

KUENZLE & STREIFF, PLAINTIFFS AND APPELLEES, VS. A. S. WATSON & CO. ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4216. February 19, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

On the 11th day of October; 1905, William H. Fifer made a contract in writing with the plaintiffs which stated that he on that day sold and transferred to the plaintiffs for the sum of P4,000 in cash, the furniture and appurtenances of three drinking saloons in the city of Manila, and other personal property therein described. The contract contained the following conditions:

"It is further stipulated and agreed by and between the parties hereto that the said William H. Fifer shall remain in possession of the said, property hereinabove sold to the said Kuenzle & Streiff, and the said William H. Fifer agrees with the said Kuenzle & Streiff to repurchase the property hereinbefore mentioned and to pay therefor the sum of four thousand pesos (P4,000), payable in consecutive monthly installments of five hundred pesos (P500) each, beginning with the 1st day of November, 1905, together with the interest thereon at the rate of 10 per centum per annum; interest payable monthly. It being expressly understood by the said Fifer that the title to and the ownership of the said property shall remain in the said Kuenzle & Streiff until the said four thousand pesos (P4,000) shall have been fully paid.

"The said William H. Fifer agrees to keep the property known as the 'Luzon Cafe'" insured during all the time of this contract in the sum of four thousand pesos, and to transfer the said insurance policy, premiums fully paid up, to the said Kuenzle & Streiff, and further agrees to keep the said premises in a good condition.

"Should the said William H. Fifer fail to pay any of the said monthly installments as hereinabove provided for, or the interest upon the principal, then the said Kuenzle & Streiff shall have the right immediately upon such default to take possession without judicial process of all the property hereinbefore mentioned."

Fifer had formerly been the owner of the personal property mentioned in this contract. The P4,000 mentioned therein were actually paid on the day named by the plaintiffs to Fifer. He remained in possession of the property until the 2d day of January, 1906. On that day, he not having made the monthly payments provided for, the plaintiffs took possession of the property. They on that day appointed Fifer, by a written document, manager of the establishment. Every day thereafter an agent of the plaintiffs went to the "Luzon Cafe" and took charge of the cash which had been received. From that day the plaintiffs paid all the bills for goods bought by Fifer as their agent and collected all the debts due to the establishment. On the 27th of April, 1906, the defendants caused a preliminary attachment to be levied upon two billiard tables which were in the "Luzon Cafe" and which were included in the property described in the contract of the 11th of October, 1905. While the sheriff was making this attachment, an agent of the plaintiffs came to the place with the contract in question and claimed that the plaintiffs were in possession of the establishment. Notwithstanding this notice, the sheriff proceeded with the attachment. The public license granted for the sale of liquors in this place was at the time of the attachment in the name of Fifer, as was also the license for the maintenance of a billiard saloon. The plaintiffs, on the 1st day of May, 1906,

brought this action to recover of the defendants and the sheriff the possession of the billiard tables. Judgment was rendered in the court below in favor of the plaintiffs and the defendants have appealed.

The defendants claim that the contract of October 11, 1905, is a contract of pledge and that the possession of the property pledged not having been taken by the pledgee, the pledge is void. The document itself, however, shows that it was not a pledge but a sale with the right to repurchase. In this respect the case differs from that of the *United States vs. Terrell* (2 Phil. Rep., 222), where it appeared from the face of the document that the contract was one of pledge.

A contract such as this, for the sale of personal property on condition that the title should remain in the vendor until the purchase price has been paid is valid, although the possession of the property is at the time of making the contract delivered to the purchaser. (Judgment of the supreme court of Spain, 16th of February, 1894; *Bachrach vs. Peterson*, 7 Phil. Rep., 571.) In the particular that the property here involved once belonged to the debtor, was resold to the creditor, and then again sold to the debtor, the case is similar to *Bierce vs. Hutchins* (205 U. S., 340).

It seems to be claimed by the appellants that there was never any delivery of the property by Fifer to the plaintiffs, and consequently that the original sale of Fifer to the plaintiffs was never perfected. Whatever might be said of the case as it stood on the 11th day of October, 1905, upon this question of a delivery then made, it is apparent that that claim, as far as the parties to the transaction are concerned, can not be sustained in view of what took place on and after the 2d day of January, 1906. The parties then agreed that the possession should be transferred to the plaintiffs and it was thus transferred, Fifer becoming from that time the agent of the plaintiffs in the management of the business. After that time, as has been seen, the plaintiffs were the persons really in charge. They paid all the current obligations, took possession daily of all the cash received, and collected all the bills due. As between the parties, this was a sufficient compliance with the provisions of the law which require a delivery upon the sale of an article. In the case of *The Fidelity and Deposit Company vs. Wilson* (8 Phil. Rep., 51), there was no such evidence of delivery as appears in this case.

If the appellants could prove that the whole transaction between Fifer and the plaintiffs was fraudulent as to the creditors of Fifer, they might, by complying with the provisions of article 1290 and following articles of the Civil Code, relating to the rescission of contracts, perhaps, be entitled to some relief. But in the first place they have not proved that the contract was fraudulent as to the creditors of Fifer. The evidence establishes a bona fide sale by Fifer of the property in question and the actual payment by the plaintiffs to him of P4,000 in cash.

Nor have the appellants brought themselves within the other requirements of the articles above cited. There is no sufficient proof in the case to show that they are even creditors of Fifer. The mere fact that they commenced a suit against Fifer and procured a writ of attachment to be issued thereon is not evidence that Fifer owed them anything. Nor did they prove that, even on the theory that they were creditors of Fifer, they could not collect their debt in any other way. (Arts. 1290 [1291], par. 3, and 1294, Civil Code.)

Even on the theory that the appellants were creditors of Fifer, it is settled by the decisions of this court that the attachment gave them no right to the property itself. (*Fabian vs. Smith, Bell & Co.*, 8 Phil. Rep., 496; *Martinez vs. Holliday, Wise & Co.*, 1 Phil. Rep., 194.)

The judgment of the court below is affirmed, with the costs of this instance against the appellants.

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

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