

RUBERT & GUAMIS, PLAINTIFFS AND APPELLEES, VS. C.A. SMITH, DEFENDANT AND APPELLANT.

G.R. No. 4468. August 21, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

There was a motion for a new trial in this case, but the appellant has not caused the evidence to be brought here. We can, therefore, only consider the pleadings and the facts stated in the decision.

It appears therefrom that on the 12th day of September, 1904, the plaintiffs, the defendant Smith, and Miss A. Hunter made a contract in which it was provided, among other things, that certain rent for July, August, September, and October, due to the plaintiffs from Miss Hunter for the occupation of a certain building belonging to them, might be paid as follows: P850 within the first three days of October, 1904; P850 within the first three days of November, 1904; and the balance of P700 to be paid within the first three days of December, 1904. The effect of the agreement was to extend the time for the payment of these sums, as indicated therein. The contract contained the following clause:

"5. I also further agree that the failure of said Miss A. Hunter to faithfully execute the agreements hereinbefore guaranteed by me will render my liability at once fixed and absolute, and that said Hubert & Guamis may immediately proceed against me to enforce the same without first proceeding against said Miss A. Hunter."

This action was brought against Smith alone to recover the P850 payable within the first three days of November, 1904, and the P700 payable within the first three days of December.

The defendant alleged in his answer that Miss Hunter had paid the P850 due within the first three days of November, 1904; that when he signed the contract, she gave him security to protect him against loss thereon; that on the second day of November Miss Hunter showed him a receipt signed by the plaintiffs to the effect that she had paid the rent for the month of November, and that he, believing that all the rent for the property had been paid, surrendered to her the security which she had given him.

Judgment was rendered in the court below in favor of the plaintiffs and the defendant has appealed.

There was nothing in the case to show that the P850 payable within the first three days of November on account of the rent for July, August, September, and October had been paid, except a receipt, dated on the second day of November, 1904, by the plaintiffs for the rent for the month of November. The defendant relies upon article 1110 of the Civil Code, which is as follows:

"A receipt from the creditor for the principal, without any stipulation regarding interest, extinguishes the obligation of the debtor with regard thereto.

"The receipt for the last installment of a debt, when the creditor has made no reservation, shall also extinguish the obligation with regard to the previous installments."

We can not see how this article could in any event have any application to this case, or prove the payment of the rent for the months of July, August, September, and October, because the time for the payment of a part of that rent had been extended, and the amount sued for here was not due on the second day of November, when the receipt in question was signed. The obligation to pay that rent was not based entirely upon the contract of lease, but was based upon a subsequent agreement, namely, the agreement of September 12, 1904. Moreover, the provision of law applicable to the case is not article 1110 of the Civil Code, but is section 334, paragraph 9, of the Code of Civil Procedure, which is as follows:

"The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:

* * * * *

"9. That former rent or installments had been paid when a receipt for the later ones is produced."

On the defendant's theory, this case falls exactly within the provisions of the section last cited, by the terms of which the receipt in question was only prima facie evidence of the payment of the rent. In the case of *Perez vs. Garcia* (7 Phil. Rep., 162), it was said that such a receipt was evidence that the former rent had been paid, but it was not said that it was conclusive evidence thereof.

There is nothing in the decision of the court to show that Miss Hunter ever gave the defendant any security, or that he ever surrendered any security to her relying on the receipt in question, or that the security was of any value. The doctrine of estoppel invoked by the defendant has, therefore, no application to the case.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered, Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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