

**MIGUEL VELASCO Y CUARTERONI, PLAINTIFF AND APPELLEE, VS.  
LAO TAM, DEFENDANT AND APPELLANT.***G.R. No. 7480. November 22, 1912*

Ponente: ARELLANO, C.J.

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On December 9, 1902, Mariano Ocampo Lao Simco leased from the Ycaza family a lot at a rental of P540 per month for a period of eleven years, count from April 10, 1903, under the stipulation that he should construct thereon a building which at the end of the eleven years' term of the contract would become the property of the lessor family. On January 4, 1910, a part of the building constructed was destroyed by fire, and, as result thereof, instead of the P1,068 which the building had been producing theretofore, it subsequently produced only P555, until the repairs on it were completed on August 31, 1910. During the eight months that it took make the repairs, Lao Tam, the successor of Lao Simco in the lease of the lot, was willing to pay only one-half of the P540 per month stipulated by his predecessor in the contract aforementioned. But the lessor family refused to assent to this claim on the part of the lessee, Lao Tam; and hence, present suit to compel him to pay the whole of the stipulated rent of P540 per month, for the months from January to August, 1910, the period when the building was undergoing repair, in accordance wherewith it was decided by the trial judge, who sentenced the defendant, Lao Tam, to pay to the plaintiff the sum of P2,075.04, with legal interest thereon from the time of the presentation of the complaint, and the costs.

The defendant appealed through a bill of exceptions with right to a review of the evidence; but this can not now be reviewed, for the reason that was not forwarded to this court. The sole assignment of error alleged that the trial court violated the law governing the construction of contracts by finding, erroneously, that the contract entered into does not allow defendant exemption from the payment of the rent for the lot leased, for the period of time the building was under reconstruction.

The clause of the contract concerned in the said assignment of error is couched in the following language:

"The tenant shall pay by way of rent to the minor proprietors or their legitimate representative the sum of five hundred and forty pesos (P540) monthly in advance and within the first six days of the month to which it pertains."

The first rule in the matter is that "if the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed." (Civil Code, 1281.) The contract in question being clear and leaving no doubt as to the intentions of the contracting parties, the trial judge, who had to abide the literal sense of the preinserted clause, rendered, in conformity with the judgment now on appeal.

But the appellant alleges that the evident intention of the contracting parties was other than that expressed by the words of the contract, as though he meant that the second rule of interpretation of the same article No. 1281 of the Civil Code, not cited by him, should apply, which read follows: "If the words should appear contrary to the evident intention of contracting parties, the intention shall prevail."

And, to prove the evident intention of the contracting parties, he argues thus:

The purpose of the lessee in taking the lot was to derive profit from the rent of the building which he was to construct thereon; and that of the lessors, in turn, in giving a lease on the lot, was not merely nor exact obtain the stipulated monthly rent, but, more especially, to acquire ownership of the building constructed by the lessee at his own expense, without any outlay or sacrifice whatever on their part. This is pro the fact that, although the contract was executed in December, 1902, the lessee did not begin to pay rent for the lease of the lot until April, 1903, the reason that the period between these dates was the time calculated for the construction of the building, which in fact was finished on April 10, 1903. This indeed shows, says the appellant, the intention of the contracting parties with respect to the payment of the rent for the lot, and was no other than that the lessee should begin to pay it whenever he should beg to obtain rent from the building constructed on the lot, since the ground leased for this purpose.

The appellees, however, say: (1) That it is sufficient to see how t appellant himself, in his special defense, alleges the terms of the co order to be convinced Of the untruthfulness of what he now asserts, to wit, that although the contract was signed in December, 1902, he did not begin to pay the rent until April 10, 1903, for he himself stated the p that Mariano Ocampo Lao Simco took in the contract, by saying: "As lessee for the term of eleven years, counting from April 10, 1 consequently, if he began to pay on the 10th of April, 1903, it was because on that date he began to be the lessee of the lot; (2) that, if he did not begin to be the lessee nor to pay the rent until April 10, 1903, it because up to this same date another lessee, named Vy Santing, had bee paying the rent; (3) that neither is it true that the construction of building was finished on the 10th of April, 1903, but that it was begun very next day, the 11th, and was completed in July, 1903. Therefore it true that the rent was not collected for the period between the 9th of December, 1902, and the 10th of April, 1903, in consideration of the, fact that the lessee had not yet begun to collect rent for the building in that case, the rent for the lot should not have begun to be collected after July, 1903, which is when the construction of the building was finished yet, notwithstanding, in the period between April and July, 1903, the re the lot was being paid by the lessee.

