

VIUDA E HIJOS DE PIO BARRETTO Y CFA., INC., PLAINTIFF AND APPELLEE, VS. ALBO & SEVILLA, INC., VICENTE ALBO, EUGENIO SEVILLA AND ANGEL GARCHITORENA, DEFENDANTS AND APPELLANTS.

G.R. No. 41768. December 17, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiff brought suit to require the defendants to pay a certain rent stipulated in a contract of lease. The defendants appealed from the judgment ordering them to pay, jointly and severally, the plaintiff the sum of P11,400 as unpaid rents from April 1, 1932 to October 31, 1933, inclusive, the sum of P600 a month from November 1, 1933 until the termination of the contract of lease, plus P1,000 as penalty and attorney's fees, and the costs.

The pertinent facts requisite to resolve the appeal are condensed in the following stipulation of the parties:

"1. That the plaintiff is a corporation duly organized and existing under the laws of the Philippine Islands, with its main office at No. 720, Echague Street, Manila;

"2. That the defendant Albo & Sevilla, Inc., is likewise a corporation organized and existing under the laws of the Philippine Islands, with its office at No. 670, Dasmarinas Street, City of Manila; and the other defendants, Vicente Albo, Eugenio Sevilla and Angel de Garchitorena, are all of age with legal capacity to be parties in this suit;

"3. That on July 15, 1930, the plaintiff and the defendants entered into a contract of lease, the original of which is attached hereto and made an integral part of this stipulation as Exhibit A;

"4. That by force of said contract of lease the defendants occupied the 'Cine Collegian' and regularly paid the rents therefor until February 28, 1931;

"5. That thereafter the rents for said cinema have been paid by Angel Garchitorena either by check of Benigno del Rio or in cash;

"6. That the receipts for rents paid from March, 1931, were issued in the name of Albo & Sevilla, Inc., without prejudice to the right of the defendants Albo & Sevilla, Inc., Eugenio Sevilla, and Vicente Albo to adduce evidence that the said issuance has not come to their knowledge from March 1, 1931;

"7. That on January 19, 1931, the defendants Eugenio Sevilla, Vicente Albo and Angel Garchitorena executed a chattel mortgage of the fixtures and chattels of the 'Cine Collegian' in favor of Vda. e Hijos de Pio Barretto & Co., Inc., which was presented for registration on February 6, 1931, but said document was not registered; and that said mortgage was executed under the stipulation in subsection (h) of the second paragraph of the contract of lease, Exhibit A. The original of said deed is attached hereto and made an integral part of this stipulation marked as Exhibit B;

"8. That by a deed of February 28, 1931, Vicente Albo and" Eugenio Sevilla, in their own behalf: and in that of the corporation Albo & Sevilla, Inc., sold their right, interest, and participation, including the Rights of lease! of the 'Cine Collegian', to Angel Garchitorena and Benigno del of which is attached to this stipulation and made a part thereof as Exhibit I, reserving plaintiff's right to establish that it neither has knowledge of, nor consented to, said sale;

"9. That on August 15, 1931, Angel Garchitorena and Benigno del Rio executed in favor of Viuda e Hijos de Pio Barretto & Co., Inc., another chattel mortgage of the same fixtures and chattels of the 'Cine Collegian' described therein, which deed is duly registered in the office of the register of deeds of the City of Manila pursuant to Act No. 1508, copy of which, duly certified by said registry office, is attached to this stipulation as Exhibit C;

"10. That the defendants have been required by the attorneys for the plaintiff to pay the rents, as evidenced by the letters of February 6, 1933, and March 1, of the same year, copies of which are attached hereto as Exhibits P and D-I, respectively; and the defendants have orally alleged that they are no longer connected with the 'Cine Collegian' in virtue of the aforesaid sale to Benigno del Rio and Angel Garchitorena."

