

## JOAQUIN LIM SOCO, PLAINTIFF AND APPELLEE, VS. CONSUELO ROXAS ET AL. DEFENDANTS AND APPELLANTS.

*G.R. No. 8993. February 09, 1914*

Ponente: MORELAND, J.

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### MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila in favor of the plaintiff and against the defendant, Consuelo Roxas, for the sum of P1,460, with interest thereon at 6 per cent per annum from the 28th of December, 1912, with costs.

The action is one to recover damages for breach of a lease between the plaintiff and the defendant, Consuelo Roxas, relative to certain lands situated in the city of Manila and fully described in the complaint.

The facts of the case are stated fully and fairly by the trial court, so far as appears from the evidence before us, as follows:

"From the evidence presented at the trial I find that the defendant Consuelo Roxas is the owner of the premises described as No. 503 Calle Nueva, in the district of Binondo, city of Manila, which had been, on the 13th day of April, 1912, rented by her to the other defendant.

"That on that date she rented the same premises to the plaintiff for a term of two years commencing on the 1st day of May, 1912, provided that the other defendant had then vacated the premises, and if he had not, then from the day on which he was evicted.

"That in addition to the monthly rent agreed upon the plaintiff obligated himself to pay all the expenses of making certain improvements upon the premises, and to deposit with the defendant Consuelo Roxas before entering upon the premises the sum of ₱500 as security for the making of the said improvements, to be returned when the improvements were made, which was to be done within sixty days from taking possession.

"The defendant Gan Siong did not vacate so that plaintiff could enter on May 1 as per lease, and nothing was done thereafter except by plaintiff, who sought to obtain possession, until August 5, 1912, when the defendant Gan Siong confirmed a verbal notice by writing plaintiff on that day that he had rented the premises in question from Consuelo Roxas for a period of five years, beginning November 1, 1912, subject to plaintiff's lease made on April 13 for two years, and that plaintiff might take possession of the premises at the expiration of his, Gan Siong's, lease on November 1, 1912, and that possibly arrangements might be made for him to enter at an earlier date.

"On August 14, 1912, the defendant Consuelo Roxas notified plaintiff that the defendant Gan Siong's lease expired on October 31, and that he could immediately oblige the defendant Gan Siong to vacate the premises.

"That on August 23, 1912, without anything further having been done, Gan Siong wrote plaintiff that he could 'now' enter the premises in question, but that before entering he must deposit the sum of ₱500 with him as called for by his contract of lease with Consuelo Roxas.

"The plaintiff appears not to have been entirely satisfied to do business with Gan Siong and on the 22d day of October, 1912, he answered the letter of Consuelo Roxas, which, as stated in his answer, was 'of the 14th of the present month/ which indicates that Consuelo Roxas' notice dated August 14 was so dated by error, that there was another letter dated October 14, or that plaintiff made error as to the date. However this may be he advises her that he is ready to take possession under his contract on November 1 and to make the deposit of 5\*500 required by the contract, and that he must have the whole premises free and unoccupied.

"Consuelo Roxas sent this communication to Gan Siong a few days later with the request to him that it be complied with.

"That on the 31st day of October, 1912, plaintiff delivered to Consuelo Roxas the P500 required by his contract with her and she received it for the purpose indicated.

"That the premises were not vacated because some tenant occupying refused to leave. Later an action in eviction was brought against the tenant, which finally terminated in a dismissal of the action some days after the defendant in that action had voluntarily vacated on January 31, 1912.

"That when plaintiff had been informed by the defendant Consuelo Roxas that he could have the possession of the premises on November 1 he began to prepare to enter into business therein, and to that end employed certain persons to assist him in carrying it on, and so employed a clerk, a cashier, a collector, a weigher, an outside man, two coolies, and a cook and kept them awaiting the time when possession of the premises would be delivered him, and thus under promises of delivery waited until some time in December, when he dismissed them, paying and promising to pay the wages agreed upon to December 31, and notified the defendant Consuelo Roxas that he would no longer require the premises, she having failed to deliver possession.