The appellant, insisting on his contention; says: "The possible event building being burned was foreseen, and as such a mishap might result at least its partial destruction and, consequently, a partial suspense the profits which the lessee intended to obtain from the contract of it was stipulated that in such a case the term of the lease, previous agreed upon, should be extended so as to include the whole time employed in reconstruction, which stipulation was couched in the following language term of the contract shall be understood to be extended, under the same conditions herein stipulated, for such number of months as may be required for the repairs or the rebuilding.' The parties," infers the a "desired to covenant that during the time of reconstruction of the build destroyed or damaged by fire, the effects of the contract of lease should be understood to be suspended with respect to the part burned, but to be resumed for the whole time that, from the instant of the occurrence of t fire, was yet to elapse before the expiration of the term of the contract lease."

The trial judge in his decision stated: "Whether the building be total which case it would have to be rebuilt, or whether it be partially destroy which event it could be repaired out of the money collected from the fir insurance policy, it is unquestionable that the lessee would be deprived rents, either totally or partially, as the case might be, during the months required to rebuild or repair the building; but, to compensate his loss either of the contingencies mentioned, it is provided that he shall indemnified by the owner of the lot by an extension of the term of the lease for a period of time equal to that during which he should be prevented from obtaining rents." Indeed it does not appear that the aforesaid clause of the contract says or can say more than what is meant by its clear and precise language.

If the case had not been foreseen of possible occurrence of fire, perhaps doubt might have arisen as to whether the

lessee, having lost half of his building, should not be obliged to but one-half of the rent for the lot; but that case having been foreseen and stipulation having been made in provision thereof, the occurrence of case provided for can produce no other effect than that stipulated, wit, an extension of the term of the contract for so long a time as the repair or reconstruction should require; and if it required eight months contract has eight months longer to run beyond the eleven years original stipulated. This, and nothing more, can be the meaning of the clause referred to.

The obligation contracted by the appellant to pay P540 per month as rent for the lot, is expressed in absolute terms, is not subject to condition temporary or final. The clause of the contract in which the lessee free voluntarily contracted such obligation, is binding law which the court apply pursuant to the terms of its expression and they have no discretion power to construe it in another sense, for the reason that its wording is and leaves no doubt as to the intention of the contracting parties. Were intended that the payment of the rent for the lot should depend upon the renting of the building, this should have been stipulated in the contract if it was not done, the courts can not supply deficiencies in the contract introducing provisions not expressed therein. In order that the force or effect of the obligation in question may be suspended, it is requisite the courts find on trial conclusive facts which show that the terms of the contract are contrary to the evident intention of the contracting parties herein before stated, no such proof was found in the present case, but rather the contrary was proved, without contradiction or question of any kind.

If the building that was erected had not been occupied, on the supposition that it was not destroyed, for a part or any; of the time, and, consequence if no rent had been collected therefrom, it would neither be just nor reasonable to contend that the owner of the lot should not collect for part or any of the time the rent which the builder had agreed to pay, for to do so, would be to make the owner dependent upon the favorable or unfavorable outcome of the private business of the builder, which it would be absurd to think could have entered into the intention, whether evidence suggested, of the contracting parties. Likewise, if, instead of P1,068, builder had obtained a rent of P4,000, the owner of the lot would not be entitled to collect a greater rent for the ground.