In the chattel mortgage deed of August 15, 1931, mentioned in paragraph 9 of the stipulation of facts, are found the following important clauses:

"First: That we are the owners in fee simple, free from all lien, incumbrance, and charge, undivided and share and share alike, of the following property found in the building known as 'Cine Collegian', belonging to the corporation Viuda e Hijos de Pio Barretto & Co., Inc., situated on the corner of Mercedes and Trinidad Ayala Streets, Ermita, Manila;

* * * * *

"Third: That to secure the payment of the monthly rental of Six hundred pesos (1*600), Philippine currency, for the occupancy of the 'Cine Collegian', payable within the first five (5) days of every month, in advance, until December 31, 1936, as well as the faithful compliance with the terms of the existing contract on said 'Cine Collegian', we, the undersigned, do constitute a first, special, and voluntary mortgage upon the property described in the first paragraph hereof, and upon all our right, interest, action, or participation in the properties described in the second paragraph hereof, in favor of the corporation Viuda e Hijos de Pio Barretto & Co., Inc., its heirs and assigns. * * *

"We, Angel de Garchitorena and Benigno del Rio, mortgagors, and Jose G. Barretto, manager of the corporation Viuda e Hijos de Pio Barretto & Co., Inc., mortgagee, do swear individually that the foregoing mortgage has been constituted to secure the obligation therein specified, that the said obligation is just and valid, and that the said mortgage has not been fraudulently constituted?"

Under the facts, the only question presents which we must resolve is whether the contract of lease was novated by the substitution of lessees, and, if so, whether the substitution was consented to by the plaintiff lessor.

Articles 1203 and 1205 of the Civil Code provide:

"Art. 1203. Obligations may be modified:

"1. By the change of their object or principal conditions;

"2. By substituting another in place of the debtor;

"3. By subrogating a third person to the rights of the creditor."

"Art. 1205. Novation which consists in the substitution of a new debtor in the place of the original one may be made without the knowledge of the latter, but not without the consent of the creditor"

Responsive to the said provisions, the substitution of the debtor in an obligation with the creditor's consent, produces novation by bringing into being a new obligation in place of the old. Applied to the case under

consideration, the result is, that if the plaintiff consented to the substitution of Angel Garchitorena and Benigno del Rio in lieu of the original lessees, it has exhausted all its right of action against the latter and can only enforce the same against the new lessees. Our inquiry, therefore, will bear on the existence of such consent.

Exhibit 1 undoubtedly evidences that Vicente Albo and Eugenio Sevilla conveyed all their rights, interest and participation in the "Cine Collegian", whose business was styled Albo & Sevilla, Inc., in favor of Angel Garchitorena and Benigno del Rio, including all their rights, interest, and obligations under the contract of lease entered into on May 15, 1930. This appears in the aforesaid deed, and so also in paragraph 8 of the stipulated facts. True, the plaintiff had no hand in this document Exhibit 1, for which sole reason it may be alleged that it neither knew nor consented to the transaction. However, in the quoted clauses from the duly registered chattel mortgage Exhibit C, executed on August 15, 1931, by Angel Garchitorena and Benigno del Rio, wherein the plaintiff directly intervened and took part through the manager Jose G. Barretto, who signed in its name, appear statements of the contracting parties clearly and logically compelling the deduction that, under its terms, the plaintiff knew of the conveyance made by Vicente Albo and Eugenio Sevilla in favor of Angel Garchitorena and Benigno del Rio, and virtually approved of and consented to the substitution of the new lessees. It is first to be noted that the document states that Garchitorena and Del Rio mortgaged the same chattels which Albo, Sevilla, Garchitorena and Albo & Sevilla, Inc., had already previously mortgaged to the said plaintiff to secure the obligations which they assumed under the contract of lease. Paragraph 1 next states that Angel Garchitorena and Benigno del Rio became the owners of the same chattels. Paragraph 3 likewise states that the period of the contract of lease is extended to December 31, 1936, and that the security is for the faithful compliance with the other conditions stipulated in the original contract of lease. The concluding clause of the deed is a reiteration that the security takes in all the conditions and obligations arising from the contract of lease. In the face of such circumstances, we believe the only logical and reasonable deduction is that in view of the second mortgage, the plaintiff was apprized of and acquiesced in the change of lessees.

