

RAFAEL ENRIQUEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. A. S. WATSON & CO. LTD., DEFENDANT AND APPELLEE.*G.R. No. 7180. March 30, 1912*

Ponente: TRENT, J.

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This action was brought on April 12, 1911, by Rafael, Antonio, Trinidad, Cayetano, Rosario, Gertrudis, and Carmen Enriquez, and Antonio Gascon (the latter being a minor, was represented by his guardian ad litem), as owners and lessors of the property Nos. 72, 74, and 76 Escolta, city of Manila, against A. S. Watson & Company, Ltd., as lessee of said property. The plaintiffs allege that on June 22, 1906, Rafael, Carmen, Antonio, and Trinidad Enriquez and Antonio Gascon executed to the defendant a contract of mortgage and lease upon their participation in that property; that on January 19, 1907, the other plaintiffs executed the same mortgage and lease in favor of the defendant upon their interest in the same property; that the said contract of lease has been terminated by the payment by the plaintiffs to the defendant of the principal and interest of the mortgage; that the said contract of lease is null and of no effect by reason of the minority of the plaintiff Antonio Gascon, who is still a minor; that the defendant, after June 22, 1906, made all the repairs necessary to its business with the approval of the plaintiffs.

The plaintiffs further allege that there exists in that building a principal wall about one meter in thickness and five meters in height, which extends from the front of the building on the Escolta to the rear of the same; that upon this wall rests the second floor of the building and that it is necessary to safely maintain the building against earthquakes and typhoons; that on the 11th of April, 1911, the defendant commenced to destroy and remove the said wall and was on the date of the filing of this complaint actually engaged in the destruction and removal of the same; and unless restrained, would continue such destruction and removal, to the irreparable injury of the plaintiffs; and that the defendant has varied the form and substance of the leased premises. The plaintiffs therefore prayed that the defendant be prohibited from destroying and removing said wall; that it be ordered to rebuild or replace that part which it had removed or destroyed; and that the contract of lease be declared terminated and rescinded.

On the 12th day of April, 1911, a preliminary injunction was issued by the Court of First Instance, prohibiting and restraining the defendant from continuing the removal and destruction of the wall in question, and requiring it to appear in court on the 17th of that month, to show cause why such preliminary injunction should not be continued in force during the pendency of this action.

On the 21st of that month, the defendant company answered, admitting the allegations as to the ownership, mortgage, and lease, contained in paragraphs 1, 2, and 3 of the complaint, and denying all the other allegations therein. The defendant set up by way of special defense that the wall in question was not a principal wall and did not extend the entire length of the building; that said wall consisted of two shells filled with mortar; that it was very old, deteriorated, and weak; that it was necessary, in order to conserve the property, to remove said wall and to substitute it with other material; that the wall in question is so located that it and its subtenant are deprived of

the use of a large part of the ground floor fronting on the Escolta; that under Clause M of the contract of lease, the defendant has the right to remove this wall, substituting in lieu thereof other material, this being required by the business established in said building.

As a second special defense, the defendant admits the payment of the mortgage by the plaintiffs, but alleges that the contract of lease is independent of the mortgage contract, and that in satisfying the mortgage of the defendant, the leasehold was specifically continued in force by all parties.

As a third special defense, the defendant alleges that under the provisions of Paragraph M of the contract of lease, it has expended the sum of over sixty thousand pesos in improving the leased premises, and that on making such expenditure it believed that it would be reimbursed by enjoying the occupancy and subrenting of the premises.

On the 24th day of May, 1911, the Philippines Drug Company, a corporation organized under the laws of the Philippine Islands, appeared and asked leave to intervene as an interested party. This leave being granted, it alleged that it is the actual owner of the pharmacy situated in the leased premises, which formerly belonged to the defendant A. S. Watson & Company, Ltd.; and that the defendant sublet to it the ground floor of the leased property under the same conditions as are expressed in the original contract of lease. The intervener further alleged, as did the defendant, the necessity for the removal of the wall in question in order to give it more space as required by its business, and that the removal of this wall was authorized in Paragraph M of the original lease.