Nor would it aid toward obliging the owner of the lot to suffer a reduction of the rent which he is entitled to collect in accordance with special law of his contract, if some general rule of law should be established for example (in the Philippines there is none), that the lessor, in the present one, should be from the beginning, and not at the end of eleven years, a joint owner of the building; for though the ownership of the house were divided between the owner of the ground and the owner of the surface right, the latter could not, on such account, in the event of the partial destruction of the building, escape payment to the former of the stipulated rental price, inasmuch as only in the case where the net revenue from the subject to the payment of an annual income, be insufficient to pay the lot could such income be reduced, either by agreement or formal declaration of the courts an exception finally repealed by article 1624 of the Civil Code in the present case, neither was right to the ground established in nature of a perpetual lease, nor may the hypothesis be admitted of the division of the ownership of the constructed building between the owner of ground and the owner of the right to use the ground, inasmuch as the so stipulation which the contracting parties made, and it is the sole law which must be applied by the courts, is that the building in question can pass the ownership of the lessors only after the lapse of eleven years and eight months, counting from the 10th of April, 1903. So that, notwithstanding any general rule of the only law applicable to the case is the special one imposed upon themselves by the parties in their contract.

Moreover, serious consequences would be brought upon the builder by making the owner of the lot, or presuming him to be, a co-participant in the ownership of the building, were this done or presumed in order to oblige him make a reduction in the rent of the lot, once there was a reduction in the value of the building: (1) Because, if the owner must suffer a reduction, he may inversely, obtain an increase, as these terms are correlative in and, (2) because, before compelling him to suffer a reduction in the rent his lot in case of accident, by reason of the joint ownership he is

supp to have in another's building, there would have to be, in the ordinary could the contract, attributed to this joint ownership its inherent effects, that is, rights to the owner identical to those of the builder, his presumed joint and thus would the absurdity be reached of having to attribute to the owner a right to the collection of one-half of the rent from the building, which make the contract truly one-sided, not only according to what its terms ex as stated by the appellant, but also according to what they do not express, pursuant to this theory.

No general rule of law is applicable whereby the owner of the ground may be deemed to have a right of ownership in the building from the moment the contract is executed.

As between the litigating parties in this case, their special law provide case of co-partnership in the building, in the clause of the contract which as follows: "In the event of a fire, such repairs as the building may require its reconstruction, shall be made without loss of time, with the obligation the part of the owners of the land to contribute, pursuant to the preceding clause, the part corresponding to them of the value of the insurance policy the extent of which amount they shall be deemed co-participants in the building but they renounce and disclaim all profits and losses which may fall to the share by reason of such co-participation, and the period of the contract sh be understood to be extended, under the same conditions herein stipulate for such number of months as may be required for the repairs or the rebuilding." (B. of E., p. 7.) So it is clearly seen that the evident the parties was that the owners of the lot should not gain any partnership the building except in the event of a fire, if they contributed their share fire insurance policy, and that their share of joint ownership sh6uld be proportionate to the amount of their share in such insurance, notwithstanding which amount they should not be entitled to any of the profits nor bear any of the losses derived from the building. No fact nor datum whatever is available to show whether they did or did not gain a partners in the building, for the evidence was not forwarded with the bill of exceptions, nor does the latter contain an insertion of the "preceding" clause, mentioned the above quotation, whereby, apparently, it was covenanted what part of the value of the insurance was to pertain to the owners of the land. Be this as it may, what is certain and settled is that this special law of the con parties dispels the idea that they may be joint owners from the beginning, instead of from the time of the occurrence of a fire, and that even in the latter event they would be joint owners only for the purposes of reconstruction or repairs, with no power on the part of the owner of the ground to take away from the owner of the building the slightest amount of his profits. Wherefore, it would be extremely inconsistent, in this same case, to allow owner of the building to reduce, and by so much as one-half, the profits belonging to the owner of the ground.

On the hypothesis that these profits are so great as to render the contract truly one-sided, in the first place, it ought not to have been for it was not imposed upon the lessee, and in the second, the latter is n entitled under color of compensation and on his own authority to make a reduction in the rents, but this is for the courts to do, through due legal action, should there be warrant of law, as in the case (if it may be a comparison) of a "superficiary" whose income is insufficient, through a partial destruction of the building erected, to pay the annuity.

Neither for the sole error assigned, nor under any of the other points of view brought out by the ample discussion accorded this case, can this appeal meet with success.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

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

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