th day of August, 1904, Ramon Mañeru, as the representative of said company, entered into a contract (Exhibit B) for and on behalf of said company, for the rent of a certain house situated at No. 4 Calle de Gunao in the district of Quiapo, city of Manila, for the purpose of carrying on the business for which the company was organized.

(3) On the 2d day of November, 1904, by mutual agreement of the partners, La Sociedad de Ayesa y Compañia was dissolved (Exhibit D) (13).

(4) On the 2d day of November, 1904, Luis Beliso and Ramon Mañeru, having acquired la fabrica de tabacos y cigarrillos titulada "El Aguila Real," organized una sociedad mercantil bajo la razon social de "Mañeru y Beliso" (Exhibit D) (14).

(5) On the 13th day of January, 1905, La Compañia de Mañeru y Beliso was mutually dissolved by agreement of its members (Exhibit D) (20).

(6) On the 13th day of January, 1905, Ramon Mañeru and Luis Beliso organized una sociedad mercantil anonima bajo la denominacion "El Aguila Real" (Exhibit D) (12).

(7) La Sociedad de Mañeru y Beliso established its business at No. 4 Calle de Gunao in the district of Quiapo, city of Manila. (See paragraph No. 1, Exhibit D) (14).

(8) La Sociedad Anonima "El Aguila Real" was established at No. 4 Calle de Gunao, in the district of Quiapo, city of Manila. (See paragraph No. 4, Exhibit D) (12).

By reference to paragraphs 7 and 8 above, it will be seen that La Sociedad de Mañeru y Beliso and La Sociedad Anonima "El Aguila Real" continued to occupy the house which was rented by La Sociedad de Ayesa y Compañia, situated at No. 4 Calle de Gunao. There is nothing in the record which shows by what authority or under what terms the last two-named societies continued to occupy the said house, which the defendant herein, Ayesa y Compañia, had rented from the plaintiff. There is nothing in the record which shows or tends to show that upon the dissolution of La Sociedad de Ayesa y Compañia, any notice whatever was given to the plaintiff. There is nothing in the record which shows or tends to show that the plaintiff herein had ever been released from the terms of the said contract of rent.

The mere dissolution of La Sociedad de Ayesa y Compañia by the mutual consent of its members, would not release said company from its contractual obligations entered into before such dissolution, at least until after due notice of such dissolution had been recorded in the mercantile registry. (Art. 226, Commercial Code.)

There is nothing in the record which shows that the dissolution of Ayesa y Compañia had ever been recorded in the commercial registry; neither is there anything in the record which shows that said company had been released from its liability, under the contract of rent, upon which the present action is based, prior to the 31st day of January, 1906, the time when the said house was vacated.

The evident theory of the appellant is that because of the fact that Ayesa y Compañia was dissolved in November, 1904, and that the other two societies continued to occupy the house in question thereafter up to the 31st day of January, 1906, that Ayesa y Compañia was dissolved from all liability for the payment of the rent. This theory is not tenable, in the absence of proof that the plaintiff had accepted another tenant in lieu of the said company, or had expressly released said company from its liability. There is no proof that the plaintiff had done either. On conclusion is, therefore, that Ayesa y Compañia continued to be responsible for the payment of the rent under the terms of this contract (Exhibit B) for the full term of said contract, or until the time when it was expressly released from liability by the plaintiff.

The house was vacated on the 31st day of January, 1906. Due notice of such, disoccupation was given to the plaintiff thirty days prior thereto. The plaintiff made no objection to the disoccupation, and soon thereafter rented a portion if not all of said property to other persons. If the plaintiff desired to insist upon the fulfillment of his contract with Ayesa y Compañia, he should have insisted upon its fulfillment at the time of the disoccupation, and should not have given his consent to the disoccupation of the property in question. The voluntary consent of the plaintiff to the disoccupation of the property, without insisting upon a compliance with the terms of the contract of rent was equivalent to giving his consent to the termination of the contract of rent and to a relinquishment of any further rights which he had under said contract.

Our conclusion then upon the first assignment of error above noted is that La Sociedad de Ayesa y Compañia was responsible for the payment of the rent of the house in question up to and including the 31st day of January, 1906.

From the record it appears that by reason of certain representations made by Ayesa y Compañia to the plaintiff, the plaintiff agreed to reduce the price of the rent from P500 to P400 per month until the business of the said company should be improved. This reduction was made for the months of September, October, November, and December, 1905. There is nothing in the record which shows that the business conditions of the company ever improved. The conditions upon which the reduction was made, therefore, and upon which the defendant promised to pay the full amount of rent are not shown to have existed. The plaintiff, therefore, can not, under the conditions of the record, insist upon the payment of the difference between the regular amount of rent stipulated in the contract and that which was actually received by him.

The appellant insists that the court committed an error in deciding that the rent for the month of January, 1906, had not been paid. With reference to this assignment of error, we are of the opinion and so hold that the defendant had paid the rent for the month of January, 1906. (See testimony of Felix Fanlo and the stub of receipt No. 20 of Exhibit!) (16).

Under the third assignment of error, the appellant undertakes to show that La Sociedad Anonima "El Aguila Real" was responsible for the payment of the rent under said contract of rent (Exhibit B) and asserts that by reason of the fact that the plaintiff had received the rent from said sociedad anonima for several months, that he had thereby accepted said sociedad as his tenant, and had there by released the defendant herein from any further responsibility under the said contract of rent. The evidence shows that the rent was collected by the agent of the plaintiff. The record does not show that the plaintiff's attention had ever been called to the fact that the property in question was occupied by anyone other than the defendant herein. The defendant, Ayesa y Compañia, so far as the record discloses, never attempted to be released from the terms of its original contract up to and including the 31st day of January, 1906, and the mere dissolution of said company, as was said above, could not have the effect of absolving it from its contractual obligations. There is nothing in the record which justifies a finding that La Sociedad Anonima "El Aguila Real" had assumed the obligations of said contract of rent or had in way been substituted as a tenant of said house, by or with the consent of the plaintiff, for Ayesa y Compañia.

The appellant insists in his fourth assignment of error that the lower court committed an error in rendering a judgment against him for the supposed violation of said contract of rent. The appellant, Luis Beliso, was a member of La Sociedad de Ayesa y Compañia. This fact is not disputed. He is, therefore, responsible for the payment of the obligations of said company arising under the said contract of rent. (See art. 127, Code of Commerce; decision of the supreme court of Spain of the 17th of December, 1873; and the decision of the supreme court of Spain of January 8, 1881.)

Our conclusions, therefore, upon all of the facts of the record and the assignments of error presented by the appellant are as follows:

First. That Ayesa y Compañia was responsible for the payment of-

- (a) The rent of the house in question, the taxes and the water, under the terms of the contract of rent up to and including the 31st day of January, 1906;
- (b) That the rent was paid up to and including the 31st day of January, 1906;
- (c) That the taxes and water had not been paid for the month of January, 1906;
- (d) That the taxes for the month of January, 1906, amounted to P62.32;
- (e) That the tax for the water used in said house for the month of January, 1906, amounted to P19.04.

Under this conclusion, therefore, the defendant is liable to pay to the plaintiff the sum of P81.36. It is, therefore, hereby ordered that the judgment of the lower court be modified in accordance with the above finding of facts and without any special finding as to costs, it is so ordered.

Arellano, C. J., Torres, Mapa, Carson, and Moreland, JJ., concur.

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