The trial court, after considering the evidence presented, making a personal inspection of the leased premises, and hearing the arguments of counsel for both parties, and after making its findings of facts and conclusions of law, entered the following decree, to wit:

"The court denies the rescission and declaration of nullity of the contract of lease demanded by the plaintiffs, declaring such contract of lease to be valid and subsisting and binding upon the parties thereto, and upon the sub-lessee and intervener, the Philippines Drug Company, and continues and declares final the preliminary writ of injunction issued herein on the 12th day of April, 1911, but modifying the same by permitting the defendant, A. S. Watson & Co. Ltd., or the intervener, the Philippines Drug Company, to remove the wall in question on the condition that they substitute it with properly constructed concrete pillars and arches and such other work as may be necessary as specified in Finding No. 17 of this judgment using such temporary shoring and bracing as shall be necessary to insure the safety of the building while such change is being made, which work of removal and substitution may be commenced and carried out upon the defendant or intervener, or both, filing herein an undertaking in the sum of P10,000 with sureties approved by the court, conditioned that it or they will reimburse the plaintiff lessors for any and all damage that may be caused the leased premises by a failure to take proper precautions and employ proper means to safeguard and protect the building while such work of removal and substitution is being accomplished."

From this judgment the plaintiffs appealed and make the following assignment of errors:

- "1. The judgment is erroneous in not having declared rescinded the contract of lease.
- "2. The judgment is erroneous in finding that the lessee and sublessee have the right to change the form and substance of the property leased.
- "3. The judgment is erroneous in finding that the lessee acted in good faith in beginning the destruction of the wall, believing that under the contract of lease it had the right to do this.
- "4. The judgment is erroneous in not finding that the building is weakened by the destruction of the wall.
- "5. The judgment is erroneous in so far as it modifies the preliminary injunction.
- "6. The judgment is erroneous in not declaring perpetual the preliminary injunction.

"7. The judgment is erroneous in the dispositive part thereof relating to the form and manner of making the modifications in the property because it does not relate to anything at issue in the case.

"8. The judgment is erroneous in the part relating to the form and manner of making the modifications in the property because it does not dispose of anything judicially, but, on the contrary, gives permission to the opposing parties without commanding them to do anything.

"9. The judgment is erroneous because it does not order the repair of the destruction made in the wall.

"10. The judgment is erroneous because it declares valid the contract of lease.

"11. The court erred in denying the motion for a new trial."

All questions in this case may be merged into one, and that is: Did the trial court err in failing to declare the contract of lease voidable or rescinded for one of two reasons: first, because of the minority of one of the lessors; and second, because neither the defendant nor intervener had authority under the contract of lease to remove the wall in question? Plaintiffs do not now insist that the contract of lease was terminated on the payment of the mortgage.

The eight plaintiffs each have a one-eighth undivided interest in the leased premises. The property was leased to the defendant for a period of twelve years with permission to renew the lease for a further period of six years. Seven of these plaintiffs were of age when they executed this contract of lease. The other, Antonio, Gascon, was a minor. At the time this contract of lease was executed, the minor was represented by his judicial guardian. The guardian having obtained authority or permission of the court to enter into this contract of lease for and on behalf of his ward, the action of the guardian in executing said contract was approved by the probate court.

Article 1548 of the Civil Code reads :

"ART. 1548. The husband can not give in lease the property of the wife, the father and guardian, that of the son or minor, and the administrator of property, not having a special power, for a period exceeding six years."

Article 398 of the same code provides:

"Art. 398. The decision of a majority of the co-owners as to the management and better enjoyment of the thing owned in common shall be obligatory.

"There shall be no majority, unless the resolution has been adopted by the co-owners representing a majority of the interests which constitute the object of the community.

"Should there be no majority, or the resolution of the latter is seriously prejudicial to the parties interested in the thing owned in common, the judge, at the instance of a party, shall decree what may be proper, including the appointment of an administrator."

* * * * *

Counsel for the plaintiffs do not claim that the contract of lease which was made for a period of more than six years is seriously prejudicial to the interests of the minor, nor do they claim that said contract, of itself, prejudices in any way the minor's interest.

The supreme court of Spain had under consideration this very question in its resolution of April 26, 1907 (vol. 15 Jurisprudencia referente alCodigo Civil, p. 194). In this case, a contract of lease for twelve years, executed by one of the co-owners of a certain property, one of whom was a minor, had been presented for registry. Registry was, refused for the reason, among others, that the majority of the co-owners lacked authority to execute said contract of lease. It was argued that the majority of the co-owners, in their enjoyment of the control of the management

and administration of the thing, acted in a representative or an administrative capacity in regard to the minority. In determining the questions presented in this case, the court said:

"That for the administration and better enjoyment of the thing, the decision of the majority of the co-owners is obligatory, and that there is no majority, unless the decision is made by the co-owners, that represent the majority of the interests that constitute the object of the community, are general rules laid down in article 398 of the Civil Code, governing community of property.

