

AGUSTIN GA. GAVIERES, PLAINTIFF AND APPELLANT; VS. FLORA BROTO, VIUDA DE MAURIS, DEFENDANT AND APPELLEE.

G.R. No. 4610. March 23, 1909

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4610/>

CARSON, J.:

On January 8, 1903, plaintiff rented from the defendant for a period of six years a certain building located on the corner of Calles Real and Magallanes, in the city of Manila, together with the furniture and bar and restaurant fittings then in the building.

Clauses two, three, four, and nine of the rental contract are as follows:

"Second. That they have agreed to the rental of the said building and furniture, and in order that it shall formally appear they execute the present document, by virtue of which they solemnly declare: That Doña Flora Broto rents the building above described, and the furniture and goods therein contained, to Don Agustin Garcia Gavieres, who in his turn accepts the same, according to the inventory-made and signed in duplicate, one copy for each of the parties, in order that the said Gavieres may use and enjoy the same as a good tenant.

"Third. The period of this contract is six years, to be reckoned from this date, which may be extended at the will of both parties.

"Fourth. The tenant shall pay, as rental for the said building and furniture, the sum of seven hundred pesos monthly, payable in Mexican currency or its equivalent, in this city, in advance, within the first five days of the respective months.

* * * * *

"Ninth. The tenant shall pay the cost of the licenses necessary for the conduct of the bar located in the premises rented, although said licenses are and shall be the property of the landlord."

At the time when the contract was made the defendant had already secured licenses to conduct a bar and restaurant in the building during the first half of the year 1903, and it was agreed between the parties that plaintiff would conduct the business under and by virtue of those licenses.

In accordance with the terms of the contract, the plaintiff paid the stipulated monthly rental down to and including the month of June. Sometime during that month the defendant made application for a renewal of her licenses to conduct a bar and restaurant in the rented building, from the 1st of July until the 31st of December; and on the 23d day of June, she made demand upon the plaintiff for the sum of \$864, Mexican currency, the amount required by the municipal authorities for the renewal of her license. The plaintiff declined to advance this amount, claiming that, under his contract with the defendant, it was defendant's duty to secure these licenses and advance the amount required therefor, the amount thus advanced to be returned to her in six equal monthly installments during the license period. On the same day, June 23, 1903, the defendant formally petitioned the Collector of Internal Revenue for the city of Manila to cancel her application for a renewal of the licenses for the latter half of the year

1903, and also to cancel the unexpired portion of the licenses then in force covering the period down to the end of the month of June. Sometime thereafter and before the 1st day of July, the municipal authorities closed the bar on the ground that the licenses had been canceled; and on the 15th day of July plaintiff made formal delivery of possession of the property to the defendant, protesting at the same time against the action of the defendant in canceling the licenses for the first half of the year 1903 before they had expired, and in failing to secure new licenses for the latter half of that year.

Plaintiff now prays for P40,000 damages, alleging that as a result of defendant's breach of contract in canceling the licenses in force in the month of June and, failing to secure new licenses for the latter half of the year 1903, he had been compelled to surrender possession of the rented property and to lose the profits which would have accrued to him from the time when the bar and restaurant were closed to the end of the rental period. Defendant denies the alleged breach of contract and insists that the reason for her failure to take out new licenses and for the canceling of the licenses then in existence was the refusal of the plaintiff to advance the amount required by the municipal authorities for the renewal of the licenses, so that any damages which may have ensued were properly to be attributed not to defendant's failure to secure the renewal of the license but to plaintiff's failure to pay therefor.

The trial court was of opinion that under the terms of the contract, no obligation was imposed upon the defendant to obtain a license for the operation of the bar, because from its terms it appears that the only thing which was rented was the building together with the furniture and fittings; and held that the plaintiff, having voluntarily surrendered the premises, is estopped from claiming damages resulting from this surrender, notwithstanding the fact that the bar and restaurant were closed by the authorities for lack of the necessary licenses.

We think, however, that the provisions of clause nine of the contract clearly imposed upon the defendant the duty of applying for and taking out the necessary licenses for the conduct of the bar and restaurant, the only obligation imposed upon the plaintiff in that regard being the duty of paying therefor. That this is the proper construction of the contract, and the construction placed thereon by the parties themselves, is made clear by the testimony of the defendant herself upon cross-examination, when in answer to the question "When Don Gavieres rented from you the bar and restaurant, was the bar open? Did it have a license?" She said: "Yes, sir, it had a license, and it was in the contract that we were the persons who should apply for the license for the bar and restaurant, but Señor Gavieres was to pay for it, and he refused to pay for it." She also testified that as a matter of fact she did apply for a renewal of the license for the latter half of the year 1903, in accordance with the terms of her contract, and that the reason the license was not procured was because of the failure of the plaintiff to advance the amount therefor.

