

HENRY BLUM, PLAINTIFF AND APPELLEE, VS. MARIANO BARRETTO, DEFENDANT AND APPELLANT.

G.R. No. 5688. August 04, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

In 1902 the plaintiff leased to one Pio de la Guardia Barretto, father of the defendant, certain lands and buildings situated at Palomar, district of Tondo, city of Manila, P. I., for a period of five years. The lease is evidenced by a notarial document duly executed, which was presented as evidence in this case and marked plaintiff's Exhibit A. The eighth clause of this lease is as follows:

"The tenant, Pio de la Guardia Barretto, Si Pioco, shall use the land and camarines, the subject of this contract, according to the usage and custom of a good tenant, obligating himself to preserve them in good condition."

The lease expired on April 12, 1907. The lessee died in the year 1907 shortly before the expiration of the lease. On April 12, 1907, the defendant applied in his own name for a lease of the same premises. The agent of the plaintiff was unable at that time to enter into, what is called throughout the case, a permanent lease with the defendant, as he desired to confer with his principal, who was absent from the country. Accordingly a temporary lease of six months was entered into by the parties. At the expiration of the six months, the parties to the lease not being able to agree upon the terms of a permanent lease, the defendant vacated and the premises were leased to other persons.

The plaintiff, believing that the defendant had failed to comply with the terms of the temporary lease and also that he had an obligation as successor of his deceased father with reference to repairing the buildings as specified in the lease of 1902, commenced this action to recover from the defendant the cost of repairs which the plaintiff claimed were necessary as a result of the use of said premises not only by the defendant under his temporary lease but also by defendant's father under the five-year lease. Judgment was rendered by the court below in favor of the plaintiff for the sum of P3,500 and costs. The defendant appealed.

The appellant contends that, according to the terms of the temporary lease, he obligated himself merely to make certain repairs on the leased buildings, not to cost more than P500, and that, during said period of six months, he made said repairs and expended therefor the sum of P481. He admits that he is responsible for the value of the materials lost or stolen during the period covered by his temporary lease, amounting to P500. The appellee insists that as his agent was compelled to expend P5,500 to put the premises in good condition, P2,500 of this amount representing repairs and improvements required by the Board of Health, and P3,000 representing the repairs made necessary by the neglect of the occupants, father and son, to fulfil their agreements, the defendant, under his contract, should be compelled to reimburse him in the amount of the said P3,000 and to pay for the materials lost or stolen, which were worth P500.

The temporary lease is contained in certain letters passing between plaintiff's agent and the defendant, the most important of which are the following:

EXHIBIT B.

"MANILA, April 12, 1907.

"Señor COHN.

"DEAR SIR; As heir of my father, Don Pio de la Guardia Barretto, and being over the age of majority, I propose to you the following:

"On this date expires the contract of lease of the land and buildings in the barrio of Palomar of this city, which my said father had made and for which he has been paying rental at the rate of P400 per month, in the manner set forth in the contract referred to.

"Now, then, in view of the ruinous condition of the buildings in which the tannery is established, it is necessary to incur expenses, which I calculate at the sum of five hundred pesos, in order that the business may continue for another six months from this date, while the repairs of a permanent character will necessarily represent some thousands of pesos, which I can only undertake in the event of a contract favorable to my interests, if you, in your representative capacity, are likewise agreed.

"In consequence of these premises I propose to you the renewal of the contract for six months more, but with the understanding that I will make payments monthly in advance at the rate of P250 per month and that the payment of taxes upon the buildings, for the six months, shall be for my account in the manner set forth in the previous contract.

"If, upon the expiration of this extension, it should suit the interests you represent, and mine, to continue the lease, in that event we shall establish the terms which shall govern.

"Awaiting your answer in a letter which can serve as a contract by means of my endorsement of the original and the copia * * * etc., etc.

"MARIANO R. BARRETTO."

EXHIBIT C.

"MANILA; April 19, 1907.

"Sr. D. MARIANO BARRETTO,

"Calle Balmes, No. 8, Tanduay.