"The contract of lease is by its nature and purpose one of the means of enjoyment or development of non-fungible property, and, in this concept, may be agreed upon by the co-owners of a thing, provided always that they represent a majority of the interests of the community, the decision being obligatory for all by virtue of the powers that are expressly conferred upon them by virtue of said provisions.

"If, indeed, the contract of lease of real property for a period exceeding six years, or in which the rents are advanced for more than three years, constitutes a real right inasmuch as it is subject to registry, according to the decision of this court in various resolutions, this principle of law, which has been applied in the sense, of not permitting, the execution of such a contract to those who administer the goods of others, and especially to prevent agents from executing such a contract without special authority for the same, in accordance with the provisions of article 1713 of the said code, is not opposed to the principle of law laid down in said article 398; taking into consideration the legal character and peculiar attributes of community of property, which makes it convenient and necessary that those who have less interest therein should submit to those who have a greater participation therein, in all that refers to the exploitation and ordinary enjoyment of the same, the rule is established that the enjoyment of the common thing must be subject to the will of the majority, without distinguishing and limiting the period or the form of the enjoyment; therefore, the contract of lease being the same in essence whatever the term for which it is constituted, such a contract must be considered as an act of mere administration, and subject to contract by the decision of the majority of coowners, the other interested parties always having the right to appeal to the court when the decision is gravely prejudicial to them according to the provisions of the same article 398.

"This doctrine was recognized by the supreme court in its decision of June 30, 1897, and of the 8th of July, 1902, and by this court in its resolution of May 29, 1906, considering as included in the powers conferred in said article, leases exceeding a period of six years, decided upon by a majority of the co-owners of a property possessed in common.

"The contract of lease of the property referred to in these proceedings, having been agreed upon by the co-owners representing the majority of the interests in the same, they were possessed of sufficient legal capacity by virtue of what is already said, and it is, therefore, subject to registry."

In the execution of the contract of lease under consideration, the minor was, as we have said, represented by his judicial guardian, who not only asked the court for and obtained authority to execute this contract of lease on behalf of his ward, but his act, after the execution, was approved by the court. The interest of the minor has not been prejudiced by reason of the fact that this contract of lease was executed for a term of more than six years. Under the doctrine laid down by the supreme court of Spain, it would appear that this contract of lease would be valid if the minor had not been represented by his guardian. The minor having been represented by his duly appointed guardian, there can be no question about the validity of this contract of lease.

The principal question is whether or not the appellees have violated the terms of the contract of lease and thereby entitle the appellants to have said contract of lease rescinded.

Before considering the contract in question, it might be well to examine the right of the lessee to make changes in the property leased, if there were no express stipulation therefor in the contract.

Article 1573 of the Civil Code provides:

"A lessee shall have, with regard to the useful and voluntary improvements, the same rights which are granted the usufructuary."

Article 487 of the same code reads:

"The usufructuary may make on the property which is the object of the usufruct any improvements, useful or for recreation, which he may deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove said improvements, should it be possible to do so without injury to the property."

The result is that the lessee may make any improvements, useful or for recreation, in the property leased that he may deem proper, provided that he does not change its form or substance. The same obligation is expressed in articles 487 and 489, and in so far as the form of the thing is concerned, in article 1557. According to articles 487 and 3557, the obligations of the lessee and the lessor are the same in the absence of any agreement to the contrary, in so far as the conservation of the form of the thing leased is concerned. This question of conserving the form and substance of the thing leased or the object of the usufruct has been passed upon at various times by the courts.

In the case of the Manila Building and Loan Association and Peñalosa (13 Phil. Rep., 575), this court said:

"If the object leased were a house, it is evident that the lessee might effect such improvements for use, recreation or comfort as would not change its form or substance as he deemed fit; he could build a tower or luxurious pavilion more expensive than the house itself, to which, at the expiration of the lease, the owner of the house would have no right whatever, unless the lessee could not remove the same without injury to the house to which it was attached as an improvement, excepting of course the right to cause the same to be demolished so that the house might be returned to him in the same condition that the lessee received it; * * *."

