

PRUDENCIO DE JESUS, PLAINTIFF AND APPELLANT, VS. LA SOCIEDAD ARRENDATARIA DE GALLERAS DE PASAY ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 7313. August 29, 1912*

Ponente: CARSON, J.

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A partnership composed of Isidoro Aragon, Lucio Cuneta Cruz and Modesto de la Cruz, owned a cockpit which it rented to the defendant company. On the 14th of December, 1908, Lucio Cuneta Cruz sold his interest in the partnership (two-fifths share) to the plaintiff, reserving the right to repurchase under certain conditions. Plaintiff claims that the vendor having failed to exercise his right to repurchase, the sale became absolute on the 15th day of February, 1909, and that since that date he has been the sole owner of this two-fifths interest in the partnership. It appears also that plaintiff purchased the interest of Isidoro Aragon in the partnership (also a two-fifths share), on the 21st of May, 1910, and that Modesto de la Cruz, one of the defendants in this action, continues to hold his original interest in the partnership (a one-fifth share).

Plaintiff in this action seeks (1) to, recover of the defendant company the amount of the monthly rental which he claims to be due him as the owner of Lucio Cuneta Cruz' interest since the 15th day of February, 1909; and (2) to terminate the rental contract, on the ground that as the owner of a four-fifths share in the renting partnership he is entitled to exercise the right of control therein.

We think that the evidence of record fully establishes the claim of the plaintiff as to his purchase of the interest of Lucio Cuneta Cruz in the partnership which entered into the rental contract with the defendant company; and also that under the terms of that contract the defendant company obligated itself to pay to the owner of that interest the sum of P280 per month so long as the contract continued in force; that the contract continued in force up to the date of the entry of judgment in the court below; and that the plaintiff became the absolute owner of Cuneta Cruz' interest on February 15, 1909.

The trial judge recognized the right of the plaintiff to recover this monthly rental from the defendant company from the date of the judgment entered by him, but declined to give judgment for the monthly rental from the date when the purchase of Cuneta Cruz' interest was perfected (February 15, 1909) to the date of the judgment. This on the ground that during that period Cuneta Cruz was contesting plaintiff's claim that he had purchased this interest in the partnership. The trial judge appears to have been of opinion that since there had been no formal adjudication of plaintiff's ownership of Cuneta Cruz' interest prior to the date of the judgment, the defendant company was not obligated to pay the plaintiff the monthly rental corresponding to that interest pending the adjudication of this question, since, as he held, to have done so might have exposed it to the risk of having the contract terminated "by Cuneta Cruz for failure to pay to him the stipulated rental, in the event that it should later be judicially determined that Cuneta Cruz and not the plaintiff was the true owner, and that the purchase had not

been consummated on the 15th of February, 1909, as claimed by the plaintiff.

In this we hold that the trial judge erred. The defendant company had due and sufficient notice of the sale at the time when the plaintiff perfected his purchase of Cuneta Cruz' interest. Demand was formally and promptly made upon it for the payment of the rent to which plaintiff was thereafter entitled. Under its contract it was the defendant company's duty to pay the stipulated rent to the owner of the interest originally held by Cuneta. If with due notice of the purchase of this interest by plaintiff, it paid any other person than the true owner, such payment in no wise relieved it of its obligations under the contract to pay the true owner. It must fulfill and comply with the terms of its contract, and the plaintiff is entitled to recover the stipulated rent from the 15th day of February, 1909, and so long as the rental contract between the partnership and the defendant company remains in force. Judgment for the rent in question from the 15th day of February, 1909, to the date of the judgment should have been rendered in favor of the plaintiff, together with interest at the rate of six per centum per annum upon the amount of the rent for each month from the date when it fell due to the date of payment.

We do not recognize the force of the contention that merely because the right of ownership was in dispute the defendant company lawfully refused to pay the rent to the plaintiff, on the ground that it could not be required to take the risk of paying the wrong person and suffering the consequences. Section 120 of the Code of Civil Procedure provides for just such a case. If the defendant company had any sufficient ground to be in doubt as to which of the claimants was entitled to the rent, it could have protected thus leaving the determination of the doubt to the courts. The defendant company not having exercised this right, it voluntarily assumed the risk of payment to the wrong person, and of course payment to the wrong person under such circumstances (even if it were actually made, which does not affirmatively appear from the record in the case), would not relieve it of liability to the person lawfully entitled to receive payment under the rental contract.

We agree with the trial court that the plaintiff's prayer that the rental contract with the defendant company be terminated can not be granted in this action. We, however, place our denial of this prayer on a different ground from that assigned in the court below. Plaintiff appears to rest his demand for the termination of the contract on the ground that as the owner of two of the three interests which originally constituted the partnership (a "sociedad colectiva" as defined in article 2 of title 1 of the Code of Commerce) that entered into the rental contract with the defendant company, these two interests constituting a four-fifths share in that partnership, he is entitled to control the operations of the partnership. But without discussing or deciding that question, we hold that even if it be admitted that plaintiff's purchase of two of the three original interests representing a four-fifths share in the partnership gave him the right to control the operations of the partnership, subject; of course, to the Code provisions in such cases, it does not necessarily follow that he can arbitrarily repudiate the rental contract entered into by the partnership before he purchased the majority interest therein.

The right to terminate the contractual relations between the parties, and the conditions upon which one or other of the contracting parties may exercise this right necessarily depends on the contract itself. It does not definitely appear from the record whether the contract was or was not reduced to writing; and while there does not seem to have been any question in the court below as to some of its terms, the contract itself is not before us. It is alleged that it contained a stipulation that the contract was to continue in force so long as the defendant company continued in existence. Of course, if the contract was not in writing, this condition could not be enforced; but if the contract was executed in due form, and as such is enforceable in the courts, and if this was the only condition touching its duration contained therein, it would appear that the relation of landlord and tenant could not be terminated at the will of one of the parties so long at least as the other party lived up to its obligations, and the

defendant company continued in existence. We reserve our opinion, however, on the question as to the precise conditions under which such a contract might be terminated, it not being necessary to go into that question in the absence of the contract itself.

Plaintiff having failed to establish satisfactorily the terms and conditions of the rental contract, it is impossible for us to determine the conditions, if any, upon which he, acting for the partnership, may exercise his alleged right to terminate it; or to hold that under the contract, the society or partnership in which plaintiff holds a controlling interest has a right to have the contract rescinded. So far therefore as the judgment of the court below denies the right of the plaintiff to have the rental contract in question terminated in this action it should be affirmed, reserving to the plaintiff, however, the right to institute a new action or to take such steps as he may deem proper, hereafter, with a view to the exercise of any right he may have, under the contract, to rescind or terminate the same.

Ten days hereafter let judgment be entered reversing the judgment of the court below without costs in this instance, and twenty days thereafter let the record be returned to the court wherein it originated, which will enter final judgment, in accordance with the principles herein laid down. So ordered.

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

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