"DEAR SIR : Replying to your letter of the 12th instant, and confirming the conversation we had on the previous day, I beg leave to state that I hereby accept the terms of your offer and hereby renew your lease of the land and buildings located at Palomar which you and your father have been occupying under the contract of lease dated February 18, 1902, for the additional period of six months under a rental of P250 per month. It is understood that you will be obligated to pay the taxes upon the buildings and to make the repairs which may be necessary at the present time. It is likewise understood that this lease is extended upon the above terms in order to permit you to make a suitable offer to take this property under lease for a longer period of time. In order that I may have sufficient time before the expiration of the six months to communicate with my principal in Japan, I earnestly request that you make me your offer at the earliest date possible. In your offer you should make mention of the following points:

"1. Period for which you desire the lease.

"2. The nature of the permanent repairs to be made and their probable cost,

"3. The rental you will be willing to pay.

"In fixing the amount of the rent which you offer, please bear in mind our conversation concerning the present provisional rent; that is, that the present rent is not to be taken as a basis for the new lease.

"Sincerely, yours,

"CHARLES C. COHN."

EXHIBIT D. - Agent's second letter to defendant.

"MANILA, May 28, 1907.

"Messrs. BARRETTO, MACHUCA Y CIA., Manila.

"Dear SIRS: Permit me to call your attention to the fact that up to this date you have not submitted to me your proposal for the lease of the land and buildings at Palomar. The owner of the property has written me stating that he is awaiting, your offer, wherefore I earnestly request you to submit your proposal immediately so that the matter can be closed before the expiration of the six months fixed for the provisional lease.

"Hoping to merit a prompt reply, I remain,

"Yours, etc.,

"CHARLES C. COHN."

EXHIBIT E. - Defendant's second letter to agent,

"MANILA, October 7, 1907.

"Senor COHN.

"Dear Sir : Referring to the conference had with you this morning concerning the continuation of the lease of the land at Palomar and the buildings which serve as a tannery, a contract which, if I remember correctly, expires the 12th instant, I have the honor to propose to you the following:

"1. The continuation of the lease under a new contract for the period of two years from the expiration of the current lease.

"2. Payment of rent quarterly in advance at the rate of P200 per month, plus that part of the taxes which I have been paying up to the present.

"3. The obligation on my part to maintain the buildings in habitable condition for the business to which they are devoted, not answering for deterioration due to force majeure.

"4. Rescission of the contract in case the sanitary authorities exact modifications and repairs which represent 2,000 pesos or more.

"With regard to the deteriorations which have been caused, and the loss of materials in the last six months, in the event that the contract is not renewed upon the terms which I propose to you, I will repair said deteriorations replacing the lost materials within the period of fifteen days from that on which you notify me that my proposal has been rejected.

"Respectfully, etc.,

"MARIANO R. BARRETTO."

EXHIBIT F. - Agent's third letter to defendant.

"MANILA, October 22, 1907,.

"Sr. D. MARIANO BARRETTO, Present

"DEAR SIR: Answering your favor of the 7th inst., I regret to state that I can not accept the proposal which you make in said letter for the renewal of the lease of the Palomar property because it does not suit the interests I represent and because I have already obtained an advantageous offer from an American concern.

"In the former letter you directed to me, dated April 12, 1907, you estimated the amount of the repairs of the damages and deteriorations incurred by the buildings up to that time at P500. Accepting that figure fixed by you, and calculating at another sum of P500 the value of the materials lost and damages which have been caused to the property during the past six months, in accordance with your expressions in the final paragraph of your letter of the 7th inst., I request you to proceed to make the necessary repairs upon the said property, to an amount equal to P1,000, within the period of fifteen days. I earnestly trust that you will commence these repairs immediately and finish the same within the time indicated since I have promised the new tenants that said repairs will be accomplished in the time mentioned.

"Yours, etc.,

"CHARLES C. COHN."

EXHIBIT H. - Letter from agent to the defendant

"MANILA, December 4 1907,

"Sr. DON MARIANO BARRETTO,

"c/o Barretto, Machuca y Cia.

