2 Phil. 309

[G.R. No. 967. May 19, 1903]

DARIO AND GAUDENCIO ELEIZEGUI, PLAINTIFFS AND APPELLEES, VS. THE MANILA LAWN TENNIS CLUB, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

This suit concerns the lease of a piece of land for n fixed consideration and to endure at the will of the lessee. By the contract of lease the1 lessee is expressly authorized to make improvements upon the land, by erecting buildings of both permanent and temporary character, by making fills, laying pipes, and making such other improvements as might be considered desirable for the comfort and amusement of the members.

With respect to the term of the lease the present question has arisen. In its discussion three theories have been presented: One which makes the duration depend upon the will of the lessor, who, upon one month's notice given to the lessee, may terminate the lease so stipulated; another which, on the contrary, makes it dependent up0n the will of the lessee, as stipulated; and the third, in accordance with which the right is reserved to the courts to fix the duration of the term.

The first theory is that which has1 prevailed in the judgment below, as appears from the language in which the basis of the decision is expressed:

> "The court is of the opinion that the contract of lease was terminated hy the notice given by the plaintiffs on August 28 of last year * * *" And such is the theory maintained by the plaintiffs, which expressly rests upon article 1581 of the Civil Code, the law which was in force at the time the contract was entered into (January 25,1890). The judge, in giving to this notice the effect of terminating the lease, undoubtedly considers that it is governed by the article relied upon by the

> plaintiffs, which is of the following tenor : "When the term has not been fixed for the lease, it is understood to be for years when an annual rental has been fixed, for months when the rent is *monthly* * * *." The second clause of the contract provides as follows: "The rent of the said land is fixed at 25 pesos *per month*." (P. 11, Bill of Exceptions.)

In accordance with such a theory, the plaintiffs might have terminated the lease the month following the making of the contract—at any time after the first month, which, strictly speaking, would be the only month with respect to which they were *expressly* bound, they not being bound for each successive month except by a *tacit* renewal (art. 1566)—an effect which they might prevent by giving the required notice.

Although the relief asked for in the complaint, drawn in accordance with the new form of procedure established by the prevailing Code, is the restitution of the land to the plaintiffs (a formula common to various actions), nevertheless the action which is maintained can be no other than that of *desahucio* in accordance with the substantive law governing the contract. The lessor—says article 1509 of the Civil Code—may judicially dispossess the lessee upon the expiration of the conventional term or of the legal term; the *conventional* term—that is, the one agreed upon by the parties; the legal term, in defect of the conventional, fixed for leases 'by articles 1577 and 1581. We have already seen what this legal term is with respect to urban properties, in accordance with article 1581.

Hence, it follows that the judge has only to determine whether there is or is not a conventional term. If there be a conventional term, he can not apply the legal term fixed in *subsidium* to cover a ease in which the parties have made no agreement whatsoever with respect to the duration of the lease. In this ease the law interprets the presumptive intention of the parties, they having said nothing in the contract with respect to its duration. "Obligations arising from contracts *have the force of law* between the contracting parties and must be complied with according to the tenor of the contracts." (Art. 1001 of the Civil Code.)

The obligations which, with the force of law, the lessors assumed by the contract entered into, so far as pertaining to the issues, are the following:

> "First. * * * They lease the above-described land to Mr. Williamson, who takes it on lease} * * * *for all the time* the members of the said club may desire to use it *

> * * Third. * * * the owners of the land undertake to maintain the club *as tenant as long as the latter shall see fit, without altering in the slightest degree the conditions* of this contract, *even though the estate be sold."*

It is necessary, therefore, to answer the first question: Was there, or was there not, a conventional term, a duration, agreed upon in the contract in question ? If there was an agreed duration, a conventional term, then the legal term—the term fixed in article 1581—has no application; the contract is the supreme law of the contracting parties. Over and above the general law is the special law, expressly imposed upon themselves by the contracting parties. Without these clauses 1 and S, the contract would contain no stipulation with respect to the duration of the lease, and then article 1581, in connection with article 1569, would necessarily be applicable. In view of these clauses, however, it can not be said that there is no stipulation with respect to the duration of the lease, or that, notwithstanding these clauses, article 1581, in connection Avith article 1569, can be applied. If this were so, it would be necessary to hold that the lessors spoke in vain—that their words are to be disregarded—a claim which can not be advanced by the plaintiffs nor upheld by any court without citing the law which detracts all legal force from such words or despoils them of their literal sense.