The supreme court of Spain, in its judgment of June 24, 1905, volume 14 of the *Jurisprudencia referente al Codigo Civil*, page 38, had under consideration the interpretation of this phrase in a case in which the lessee asked for the rescission of the lease because the lessor had altered the form of the thing leased. The facts were that the lessee had leased the house for the period of ten years, and at the time of the execution of the contract of lease, there was a vacant lot next to the house and 13 windows of the house leased overlooked this lot. Thereafter the owner of the adjacent lot constructed an edifice thereon which gave rise to litigation between the lessor and the owner of the adjacent lot, which litigation was settled by the lessor and the owner of the said lot, the latter being permitted to cover the windows of the leased property, and the former allowed to open in the partition wall of the latter's garden two large and two small windows of specified dimensions, under certain conditions. The construction was continued, with the result that such construction effectually closed and covered the 13 windows and the balcony, depriving the property leased of the light previously received by the same. For the purpose of obtaining better light, many changes were made and much work done in the interior of the leased house, the final result being that some of the rooms of the house were darkened completely, others receiving poor and indirect ventilation. The court, in refusing to rescind the contract of lease, said:

"It does not appear that there is error committed by the trial court in its decision as set out in the first assignment of error, because, even though the noncompliance by the lessor of his obligations, among which was that of maintaining the lessee in the peaceable enjoyment of the lease during the period of the contract, and the prohibition to change the form of the thing leased, confers upon the lessee the right to ask for the rescission of the contract, such circumstances are not found in the present case since the trial court says that the appellant was not disturbed in the possession of the house, the object of the lease, nor was he impeded from using the premises as a tavern, for which use he had intended the same, and these findings of fact have not been legally impugned.

"The decision also states that the changes made in the property did not change the form of the same in the sense and concept covered by article 1557 of the Civil Code. Notwithstanding that the findings on the point contain legal reasoning now corresponding to this court, the interpretation of this article can not be made in general and absolute terms not defined by law, because as a circumstantial fact depending in each case on the peculiar conditions of the thing leased, there exists no reason in the case at bar upon which to base the conclusion that the trial court erred, having in mind that the particular use of the same as a tavern was not interfered with, as held in its decision, and also the fact set out in its decision, and not contradicted in any manner, namely, that the changes and alterations made were beneficial, tolerated by Sabay, and consented to by the person to whom Sabay transferred his rights under the contract of sublease.

"The last two reasons given for the rescission of the contract lack force and weight, because, in accordance with the sense and concept of article 1561 of the said Civil Code, the property must be returned at the expiration of the term of lease with the changes made in the same, and these do not involve, as has already been said, any variation or change of form or any interruption of the peaceable enjoyment of the lease and because it does not appear from the facts that the trial court accepted as proven that the appellant suffered disturbance of his rights for which he had been compelled to become responsible to the lessor, and he, not having done so, there is no legal reason to apply, as is attempted, the provisions of article 1560 of the code referred to."

Manresa, in volume 10 of his commentaries on the Civil Code, pages 534, 535, [488, 489] says:

"The question was discussed very energetically as to whether the lessee of a city property leased for a stated industrial purpose, could install machinery propelled by steam in substitution for the utilities, implements, and contrivances which were used before the general adoption of such machinery. The installation of modern machinery and its ordinary operation, at once caused a deterioration to the estate much greater than the use of the former apparatus, besides the accidents which might occur and which produce very great damage to the thing leased. Therefore, based upon this consideration, it was said that the lessee could not make this substitution because it implied a bad and prejudicial use of the thing and therefore very different from that diligence of a good father in its use to which he had obligated himself.

"As Laurent says, there arise here two contrary interests and two diverse tendencies. The owner has in view the stability of the structure and fears every innovation which may compromise its preservation. The manufacturer finds himself obliged to keep abreast of the development of his industry, to make changes, if he does not wish to perish, and his interests demand that he put into practice the inventions which increase his profits, even though the edifice may suffer. The owner commences to resist, adds this writer, but competition forces the manufacturer, and the owner ends by yielding, if he does not wish to remain unproductive.

"This is the essence of the policy pursued by foreign decisions, where the question has been so much more important than in our own country. Until the year 1860, judicial decisions were inclined to favor the owner of the property. But from that year the rights of industry have been recognized with ever increasing clearness. It has been considered that from the moment the lease is drawn up, in which is stated the industrial use to which the lessee desires to put the thing leased, the claims of the industry to which the object of the lease is to be devoted have been determined, and the lessee can not be condemned to a stagnation which would be uneconomical, and, these facts admitted, the logical consequences must necessarily follow: the lessor can not prevent the lessee from adopting the improvements of his industry; the acts of the parties in making the stipulations in the lease will do the rest."