The plaintiff argues that Vicente Albo and Eugenio Sevilla undertook to be jointly and several sureties for the payment of rents under the third paragraph of the contract of lease which says: "The undersigned Messrs. Vicente Albo, Eugenio Sevilla and Angel Garchitorena, jointly and severally undertake with Albo & Sevilla, Inc., to comply with all the obligations of the lessees in this contract." We understand and so hold that by the terms, clear to be sure, of said clause, Albo and Sevilla did not execute a special and separate bond, but only intended to state that the obligations assumed by them with Garchitorena and the corporation Albo & Sevilla, Inc., relative to the conditions of the contract of lease, were joint and several in nature. It would be repugnant to the nature of the contract of guaranty and to the provisions of article 1822 of the Civil Code to construe that the intention of said alleged sureties was to become guarantors of their own obligations. Granting, however, that it were a bond, which seems to us absurd, their obligations as sureties were extinguished at the same time as their obligations as debtors or lessees, under the express provisions of article 1847 of the same Code.

After the promulgation of the decision rendered in this case, which is practically that above-quoted, the co-defendant Albo & Sevilla, Inc., filed a motion entitled "Motion to clarify the dispositive part of the judgment" praying that the judgment be modified by absolving it likewise from the complaint. In support of the petition the point is made that the corporation Albo & Sevilla, Inc., was likewise released from its obligation as lessee in view of our holding that there had been a novation by the substitution of lessees. And the whole argument rests on the stipulation in paragraph 8 of the agreed statement of facts that the corporation had likewise conveyed its interest, rights, and obligations in the contract of lease Exhibit A to Angel Garchitorena and Benigno del Rio. The contention, although it was not discussed at length in the original decision because it was not raised then in the briefs, is clearly untenable and without merit. It should be borne in mind that while such fact has really been stipulated, however, the said paragraph 8 has likewise stated that Exhibit 1, which is the deed of conveyance

furnishing one of the grounds of novation, forms an integral part of said stipulation, hence, its content cannot and should not be overlooked in ascertaining who transferred their obligations to the new lessees under the contract of lease. Viewing the fact stipulated in paragraph 8 in connection with the contents of Exhibit 1, and interpreting them together pursuant to the provisions of article 1285 of the Civil Code, it will plainly be seen that the corporation Albo & Sevilla, Inc., neither intervened in Exhibit 1 nor conveyed its rights and obligations in the lease, from which it follows that the plaintiff could not have consented expressly or impliedly to a non-existing contract. We said that there was a novation of the original contract of lease in view of certain statements appearing in the second chattel mortgage deed, Exhibit C, from which the plaintiff necessarily obtained knowledge of the existence of the deed of conveyance Exhibit 1, and in yielding assent to the second mortgage, the logical and inescapable deduction is that it consented impliedly to the substitution of lessees. If these were the grounds of the novation, and if the corporation Albo & Sevilla, Inc., neither took part nor intervened either in the deed of conveyance Exhibit 1 or in the second chattel mortgage Exhibit C, it is evident that the novation was not extended to it, nor can it successful]y allege that it was substituted by the new lessees. We, therefore, conclude that the petition is absolutely groundless and untenable.

In its reply to the motion of Albo & Sevilla, In the plaintiff likewise petitioned that we affirm the appealed judgment on the ground that, although Vicente Albo and Eugenio Sevilla were relieved from their obligations as lessees in view of the substitution, nevertheless they continue to be bound by all the consequences of the original contract of lease as sureties. In other words, the plaintiff reaffirms that under paragraph 3 of the deed of lease, said two defendants also acted as sureties of the other lessees. The language of paragraph 3 does not lend itself to such interpretation. Manifest is the parties' intention that Vicente Albo and Eugenio Sevilla did not bind themselves as sureties of the other co-lessees, their only intention being to make known that the obligations assumed by all the lessees were joint and several in nature. This same conclusion was already stated in the original decision when the same point was considered and discussed. We, therefore, hold that the plaintiff's petition is likewise groundless and untenable.

Wherefore, the appealed judgment is modified, absolving the defendants Vicente Albo and Eugenio Sevilla from the complaint, and the same is affirmed in all other respects, without special pronouncement as to the costs in this instance. So ordered.

Hull, Butte, and Diaz, JJ., concur.