It having been demonstrated that the legal term can ot be applied, there being a conventional term, this destroys the assumption that the contract of lease was wholly terminated by the notice given by the plaintiffs, this notice being necessary only when it becomes necessary to have recourse to the legal term. Nor had the plaintiffs, under the contract, any right to give such notice. It is evident that they had no intention of stipulating that they reserved the right to give such notice. Clause 3 begins as follows: "Mr. Williamson, or whoever may succeed him as secretary of said club, may terminate this lease whenever desired without other formality than that of giving a month's notice. The owners of the land undertake to maintain the club as tenant as long as the latter shall see fit." The right of the one and the obligation of the others being thus placed in antithesis, there is something more, much more, than the *inclussio unius, exclussio alterius*. It is evident that the lessors did not intend to reserve to themselves the right to rescind that which they expressly conferred upon the lessee by establishing it exclusively in favor of the latter.

It would be the greatest absurdity to conclude that in a contract by which the lessor has left the termination of the lease to the will of the lessee, such a lease can or should be terminated at the will of the lessor.

It would appear to follow, from the foregoing, that, if such is the force of the agreement, there can be no other mode of terminating the lease than by the will of the lessee, as stipulated in this case. Such is the conclusion maintained by the defendant in the demonstration of the first error of law in the judgment, as alleged by him. He goes so far, under this theory, as to maintain the possibility of a perpetual lease, either as such lease, if the name can be applied, or else as an innominate contract, or under any other denomination, in accordance with the agreement of the parties, which is, in fine, the law of the contract, superior to all other law, provided that there be no agreement against any prohibitive statute, morals, or public policy.

It is unnecessary here to enter into a discussion of a perpetual lease in accordance with the law and doctrine prior to the Civil Code now in force, and which has been operative since 1889. Hence the judgment of the supreme court of Spain of January 2, 1891, with respect to a lease made in 1887, cited by the defendant, and a decision stated by him to have been rendered by the Audiencia of Pamplona in 1885 (it appears to be rather a decision by the head office of land registration of July 1, 1885), and any other decision which might be cited based upon the constitutions of Cataluna, according to which a lease of more than ten years is understood to create a life tenancy, or even a perpetual tenancy, are entirely out of point in this case, in which the subject-matter is a lease entered into under the provisions of the present Civil Code, in accordance with the principles of which alone can this doctrine be examined.

It is not to be understood that we admit that the lease entered into was stipulated as a life tenancy, and still less as a perpetual lease. The terms of the contract express nothing to this effect. They do, however, imply this idea. If the lease could last during such time as the lessee might see fit, because it has been so stipulated by the lessor, it would last, first, as long as the will of the lessee—that is, all his life; second, during all the time that he may have succession, inasmuch as he who contracts does so for himself and his heirs. (Art. 1257 of the Civil Code.) The lease in question does not ,fall within any of the cases in which the rights and obligations arising from a contract can not be transmitted to heirs, either by its nature, by agreement, or by provision of law. Furthermore, the lessee is an English association.