The lessee may make on the property which is the object of the lease any improvements, useful or for recreation, which he may deem proper, provided he does not change its form or substance. He is obligated to use the thing leased as a diligent father of a family would, and to return the thing leased at the expiration of the lease in the same condition in which he received it, except what may have been destroyed or impaired by time or unavoidable reasons. (Arts. 1573, 487, 1555, and 1561, Civil Code.)

The supreme court of Spain recognizes the fact that no ironclad rules for the interpretation of these articles can be laid down which would govern all cases. These provisions must be applied according to the facts and circumstances of each case. Manresa is inclined to the view that industrial development should be taken into consideration in the determination of questions involved in the application of said articles. The provisions of these articles are general rules of law, and, like most general propositions, are not to be accepted without limitation or reserve, under any and all circumstances. They must be interpreted in the light of the growth of civilization and varying conditions. Certain obligations are placed upon the lessee to prevent lawless acts which would result in waste or destruction. The importance of these obligations to the lessor cannot be denied. Especially are they valuable and essential to the protection of a landlord who rents his premises for a short time. Suppose he has fitted his premises for certain uses and leases them for such uses for a short term. He would then be entitled to receive them back at the end of the term still fitted for those same uses, and he may well say that he does not choose to have a different property returned to him from that which he leased, even if it be found to be of greater value by reason of the change. But suppose that a usufructuary who has a life interest in an estate should receive as such a hemp hacienda, and that in a short time this hacienda should become permanently unproductive through disease or death of the plants, or by change of the market conditions, and the land to have become far more valuable, by reason of new conditions, as rice or sugar land. Is the usufructuary to be compelled to preserve or renew the useless hemp fields and forego the advantages to be derived from a different use? Or, suppose a life tenant should change warehouses into dwelling houses on the ground that by change of conditions the demand for warehouses had ceased and the property had become worthless, whereas it would be very valuable when fitted for dwelling houses. Would this be such a change in the form or substance of the thing leased as to forfeit the interest of the tenant? Again, a lessee for a long term received, during very prosperous times, a hemp hacienda upon which were constructed large and valuable storehouses in which were the old style hand-presses, but new. Later, on account of a complete change in conditions due to the market and the method of pressing hemp by steam, the lessee allowed the buildings and presses, which had become useless, to fall into decay rather than incur the expense of repair. Would a prudent owner of the fee, if in possession, have done the same? These questions naturally suggest their own answer. The radical and permanent changes of surrounding conditions must always be an important consideration in the determination of such questions. The interpretation that "if the man is too long for the bed his head should be chopped off rather than enlarge the old bed or purchase a new one" should not be given those provisions of the Civil Code regarding the obligations of lessees.

Let us now turn to the contract of lease and the evidence presented. In this contract of lease there are two clauses which deserve careful consideration.

Clause K:

"All the expenditures for cleaning, painting, and repairs which the building may require and all that is ordered done by the Board of Health, will be at the expense of the lessee, A. S. Watson and Company, Limited.

Clause M:

"The lessee may make such works on the building as the business which it has established therein requires, provided always that neither the strength nor the value of the said building is impaired."

It will be noted that the word "reparaciones" is used in Clause K, and the word "obras" in Clause M. Counsel 'for the appellants insist that the word "obras" as thus used means the same as "reparaciones." The Encyclopedic Dictionary of the Castilian Language (Diccionario Enciclopedico de la Lengua Castellana) defines these words as follows :

"OBRA:

"1. A thing made or produced by an agent.

* * * * *

"4. A building in course of construction.

"REPARACION:

"1. The action and effect of repair. (Reparar—verb: To mend, to straighten, or to correct the damage suffered by something.)"

The New Dictionary of the Castilian Language (Nuevo Diccionario de la Lengua Castellana) defines the same words as follows:

"OBRA:

"Anything made, created, or produced by some power or agent. Any construction of architecture, masonry, or carpentry, applied especially to buildings in course of construction or repair, as: There are three jobs in Calle Hortaleza. Everything in my house is disordered and topsyturvy because of the work.'

"REPARACION :

"The act or effect of repairing or of being repaired. The fact of repairing, in the sense of renewing or improving something."

The only synonym given in this work for "obra" is "produccion."

It may be that repairs are included in the definition of "obras." Nevertheless, it cannot be denied that the word "obras," used in its general sense, has a far more comprehensive meaning than just simple repairs.