"That the expenses thus incurred by plaintiff amount to P960."

There are three errors assigned by the appellants which need consideration. The first one is that the court erred in finding "that when plaintiff had been informed by the defendant Consuelo Roxas that he could have the possession of the premises on November 1 he began to prepare to enter into business therein and to that end employed certain persons to assist him in carrying it on and so employed a clerk, a cashier, a collector, a weigher, an outside man, two coolies, and a cook and kept them awaiting the time when possession of the premises would be delivered to him, and thus under promises of delivery waited until some time in December, when he dismissed them paying and promising to pay the wages agreed upon to December 31, and notified the defendant Consuelo Roxas that he would no longer require the premises, she having failed to deliver possession; that the expenses thus incurred by plaintiff amount to P960."

We do not understand that in assigning this error counsel for appellants intended to assert that there is no evidence to sustain the findings referred to. Each finding is fully supported by evidence presented by the plaintiff himself and other witnesses testifying in relation thereto. There is very little, if any, direct evidence to the contrary. This may be due, as counsel alleges, to the fact that it is difficult to meet evidence of that character. This, however, does not militate against the fact that there exists such evidence; and if the court, in the exercise of sound judgment, accepted as true the testimony of the plaintiff and his witnesses, the finding based thereon is not reversible unless appellants show to the satisfaction of this court that the trial court erred in making the finding. No attempt has been made to demonstrate such error except to allege that the evidence of plaintiff and his witnesses is untrue. We see nothing in the record which demonstrates that such evidence is unreasonable or that it is false or that it suffers from" any of the defects which must appertain to it before it can be disregarded by us after having been passed upon and accepted by a court who saw the witnesses, observed carefully their manner of testifying, watched their expression and conduct, and from these observations made up the finding which is before us.

The other two errors assigned relate to objections sustained by the court to certain questions put by counsel for the appellants to the plaintiff when on the witness stand. The first one is: "You stated at that time, did you not, that you had some laborers ready to go to work on the house?"

An objection was made to this question and sustained. We do not see any reason for sustaining the objection to the question; neither can we see that the exclusion of the answer in any way prejudiced the appellants' case.

The other question is as follows: "Is it not a fact that on the 12th of November you were a witness before the justice of the peace of the city of Manila, in the suit of Joaquin Gan Siong vs. Tan Kee Co?"

This question was also objected to and the objection sustained. We are not in a position to say that the exclusion of the answer to this question prejudiced the appellants' case. It does not appear in the record what was the purpose of the question. No statement was made by counsel indicating his object in propounding it. As the record stands before us, we can see no prejudice which resulted to appellants from the ruling of the court on the objection.

That there was a breach of the contract between plaintiff and the defendant Roxas we regard as clearly demonstrated. According to the lease plaintiff was entitled to possession on the 1st day of May. Being unable to secure it at that time, he was told that he could have possession in August. Again he was disappointed. Following this disappointment he was told that he could have possession on the 1st of November. Again he was disappointed. Up to that time it is clear that no real effort had been made to give him possession. The premises were in the possession of various other persons to whom they had been rented by the defendant Roxas. They were not vacated for his possession until toward the 1st of February of the following year. It seems unreasonable to ask that the lessee wait nearly nine months for possession under a lease. We can concede no force to the argument that the lessor is not bound to give possession but that the lessee is obliged to take the premises although occupied by another and he himself obtain possession through the proper procedure in the court. In this case actual possession was promised, not once but several times.

We are of the opinion that the damages found by the court were correctly found. Plaintiff was entitled to such damages as were the direct, immediate, and probable result of the breach of the contract. Appellants knew the purposes for which the plaintiff was renting the premises and, as a natural consequence, they were aware of such damages as would naturally and probably result from their failure to fulfill the terms of the lease. These damages have been clearly proved by evidence found to be credible and we can see nothing in the record which warrants interference there with.

The judgment appealed from is affirmed, with costs against the appellants.

Arellano, C. J., Trent and Araullo, JJ., concur.

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