CONCURRING AND DISSENTING

VILLA-REAL, J.,

I am in accord with the majority opinion in so far as it modifies the appealed judgment absolving the defendants Vicente Albo and Eugenio Sevilla from the complaint, and I dissent in so far as it affirms the rest of the aforesaid judgment ordering Albo & Sevilla, Inc., to pay, jointly and severally with Vicente Albo, Eugenio Sevilla and Angel Garchitorena, the plaintiff the sum of P11,400 as unpaid rents from April 1, 1932 to October 31, 1933, inclusive, the sum of P600 a month from November 1, 1933, until the termination of the contract of lease, plus P1,000 as penalty and attorney's fees, and the costs.

In paragraph 8 of the stipulation of facts, the following appears:

"8. That by a deed of February 28, 1931, Vicente Albo and Eugenio Sevilla, in their own behalf and in that of the corporation Albo & Sevilla, Inc., sold their right, interest, and participation, including the rights of lease of the 'Cine Collegian', to Angel Garchitorena and Benigno del Rio, copy of which is attached to this stipulation

and made a part thereof as Exhibit I, reserving plaintiff's right to establish that it neither has knowledge of, nor consented to, said sale."

While the deed of sale Exhibit 1 does not state that Vicente Albo and Eugenio Sevilla likewise sold the rights and interest of Albo & Sevilla, Inc., in the latter's behalf, nevertheless, in reciting¹ in said paragraph 8 of the stipulation of facts that the said deed of sale included the rights and interest of said corporation, the omission in the said deed of sale Exhibit 1 was remedied. If by virtue of said sale, to which implied consent was later given by the plaintiff-appellee Viuda e Hijos de Pio Barretto & Co., Inc., in conforming to the execution of the chattel mortgage Exhibit C, the defendants Vicente Albo and Eugenio Sevilla were released from their obligation as lessees of the "Cine Collegian", it follows that Albo & Sevilla, Inc., was likewise discharged under the said paragraph 8 of the stipulation of facts.

Moreover, and this is the most fundamental, the contract of lease having been novated, all the joint and several lessees, including Albo & Sevilla, Inc., were released from its effects under the provisions of article 1143 of the Civil Code, reading:

"Art. 1143. The novation, compensation, merger, or remission of the debt, made by any one of the solidary creditors, or with any of the solidary debtors, extinguishes the obligation, without prejudice to the provisions of article 1146.

"Any creditor by whom any of these acts may have been done, as well as he who may collect the debt, shall be liable to the others for their proportional share of the obligation."

The juridical relation existing between a joint and several creditor and the joint and several debtors is the same in its effect as that existing between a simple creditor and the joint and several debtors. If the novation made by a joint and several creditor with any of the debtors of the same class extinguishes the obligation, there is no juridical reason why the novation made by a simple creditor with some of the joint and several debtors should not produce the same effect of extinguishing the obligation. Under the same principle, the implied novation made by the lessor, the herein plaintiff-appellee Viuda e Hijos de Pio Barretto & Co., Inc., with two of the joint and several lessees, the herein defendants-appellants Vicente Albo and Eugenio Sevilla, of the contract of lease of the "Cine Collegian", extinguished the obligation with respect to the joint and several lessee Albo & Sevilla, Inc. (See decision of the Supreme Court of Spain of February 21, 1912.)

Article 1281 of the French Civil Code sanctions this result in providing that all the codebtors are discharged by the novation that had taken place between the creditor and one of the joint and several debtors.

Ruggiero, in his work entitled, *Institutes of Civil Law*, volume II, page 92, speaking of passive solidarity, or that which permits a creditor to whom several debtors have the same indebtedness to claim the total thereof from any of them, concludes as follows:

"If, therefore, the interruption of the prescription, the default, the novation, the remission of the debt, the oath, are acts affecting the debt in its objective unity, it follows: That * * * (3) the novation made between the creditor and one of the debtors releases the others, unless the creditor should have required the inclusion of the other codebtors, because the latter's refusal to adhere to the new agreement would keep alive the old indebtedness (article 1277, Italian Civil Code). * * *"

I am, therefore, of the opinion, that the corporation Albo & Sevilla, Inc., should also be absolved from the complaint.

Malcolm and Goddard, JJ.:

We concur in the opinion of Justice Villa-Real.