Sections 290 and 293 of the Code of Civil Procedure, provide:

"SEC. 290. Terms of a writing presumed to be in their ordinary sense.—The terms of a writing are presumed to have been used in their primary and general acceptance, but evidence is nevertheless admissible that they have a local, technical or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly."

"SEC. 293. Where intention of different parties to instrument not the same.—When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it; and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made."

In the case at bar no proof has been presented tending to show that the word "obras" was used in a technical or special sense, or that it has a local signification, and therefore, it must be considered as used in its ordinary and general sense. If there exists any ambiguity and if the meaning that the appellants give to the word "obras" is proper, the meaning given by the appellees is likewise proper, consequently, we must apply the rule laid down in section 293, above quoted, for the reason that the stipulation contained in Clause M of the contract is a stipulation in favor of the lessee.

Counsel for appellants insist that in order to define the meaning of the word "obras" we should refer to the articles of the Civil Code that deal with contracts of lease. This might be done in those cases where the intention of the parties could not be ascertained from either the contract itself or from the conduct of the parties in executing and carrying out the same. In the case at bar, all that is necessary is to give a fair and reasonable interpretation to the meaning of Clause M of the contract of lease. This clause contains certain limitations on the exercise of the right

to make alterations (obras) : first, the alterations (obras) proposed to be made must be required by the business; second, such alterations must not injure the solidity of the building; and third, the same must not prejudice the value of the building. But it is insisted, as we have said, that the word "obras" in Clause M must be interpreted to mean "reparaciones" as used in Clause K. , Clause K imposes upon the lessee the obligation to make the repairs required by the building for its conservation. If the words have exactly the same meaning and were intended by the parties to mean the same thing, then the insertion of Clause M would only have had the effect of giving to the lessee the right to keep the building in repair, when, as a matter of fact, Clause K made it its duty to repair the building. As we understand the contract, in Clause K a duty is imposed upon the lessee, while in Clause M a right is given to it. In Clause K the word "reparaciones" is used in connection with the duty, and in Clause M the word "obras" is used in connection with the right. If the contracting parties had intended that the two words be used in the same sense they would have so stated, or they would have eliminated Clause M entirely as being useless, as it is meaningless to say that when a duty is imposed upon a person it is necessary to expressly give him a right to perform that duty. If he did not have the right to perform that duty, the same would not have been imposed upon him. The stipulations in Clause M are expressed as clearly and explicitly as they could have been under the circumstances. At the time of the execution of this contract of lease, it was impossible to know what would be the requirements of the business during its term of eighteen years. It was likewise impossible for the parties to have then agreed in detail as to the changes that, might be necessary. The lessee wished to reserve to itself the right to make the changes in the property required by its business, and none of the parties could anticipate what might be required during this long period of time. This right was conferred upon the lessee by the lessors, but the right, as we have said, had its limitations: that is, the lessee could not prejudice the solidity or the value of the building without breaking the contract.

The question was raised as to whether the conduct of the parties in carrying out the terms of this lease has been such as to show or indicate their intention or understanding of the meaning of the word "obras" when they inserted this word in Clause M, Upon this point the trial court said:

"That under and by virtue of the said contract of lease, the defendant company entered into possession of the leased premises, making therein alterations and repairs at a cost of some P60,000, including the removal of the whole front of the building facing upon, the Escolta and replacing the same upon the new street line, established by the city of Manila, with a modern and decorative commercial front; the removal of the heavy tiled roof and the replacing of the same with a light galvanized roof; the removal of various walls and replacing the same with steel columns and girders; the tearing down and rebuilding of a part of the building and the adding thereto of a camarin upon the Pasig River; and the building of a river wall and reclamation of a considerable amount of ground; and which alteration included the removal of that part of the wall in question which extended from Point A to Point G on the plan of the premises introduced in evidence as defendant's Exhibit No. 9, all of which repairs, alterations, and improvements, were made with the final approval of the plaintiffs, although after much controversy and many disagreements, and to which alterations and improvements the plaintiffs contributed the sum of about eighteen hundred pesos paid by the city of Manila for the expropriation for street purposes of the small strip along the front of the building heretofore mentioned."

These findings of fact are, we think, fully supported by the evidence. The result is that these important and material changes, which include the removal of a great portion of the very wall in question, were made by virtue of the contract of lease itself. It is true that the owners objected at first, but afterwards consented in accordance with the provisions of Clause M, and not by reason of any subsequent specific agreement. After all, that the defendants have the right under the law and the provisions of Clause M of the contract of lease to remove the wall in question, cannot be seriously doubted, provided always that neither the solidity of the building nor its value be impaired.