Usufruct is a right of superior degree to that which arises from a lease. It is a real right and includes all the *jus utendi* and *jus fruendi*. Nevertheless, the utmost period for which a usufruct can endure, if constituted in favor of a natural person, is the lifetime of the usufructuary (art, 513, sec. 1); and if in favor of a juridical person, it can not be created for

more than thirty years. (Art. 515.) If the lease might be perpetual, in what would it be distinguished from an emphytensis? Why should the lessee have a greater right than the usufructuary, as great as that of an emphyteuta, with respect to the duration of the enjoyment of the property of another? Why did they not contract for a usufruct or an emphteusis? It was repeatedly stated in the document that it was a lease, and nothing but a lease, which was agreed upon: "Being in the full enjoyment of the necessary legal capacity to enter into this contract of *lease* * * * they have agreed upon the *lease* of said estate * * * They *lease* to Mr. Williamson, who receives it as *such* * * *. The *rental* is fixed at 25 pesos a month. * * * The owners bind themselves to maintain the club as *tenant*. * * * Upon the foregoing conditions they make the present contract of *lease*. * * *" (Pp. 9. 11, and 12, bill of exceptions.) If it is a lease, then it'must be for a *determinate period*. (Art. 1543.) By its very nature it must be temporary, just as by reason of its nature an emphyteusis must be perpetual, or for an unlimited period. (Art. 1608.)

On the other hand, it can not be concluded that the termination of the contract is to be left completely at the will of the lessee, because it has been stipulated that its duration is to be left to his will.

The Civil Code has made provision for such a case in all kinds of obligations. In speaking in general of obligations with a term it has supplied the deficiency of the former law with respect to the "duration of the term when it has been left to the will of the debtor," and provides that in this case the term shall be fixed by the courts. (Art. 1128, sec. 2.) In every contract, as laid down by the authorities, there is always a creditor who is entitled to demand the performance, and a debtor upon whom rests the obligation to perform the undertaking. In bilateral contracts the contracting parties are mutually creditors and debtors. Thus, in this contract of lease, the lessee is the creditor with respect to the rights enumerated in article 1554, and is the debtor with respect to the obligations imposed by articles 1555 and 1561. The term within which performance of the latter obligation is due is what has been left to the will of the debtor. This term it is which must be fixed by the courts.

The only action which can be maintained under the terms of the contract is that by which it is sought to obtain from the judge the determination of this period, and not the unlawful detainer action whicli Has oeeii brought—an action which presupposes the expiration of the term and makes it the duty of the judge to simply decree an eviction. To maintain the latter action it is sufficient to show the expiration of the term of the contract, whether conventional or legal; in order to decree the relief to be granted in the former action it is necessary for the judge to look into the character and conditions of the mutual undertakings

with aview to supplying the lacking element of a time at which the lease is to expire. In the case of a loan of money or a *commodatum* of furniture, the payment or return to be made when the borrower "can conveniently do so" does not mean that he is to be allowed to enjoy the money or to make use of the thing indefinitely or perpetually. The courts will fix in each case, according to the circumstances, the time for the payment or return. This is the theory also maintained by the defendant in his demonstration of the fifth assignment of error. "Under article 1128 of the Civil Code," thus his proposition concludes, "contracts whose term is left to the will of one of the contracting parties must be fixed by the courts, * * * the condition as to the term of this lease has a direct legislative sanction," and he cites article 1128. "In place of the ruthless method of annihilating a solemn obligation, which the plaintiffs in this case have sought to pursue, the Code has provided a legitimate and easily available remedy. * * * The Code has provided for the proper disposition of those covenants, and a case can hardly arise more clearly demonstrating the usefulness of that provision than the case at bar." (Pp. 52 and 53 of appellant's brief.)

The plaintiffs, with respect to this conclusion on the part of their opponents, only say that article 1128 "expressly refers to obligations in contracts in general, and that it is well known that a lease is included among special contracts." But they do not observe that if contracts, simply because special rules are provided for them, could be excepted from the provisions of the articles of the Code relative to obligations and contracts in general, such general provisions would be wholly without application. The system of the Code is that of establishing general rules applicable to all obligations and contracts, and then special provisions peculiar to each species of contract. In no part of Title VI of Book IV, which treats of the contract of lease, are there any special rules concerning pure or conditional obligations which may be stipulated in a lease, because, with respect to these matters, the provisions of section 1, chapter 3, Title I, on the subject of obligations, are wholly sufficient. With equal reason should we refer to section 2, which deals with obligations with a term, in the same chapter and title, if a question concerning the term arises out of a contract of lease, as in the present case, and within this section we find article 1128, which decides the question.