"DEAR SIR: I regret to state that almost two months have elapsed since the termination of your lease of the Palomar property, and you have wholly failed to comply with your obligation to make the stipulated repairs and replace the fallen roof as you agreed to do.

"In this matter, I have shown you all of the patience which is reasonable and possible, and I find myself obliged now to demand that you pay me the sum of one thousand pesos in cash with which to make the necessary repairs, on or before the 11th of the present month, notifying you that in the event that this sum is not paid on or before that date, I shall immediately proceed against you through the courts.

"Yours, etc.,

"CHARLES C. COHN."

EXHIBIT I. - Defendant's reply to Exhibit H.

"MANILA, December 7, 1907.

"Señor COHN.

"DEAR SIR : I received your favor of the 4th inst. and upon learning its contents I proceeded immediately to perform the necessary (repairs?) upon the Palomar buildings which I have had under lease, a thing which I did not do sooner on account of a pressure of business, and for which I beg you to excuse me. Said work you may cause to be examined by the person you may designate, considering the contract in question terminated when once you have given the corresponding approval concerning the buildings.

"Yours, etc.,

"MARIANO R. BARRETTO."

The trial court was of the opinion that the appellant renewed the old lease, thereby obligating himself to make good the deteriorations occurring during the time his father occupied the premises. The court said:

"It will be seen that by the terms of the contract as finally settled upon between them (and defendant continued to occupy the premises, presumably subject to such terms), the duty imposed upon him was not the expenditure of any particular sum of money but the placing of the premises in a good condition pursuant to the terms of the original lease whose renewal defendant sought and obtained."

In the order denying the motion for a new trial the court below used the following language:

What he did 'propose' was 'the renewal of the contract,' and this plaintiff expressly accepted, emphasizing the requirement that the defendant 'make the repairs which may be necessary at the present time.' Necessary for what? Why, to preserve them (the premises) in good condition as required by the lease which the parties were then renewing. * * *

"We can not see how the requirement of 'necessary repairs' can be regarded as a new element in the contract since the lease which was renewed required the buildings to be kept 'in good condition.' But if it were to be so regarded it would then be in the nature of a counter-proposition by plaintiff which defendant by remaining in possession accepted."

The court allowed the plaintiff P3,000 expended by hi in restoring the buildings to the condition in which he believed the defendant was obliged by his contract to surrender them, and P500 to restore the collapsed portion of the buildings, including the materials lost or stolen. As we have seen, the appellant admits that he promised to make certain repairs not to cost more than P500, and also to be responsible for the materials lost or stolen to the extent of P500. Accordingly, the greater portion of the P3,000 allowed by the court was to cover an expenditure for repairs made necessary by the occupancy of the original tenant.

It is true, as appellant says, that the buildings on April 12 (the date of the expiration of the original lease) were in a "ruinous condition." We are not now called upon to decide whether or not the estate of the original lessee should reimburse the plaintiff in the amount expended by him in placing the premises in a habitable condition; or, in other words, for repairs which were necessary prior to April 12th. The extent of appellant's responsibility is the only question before us. He did not sign the original lease, nor did he participate in any manner in the making or execution of the same. It may be true that he occupied the premises with his father, but the record does not disclose that he obligated himself to repair or assist in repairing the deteriorations occurring while the original lease was in force, unless such responsibility attached by reason of his continuing in possession of the premises under the temporary lease. It is clear that his responsibility to make these repairs did not attach prior to April 12, 1907, as the negotiations for the renewal of the lease started on this date, the first communication on the subject being Exhibit B, in which the appellant stated that his deceased father's lease of the premises expired on that date.. Moreover, in the same communication he notified the appellee or his agent that the premises were in a ruinous condition and that it would be necessary to incur expense in repairs in order that the business might continue for another six months, which expense he calculated would amount to P500. In that letter he made it clear that the repairs of a permanent character would necessarily represent thousands of pesos, which he would undertake to make only in the event that a permanent lease favorable to his interests was made. He, therefore, proposed a temporary lease for a period of six months, providing for monthly payments of P250 instead of P400 (the amount his father had been paying) and with the further stipulation that if, upon the expiration of the six months, he and the appellee's agent could agree, terms would be made for a permanent lease. This offer was

accepted by the appellee's agent on April 19, and in accepting it the agent stated among other things:

"It is understood that you will be obligated to pay the taxes upon the buildings and to make the repairs which may be necessary at the present time. It is likewise understood that this lease is extended upon the above terms in order to permit you to make a suitable offer to take this property under lease for a longer period of time.