Let us now determine whether or not a removal of the wall in question (1) will prejudice either the solidity of the building or its value, and (2) if it is required by the business of the defendants.

The wall which the defendants and interveners propose to remove and substitute in lieu thereof other material is composed of two outer shells of Guadalupe or Meycauayan stone, filled with lime, plaster and rubber, the two shells being bound together by stones laid transversely, the whole wall so formed being about one meter thick and extending from the front of the building a distance of about 38 meters toward the Pasig River. This wall is about four meters high, extending from the ground floor to the second floor. The joists and girders supporting the second floor are embedded in said wall. There are two actual openings in this wall, with three doors and an arch, which have been walled up. The wall is in good condition, except that part removed by the defendants before the commencement of this action, and said wall is one of four longitudinal walls, all being approximately of the same thickness. The wall in question divides the east half of the ground floor of the building approximately in its center and sustains a part of the weight of the second floor of this east half, together with a partition forming one of the divisions of the second floor. But it does not sustain any of the weight of the roof, this weight being distributed by means of trusses to the outer walls of the building. About one-third of this wall, or that part nearest the Pasig, has already been removed, and the removal of the same was approved by the owners. The interveners now propose to remove the remaining two-thirds and substitute in lieu thereof other material, using the material of the old wall for filling up certain openings in other walls of the building. This old wall, according to the experts, offers very little resistance to lateral shocks or motions. Practically all of the resistance of lateral shocks or motions is furnished by the cross-walls. Again, according to the opinion of the experts the building will be greatly strengthened against earthquakes or unusual shocks or force, and its durability increased by the removal of the remaining part of the wall in question and the substitution in lieu thereof of reinforced concrete posts or pillars and arches, taking the material and filling, as the interveners propose to do, the openings in some of the other walls. Such proposed removal, if carried out, will practically double the floor space of the drug store and greatly increase its rental value, and also greatly increase the actual value of the building. This extra floor space is absolutely essential to the business carried on in this part of the building. The foregoing are substantially the findings of the trial court, based upon the testimony of expert witnesses, and an ocular inspection of the premises. These facts show clearly and beyond a question that the removal of the remainder of this old wall will not only not prejudice the solidity of the building, but greatly increase its solidity and durability, as, according to the opinion of the experts, the reinforced concrete posts and arches will offer greater resistance to earthquakes or baguios than the old wall; that both the intrinsic and rental value of the building will be increased; and that this removal is required by the business.

Lastly, counsel for the appellants say:

"The plaintiffs contend that a contract is only binding on the parties thereto as provided in article 1257 of the Civil Code and that, although a sublessee is bound to the lessor as provided in articles 1551 and 1552 yet this is not an obligation arising out of contract but one founded in law and the relation of the parties to property, and that the lessor has no obligation towards the sublessee as such at all either legal or of contract and that therefore even if by clause (m) of the lease the plaintiffs had the obligation to permit the defendant to take out the wall to suit the convenience of its own business, that such an obligation was purely personal between the parties to the lease and since the contract of lease is not assignable this right could not be transferred by defendant or made use of by defendant for the benefit of other persons."

A lease may be of things, works, or services. (Art. 1542, Civil Code.) In a lease of things, one of the parties thereto binds himself to give to the other the enjoyment or use of a thing for a specified time and for a fixed price. (Art. 1543, *idem*.)

Article 1550 of the Civil Code reads:

"Should it not be expressly forbidden in the contract of lease of things, the lessee may sublet the whole or a part of the things leased without prejudice to his liability for the fulfillment of the contract executed with the lessor."

There is nothing in the contract of lease in the case at bar which even tends to prohibit the lessee from sub-letting the whole or any part of the leased premises. The lessee's right to do this cannot be questioned, and his subtenant is not only obligated to carry out his part of the contract with the sublessor, but he is also bound to the lessors for all of the acts which refer to the use and preservation of the premises, in the manner agreed upon between the lessors and the lessee. The lessors can compel the subtenant to comply with these conditions. This sets up the privity between the lessors and the subtenant. But it is said that the contract of lease in question is not assignable. This contract is an ordinary one, under which the lessee as we have said, has a perfect right to sublet the whole of the premises for the entire time. Should the lessee do this, would it not amount to an assignment of the contract of lease? The power of assignment is incident to the state of every lessee of things, unless he has been restrained by the terms of his lease. In the contract of lease in question, the lessors, by Clause M, agree that the lessee may make such changes as its business requires, provided that neither the solidity nor the value of the building is prejudiced. This is a specific right granted to the lessee. This right is a part of the lease itself and affects directly the thing leased. It is not, therefore, a personal obligation between the lessors and the lessee.

