

MARGARITA QUINTOS AND ANGEL A. ANSALDO, PLAINTIFFS AND APPELLANTS, VS. BECK, DEFENDANT AND APPELLEE.*G.R. No. 46240. November 03, 1939*

Ponente: IMPERIAL, J.

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The plaintiff brought this action to compel the defendant to return to her certain furniture which she lent him for his use. She appealed from the judgment of the Court of First Instance of Manila which ordered that the defendant return to her the three gas heaters and the four electric lamps found in the possession of the Sheriff of said city, that she call for the other furniture from the said Sheriff of Manila at her own expense, and that the fees which the Sheriff may charge for the deposit of the furniture be paid pro rata by both parties, without pronouncement as to the costs.

The defendant was a tenant of the plaintiff and as such occupied the latter's house on M. H. del Pilar street, No. 1175. On January 14, 1936, upon the novation of the contract of lease between the plaintiff and the defendant, the former gratuitously granted to the latter the use of the furniture described in the third paragraph of the stipulation of facts, subject to the condition that the defendant would return them to the plaintiff upon the latter's demand. The plaintiff sold the property to Maria Lopez and Rosario Lopez and on September 14, 1936, these three notified the defendant of the conveyance, giving him sixty days to vacate the premises under one of the clauses of the contract of lease. There after the plaintiff required the defendant to return all the furniture transferred to him for his use. The defendant answered that she may call for them in the house where they are found. On November 5, 1936, the defendant, through another person, wrote to the plaintiff reiterating that she may call for the furniture in the ground floor of the house. On the 7th of the same month, the defendant wrote another letter to the plaintiff informing her that he could not give up the three gas heaters and the four electric lamps because he would use them until the 15th of the same month when the lease is due to expire. The plaintiff refused to get the furniture in view of the fact that the defendant had declined to make delivery of all of them. On November 15th, before vacating the house, the defendant deposited with the Sheriff all the furniture belonging to the plaintiff and they are now on deposit in the warehouse situated at No. 1521, Rizal Avenue in the custody of the said sheriff.

In their seven assigned errors the plaintiffs contend that the trial court incorrectly applied the law: in holding that they violated the contract by not calling for all the furniture on November 5, 1936, when the defendant placed them at their disposal; in not ordering the defendant to pay them the value of the furniture in case they are not delivered; in holding that they should get all the furniture from the Sheriff at their expenses; in ordering them to pay one-half of the expenses claimed by the Sheriff for the deposit of the furniture; in ruling that both parties should pay their respective legal expenses or the costs; and in denying the motions for reconsideration and new trial. To dispose of the case, it is only necessary to decide whether the defendant complied with his obligation to return the furniture upon the plaintiff's demand; whether the latter is bound to bear the deposit fees thereof, and whether she is entitled to the costs of litigation.

The contract entered into between the parties is one of commodatum, because under it the plaintiff gratuitously

granted the use of the furniture to the defendant, reserving for herself the ownership thereof; by this contract the defendant bound himself to return the furniture to the plaintiff, upon the latter's demand (clause 7 of the contract, Exhibit A; articles 1740, paragraph 1, and 1741 of the Civil Code). The obligation voluntarily assumed by the defendant to return the furniture upon the plaintiff's demand, means that he should return all of them to the plaintiff at the latter's residence or house. The defendant did not comply with this obligation when he merely placed them at the disposal of the plaintiff, retaining for his benefit the three gas heaters and the four electric lamps. The provisions of article 1169 of the Civil Code cited by counsel for the parties are not squarely applicable. The trial court, therefore, erred when it came to the legal conclusion that the plaintiff failed to comply with her obligation to get the furniture when they were offered to her.

As the defendant had voluntarily undertaken to return all the furniture to the plaintiff, upon the latter's demand, the Court could not legally compel her to bear the expenses occasioned by the deposit of the furniture at the defendant's behest. The latter, as bailee, was not entitled to place the furniture on deposit; nor was the plaintiff under a duty to accept the offer to return the furniture, because the defendant wanted to retain the three gas heaters and the four electric lamps.

As to the value of the furniture, we do not believe that the plaintiff is entitled to the payment thereof by the defendant in case of his inability to return some of the furniture, because under paragraph 6 of the stipulation of facts, the defendant has neither agreed to nor admitted the correctness of the said value. Should the defendant fail to deliver some of the furniture, the value thereof should be later determined by the trial Court through evidence which the parties may desire to present.

The costs in both instances should be borne by the defendant because the plaintiff is the prevailing party (section 487 of the Code of Civil Procedure). The defendant was the one who breached the contract of commodatum, and without any reason he refused to return and deliver all the furniture upon the plaintiff's demand. In these circumstances, it is just and equitable that he pay the legal expenses and other judicial costs which the plaintiff would not have otherwise defrayed.

The appealed judgment is modified and the defendant is ordered to return and deliver to the plaintiff, in the residence or house of the latter, all the furniture described in paragraph 3 of the stipulation of facts Exhibit A. The expenses which may be occasioned by the delivery to and deposit of the furniture with the Sheriff shall be for the account of the defendant. The defendant shall pay the costs in both instances. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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