"In your offer you should make mention of the following points:

- "1. Period for which you desire the lease;
- "2. The nature of the permanent repairs to be made and their probable cost, and
- "3. The rental you will be willing to pay."

From this we think it clear that the appellant proposed in his first communication to make only such repairs as would permit him to continue his business for a period of six months, as stated. We believe it is clear also that the agent accepted appellant's proposition, with the understanding that the appellant proposed to make temporary repairs which should cost not more than P500. Otherwise it is difficult to understand, among other things, why the agent requested the appellant in his offer for a permanent lease to state the nature of the permanent repairs to be made and their probable cost. The reduction in the monthly rental in the temporary lease was made on account of the condition of the premises. Naturally, the appellant would not consent to pay P400 a month for premises in which, by reason of their dilapidated condition, his business could not be carried on except with great difficulty and great additional expense, when such premises were worth only P400 a month when in good condition. The agent in his letter of May 23 states:

"Permit me to call your attention to the fact that up to this date you have not submitted to me your proposal for the lease of the land and buildings at Palomar."

The appellant made his proposals in his communication of October 7th, but the agent refused to accept them. The agent in his communication declining to accept the proposals of the appellant requested him to proceed within the period of fifteen days to make the repairs upon the premises to an amount equal to P1,000, and in his communication, dated December 4th, said:

"And I find myself obliged now to demand that you pay me the sum of one thousand pesos in cash."

This one thousand pesos was made up of the five hundred pesos which the appellant agreed to expend on temporary repairs and P500 the value of the lost materials for which the appellant admits he is responsible. The terms of these communications are so clear and explicit that it is not necessary to go outside of them to ascertain the intention of the parties.

The appellant proposed to renew or enter into a temporary lease for six months, obliging himself to expend not more than P500 in making repairs on the premises which were then absolutely necessary in order to continue his business. He proposed to enter, into a permanent lease, if an agreement could be reached, by which he would obligate himself to make the repairs made necessary by his father's occupancy. They could not agree upon the terms of the permanent lease. The appellee's agent accepted the proposition to enter into a temporary lease for a period of six months, having in mind that the appellant was to make repairs to the extent only of P500. This was the agent's understanding at the time as he demanded in writing the payment of only P1,000, five hundred of which was for lost materials. The appellant did not obligate himself to make the permanent repairs (the repairs made necessary by his father's occupancy). He specifically bound himself to expend in repairs an amount not to exceed P500, and this is the extent of his liability in that regard.

The court below found that the appellant had not made any repairs on the premises after the 12th day of April,

1907. We can not say that this finding of fact is against the weight of the evidence.

The appellant in his letter dated the 7th of October, 1907, said:

"With regard to the deteriorations which have been caused and the lost materials in the last six months, in the event the contract is not renewed upon terms which I propose to you, I will repair said deteriorations, replacing the lost materials within the period of fifteen days from that on which you notify me that my proposal has been rejected."

These statements were made by the appellant in said communication more than six months after he executed the temporary lease. Notwithstanding the fact that he called witnesses and attempted to show that he did in fact repair the buildings and expend therefor a sum amounting to P481, we think that such proof is not sufficient to overcome the statements made by the appellant himself. If he had repaired the buildings to this extent and had expended therefor the sum of P481 prior to the date of this communication, it would not have been necessary to make, neither would he have made, this direct and positive promise to make the repairs within fifteen days.

The judgment of the court below is hereby modified by reducing the amount found due from defendant to plaintiff to the sum of one thousand pesos, and, so modified, is affirmed.

Torres, Mapa, and Carson, JJ., concur.

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