We are, therefore, of the opinion that the judgment appealed from should be affirmed with costs against the appellant.

Johnson, Carson, and Moreland, JJ., concur.

Arellano, C. J., and Mapa, J., dissent.

DISSENTING

TORRES, J.:

Notwithstanding the respect the opinion of the majority deserves, I regret that I can not agree with the foregoing decision in so far as it allows the defendant, A. S. Watson & Co., or the intervener, The Philippines Drug Company, to remove the wall in question on condition that they replace it by pillars and arches of reinforced concrete, with the remaining circumstances set forth.

In my opinion this point in the judgment appealed from should be reversed by sustaining the injunction issued by the court and ordering the destroyed wall to be restored to the form and condition it previously had.

The destruction of this wall amounts to a change in form and an essential modification of the condition of solidity the property had before it was removed. The best proof that it was not expedient to remove the wall was being torn down, the building was propped up and another wall erected to replace the one taken out.

Article 1557 of the Civil code prescribes:

"The lessor can not change the form of the thing leased."

Article 1561 thereof says:

"The lessee must return the estate at the expiration of the lease in the same condition in which he received it, except what may have been destroyed or impaired by the time or by unavoidable reasons."

In the contract of lease appears the following Clause M:

"The leasing company may perform on the property the work required by the business it has established therein, provided that the solidity of the building is not damaged or its value affected."

The defendants proceeded to tear down said wall in violation of the provisions of the law and the agreement in the contract of lease, for the clause quoted does not authorize them to destroy the central wall of the building, even with the intention of replacing it by another wall of concrete, and in doing so they changed the form of the building and performed work not authorized in the contract, and which essentially affects the solidity of the building.

Even though said clause provides that the leasing company perform the work required by the business it has established therein, yet the same clause says: provided that the solidity of the building is not damaged or its value affected. By tearing down the wall in question and changing its form as the central support of the whole weight of the second story and of the framework of the roof, the defendant company undoubtedly performed work which essentially affects the solidity and the value of the structure.

The convenience of the tenant, not admitted by the owner, is no legal reason or cause whereby the former may alter the condition of the property, as there was no express stipulation that the said wall might be torn down, it is impossible to assert that the leasing company has not violated the contract and the legal provision which protects the right of the owner, who should in no sense be at the mercy of the caprice and convenience of the tenant, for that would give rise to a genuine transgression upon the right of property.

One of the obligations of lease under article 1555 is to use the thing leased like a careful householder by applying it to the use agreed upon, and, in default of agreement, to use that may be inferred from the nature of the thing leased according to the custom of the land. There is no custom in this country whereby a tenant may without permission of the owner tear down in this way a central wall that upholds building.

In a country like this, where the ground is frequently shaken by an enormous internal force, causing violent earthquakes, it is customary to build for the solidity of the structure walls of size and extent such as that of the property in question, which was destroyed by the defendant party by and for itself. In spite of the defects ascribed thereto, it is sufficient to assert that said wall has withstood all the violent earthquakes that have occurred during the latter half of the past century, and yet it was arbitrarily torn down without the knowledge and consent of the owners and in spite of an injunction of the court, not because it was not solid but because it was thick and wide and took up a good deal of space in the place which the defendant company wished to use to its full extent. A concrete wall, with which the destroyed stone was replaced, would be more convenient for the interests of the defendant because it would take up less room, but the solidity of concrete walls in this land of earthquakes has not yet received stamp of conclusive test in one of those violent phenomena, happily not yet experienced since the concrete building have been erected here. But if the will of the parties is the law in contracts not contrary to law, morality and public order, and in cases not foreseen by the interested parties, the rules and provisions of law that protect the reciprocal rights and duties of the contracting parties, the leasing company unquestionably had no right to tear down the wall in question and replace it by another of concrete without the consent and against the express objection of the owners of the property.

Therefore, I think that the first part of the judgment appealed from should be affirmed and that the second part, referring to the authorization therein conferred upon the defendant party to remove the wall in question and replace it by another of concrete with the conditions set forth, ought to be reversed and the defendant party ordered to replace the destroyed wall in the form and condition it formerly had, with the "costs against the defendant party."

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