The judgment was entered below upon the theory of the expiration of a legal term which does not exist, as the case requires that a term be fixed by the courts under the provisions of article 1128 with respect to obligations which, as is the present, are terminable at the will of the obligee. It follows, therefore, that the judgment below is erroneous.

The judgment is reversed and the case will be remanded to the court below with directions

to enter a judgment of dismissal of the action in favor of the defendant, the Manila Lawn Tennis Club, without special allowance as to the recovery of costs. So ordered.

Mapa and Ladd, JJ., concur.

Torres, J., disqualified.

CONCURRING

WILLARD, J.:

I concur in the foregoing opinion so far as it holds that article 1581 has no application to the case and that the action can not be maintained. But as to the application of article 1128 I do not concur. That article is as follows:

> "Should the obligation not fix a periocj, but it can be inferred from its nature and circumstances that there was an intention to grant it to the debtor, the courts shall fix the duration of the same.
>
> "The court shall also fix the duration of the period when it may have been left to the will of the debtor."

The court has applied the last paragraph of the article to the case of a lease. But, applying the first paragraph to leases, we have a direct conflict between this article and article 1581. Let us suppose the lease of a house for 50 pesos a month. Nothing is said about the number of months during which the lessee shall occupy it. If article 1581 is applicable to this case, the law fixes the duration of the term and the courts have no power to change it. If article 1128 is applied to it, the courts fix the duration of the lease without reference to article 1581. It will, I think, be agreed by everyone that article 1581 is the law applicable to the case, and that article 1128 has nothing to do with it.

It seems clear that both parts of the article must refer to the same kind of obligations. The first paragraph relates to obligations In which the parties have named no period, the second to the same kind of obligations in which the period is left to the will of the debtor. If the first paragraph is not applicable tp leases, the second is not.

The whole article was, I think, intended to apply generally to unilateral contracts—to those in which the creditor had parted with something of value, leaving it to the debtor to say when it should be returned. In such cases the debtor might never return it, and the creditor might thus be deprived of his property and entirely defeated in his rights. It was to prevent such a wrong that the article was adopted, But it has no application to this case. The plaintiff's are not deprived of their rights. They get every month the value which they themselves put upon the use of the property. The time for the payment of this rent has not boon left by the contract to the will of the debtor. It is expressly provided in the contract that it shall be paid "within the first five days after the expiration of each month."

Article 1255 of the Civil Code is as follows:

> "The contracting parties niny make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order."

That the parties to this contract distinctly agreed that the defendant should have this property so long as he was willing to pay 25 pesos a month for it, is undisputed.

I find nothing in the Code to show that when a natural person is the tenant such an agreement would be contrary to law, morality, or public policy. In such a case the contract would terminate at the death of the tenant. Such is the doctrine of the French *Cour de Cassation*, (Houet *vs.* Lamarge, July 20, 1840.)

The tenant is the only person who has been given the right to say how long the contract shall continue. That right is personal to him, and is not property in such a sense as to pass to his heirs.

In this case the question is made more difficult by the fart that the tenant is said to be a juridical person, and it is said that the lease is therefore a perpetual one. Just what kind of a partnership or association the defendant is does not appear, and without knowing what kind of an entity it is we can not say that this contract is a perpetual lease. Even if the defendant has perpetual succession, the lease would not necessarily last forever. A breach of any one of the obligations imposed upon the lessee by article 1555 of the Civil Code would give the landlord the right to terminate it.

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