DISSENTING

AVANCEÑA, C.J.,

This is a suit brought to require compliance with an obligation arising from a contract of lease.

The contract was entered into on July 15, 1930, between the plaintiff, as lessor, and the four defendants Albo & Sevilla, Inc., Vicente Albo, Eugenio Sevilla and Angel Garchitorena, as lessees, who bound themselves jointly and severally to comply therewith. On January 19, 1931, three of the defendants, namely, Eugenio Sevilla, Vicente Albo and Angel Garchitorena, secured compliance with the contract by a mortgage of certain chattels. On February 28, 1931, two of the defendants, Vicente Albo and Eugenio Sevilla, conveyed their interest, participation and rights in the lease to the other lessee Angel Garchitorena and to Benigno del Rio. On August 15, 1931, Angel Garchitorena and Benigno del Rio, to secure compliance with the same contract of lease, mortgaged the chattels which had already been mortgaged for the same purpose on January 19, 1931, as well as other properties described in the mortgaged deed.

From these facts the majority infers that the contract of lease was novated by the substitution for the lessees Eugenio Sevilla and Vicente Albo of Angel Garchitorena and Benigno del Rio. In view of this conclusion, the majority absolves Eugenio Sevilla and Vicente Albo from the complaint and renders judgment against the defendant Angel Garchitorena and Albo & Sevilla, Inc.

If, as the majority decides, the contract of lease in question was novated by the substitution of some of the lessees, all of them being joint and several lessees, the obligation created by said contract was extinguished under article 1146 of the Civil Code, and, consequently, Albo & Sevilla, Inc., should be discharged as the contract of lease on which rests the action against it is no longer in existence.

In my opinion, however, the contract of lease was not novated, and the appealed judgment against all the defendants should be affirmed.

The novation which consists in the substitution of a new debtor for the old one cannot be made without the creditor's consent. The conveyance by Vicente Albo and Eugenio Sevilla of their interest, participation and rights in the lease to Angel Garchitorena and Benigno del Rio without plaintiff's consent. But, the prevailing opinion states, this consent was impliedly given by the plaintiff when it entered into the mortgage conjunct of August 15, 1931, with Angel Garchitorena and Benigno del Rio. The ground of the conclusion is, that by virtue of said contract the plaintiff learned that Vicente Albo and Eugenio Sevilla had conveyed their rights in the lease to Garchitorena and Del Rio, and having accepted the mortgage executed by the latter by reason of that conveyance, the plaintiff thereby consented to said conveyance.

There is nothing, however, in the mortgage contract of August 15, 1931, partly quoted in the majority opinion, supporting this conclusion. There is absolutely no mention therein of such conveyance of the rights of lease. The deduction from that contract is that Albo and Sevilla to Garchitorena and Del Rio the chattels which were mortgage January 19, 1931. But this does not perforce imply that Albo and Seville also conveyed their rights of lease. The contract of lease was different from that of J mortgage, and in the latter only three of the lessees intervened and it was entered into long after the contract of lease was executed. It was unnecessary for the lease that the mortgage be constituted, as the former was entered into without the latter, which was executed months afterwards. Thus viewed, whatever plaintiff Knew of the conveyance of the mortgaged properties, did not serve to apprise her of the fact that the lease rights likewise changed hands. The most that can be said is that the plaintiff consented to the conveyance of the mortgage property to Garchitorena and Del Rio, but it cannot be said that thereby it likewise consented to the transfer of the lease rights of which it does not appear that it had knowledge.

Neither is the majority's theory helped by the fact that Garchitorena and Del Rio secured compliance with the conditions of the lease by a mortgage, as a third person may secure another's obligation by a mortgage without bringing about thereby a substitution of the debtor. Nor the fact that the plaintiff accepted the extension of the lease, since, aside from the fact that an extension is not a novation, even if it were, it would be a novation of the conditions of the contract but not by the substitution of a debtor by another.

My opinion is that there has been no substitution of debtors by others, and that the defendants continue to be the lessees of the "Cine Collegian" and should all be ordered to pay to the plaintiff the latter's claim in this case, thus affirming the appealed judgment.

Vickers, J.:

I concur in the dissenting opinion of the Chief Justice.

Judgment modified.

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