Plaintiff, as appears from the evidence of record, declined to advance this money and insisted that it was the duty of the defendant so to do, the amount thus advanced to be recouped from the plaintiff in six equal installments during the term of the license; and he still insists that such were the terms of his contract with the defendant. An examination of the terms of the written contract, however, leaves no room for doubt that under its terms, it was plaintiff's duty to pay such amount as was required by the municipal authorities for the license, and nowhere in that contract is it made the duty of the defendant to advance the cost of the licenses and recover the amount thus advanced in installments, as claimed by the plaintiff.

Plaintiff, testifying in his own behalf, swore that during the period from January to June while he operated the bar and restaurant, he had as a matter of fact paid to the defendant in monthly installments the amount of the license for the first half of the year 1903, in installments, though apparently not, as he alleges, in six equal installments. But keeping in mind the circumstances under which these payments were made, the fact that the amount of the license for the first half of the year 1903 was paid in installments is in itself by no means sufficient to establish plaintiff's contention that the original contract contemplated the continuance of a similar arrangement throughout

the rental period, or that the contract had been modified to that effect by agreement between the parties after the execution of the contract. It appears that the license for the first half of 1903 had already been secured before the rental contract was entered into on the 8th day of January, and the fact that the defendant agreed to accept and did accept reimbursement for the amount paid therefor in installments, by no means justifies the plaintiff's contention that the terms of the written contract were so modified as to impose upon the defendant the duty of advancing the amount required for the various renewals of the licenses throughout the entire rental term of six years. Defendant positively denied the existence of any agreement for a modification of the terms of the written contract, and indeed plaintiff, when testifying in his own behalf, did not positively claim that such an agreement had been formally and expressly entered into between the parties, and relied rather upon the alleged implied modification of the contract resulting from the conduct of the defendant in accepting reimbursement, in installments, for the amount paid for the licenses for the first half of the year 1903.

We are of opinion that defendant, having applied for a renewal of the license for the latter half of the year 1903, and plaintiff having formally declined to advance the amount necessary to secure the issuance of such renewal, defendant's failure to secure the renewal of the license was due to plaintiff's fault, and plaintiff, therefore, is not entitled to damages because of the failure to procure the renewal of the licenses. We think, however, that defendant was clearly at fault in having the unexpired portion of the license for the first half of the year 1903 canceled at the same time that she withdrew her application for a renewal of the old license. The evidence of record discloses that the plaintiff had reimbursed her for the full amount expended therefor, and she herself, while denying that she was reimbursed for the amount paid for the license, stated that when the contract was executed, she made a gift to her tenant of the license down to the 1st of July. The failure of the plaintiff to advance the amount necessary to secure a renewal of the license in nowise justified her in having the license for the first half of the year, which she had sold or ceded to the plaintiff, canceled, and under the terms of her contract, it was clearly her duty, the tenant having paid for the license, to secure to him, as far as in her power lay, the benefits to be derived therefrom.

We think there can be no doubt that the plaintiff, as a result of her breach of contract in this regard, was entitled to damages for any losses which he may have sustained as a result of the closing of the bar by the municipal authorities, from the time when it was closed until the 30th of June, when the license expired; but, while it is clear from the record that the municipal authorities closed the bar sometime between the 23d day of June, when defendant asked to have the license canceled, and the last day of that month, there is no evidence as to the precise day or hour when such action was taken, nor is there any satisfactory evidence as to the amount per diem of the losses suffered by the plaintiff while the bar and restaurant were closed in the month of June. The only testimony as to the date when the municipal authorities closed the bar was the statement of the plaintiff himself, who said that about the middle of June the police came and ordered him to close up the business on account of there being no license. The other evidence of record, however, leaves no room for doubt that defendant did not apply for the cancellation of the license until the 23d of June, and it nowhere appears how long after that date or before the end of the month the bar and restaurant were actually closed. Plaintiff claimed that the monthly profits from the hotel, bar, and restaurant conducted in the rented building amounted to some seven or eight hundred pesos during the period it was under his control, but it nowhere appears how much these profits were affected by the canceling of the license for the restaurant and bar. Plaintiff having failed to establish definitely the amount of his damages, which at most would amount to no more than the probable profits of the bar for the few days in June, 1903, during which it was closed by order of the municipal authorities, no judgment can be rendered therefor in his favor.

For the reasons assigned in this opinion, the judgment of the trial court should be and is hereby affirmed, but without costs to either party in this instance or in the court below.

Arellano, C J., Torres, Mapa, Johnson, and Willard, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.