7 Phil. 211

[G.R. No. 2541. December 26, 1906]

IGNACIO ICAZA ET AL., PLAINTIFFS AND APPELLANTS, VS. RICARDO FLORES ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

JOHNSON, J.:

This was an action brought originally in the court of the justice of the peace of the city of Manila to recover the possession of the hotel building situated at the corner of Calle Palacio and Calle Victoria in the city of Manila; to forfeit the sum of 5,705 pesos, which sum had been deposited with the plaintiffs as security for the performance of the conditions of a certain contract of lease, and for damages alleged to have been sustained by reason of the violation of said contract of lease on the part of the defendants.

After hearing the evidence adduced in the trial of said cause in the Court of First Instance of the city of Manila, the judge thereof made the following finding of facts:

(1) On the 9th day of April, 1.900, the plaintiffs, by their duly authorized agents, entered into a contract of lease with Kicardo Flores and Jose Flores, whereby the former leased to the latter the building in question for a term of five years and the plaintiffs made a conditional sale to the said Flores of the furniture therein.

(2) By the terms of the said lease the sum of 1,800 pesos was deposited with the plaintiffs by the said Flores to secure the rent, the said lease providing that at its termination, provided that all the terms thereof had been performed faithfully, the title to the furniture therein would go to the lessee.

(3) The clauses of said lease which plaintiffs contended had been violated were as follows:

Paragraph 6 of said contract provided that the following obligations should be on account of the tenants:

> "(*a*) The cleaning of the closets and canals; the painting of the inside and outside of the house, and any other obligations which may be imposed upon him by competent authority on account of the public health or for any other reason;
>
> "(*b*) The payment of the water account and the electric fluid;
>
> "(*c*) The payment of the difference between the tax now paid on said house and any after tax which may be levied by the legal authorities;
>
> "(*d*) The payment of excess over 1¼ per cent as interest on 40,000 pesos now existing on said property, either on account of any change of tariff or on account of any industry which may be established in said building."

(4) On the 3d day of May, 1900, the said contract was modified by the plaintiffs transferring the absolute title to the furniture therein to the lessee in consideration of said lessee making a deposit with the said plaintiffs of 3,905 pesos, which was the amount agreed upon as the value of said furniture, which deposit was to be considered as a fund for additional security for the performance of the obligations on the part of the lessee.

(5) Subsequently the said lease was transferred by Fllores to the association known as the "Manila Hotel Company," Ricardo Flores, *en comandita*, together with the furniture mentioned therein, which was sold to the said association.

(6) On the 7th day of June, 1901, the said association was dissolved and an agreement was entered into by and between the members of said association, whereby Ricardo Flores and Jose Flores transferred to Messrs. Brockmaii, Oppenheim, Nelle, Hermann, and Jehrling the lease of the building in question of "all his present right, title, and interest, and that which he may have in the future in and to those certain establishments destined for hotel purposes and designated under the names of the "Universal" and "Delmonico" hotels, situated respectively in Oalle Palacio, No. 12, and Calle Palacio, No. 31, together with all the furniture, fixtures, and effects therein contained at the present time," for a certain consideration designated in said contract.

(7) The above transfers by the defendants to Messrs. Krockinan, Oppenheim, etc., were made in one instrument in writing, the fourth clause of which is as follows: "There are considered included in the transfer of the above-named establishments the leases on the properties occupied respectively by the same under the same terms and conditions as set

forth in the instrument executed for the said leases, which are hereby declared transferred to the respective parties to whom the said hotels have .been adjudicated."

(8) By virtue of the said transfer Messrs. Brockman, Oppenheim & Go. remained in possession of the building in question at Calle Palacio, No. 31, known as the "Delmonico Hotel," and operated the same as a corporation known as the "Manila Hotel Company."

(10) In the month of August, 1903, the plaintiffs were notified by the Board of Health of the city of Manila to make certain improvements in the plumbing, etc., in the said Dehnonico Hotel.

(11) This notice was immediately transferred to the defendants Ricardo and Jos6 Flores, who in turn transferred the same to the manager of the "Manila Hotel Company."

(12) The time fixed in the original notice within which said improvements were to be made was forty-five days. This period was extended from time to time by the said health authorities at the request of the manager of the said hotel company, up to and including the 31st day of January, 1904.

(13) On the 10th day of January, 1904, said hotel company actually commenced the performance of the improvements required by the said notice, and the same were completed on or about the 25th of January, 1904.

(14) On the 1.2th day of January, 1904, the agent of the plaintiffs, Miguel Velasco, was arrested and tried before the municipal court of the city of Manila on the charge of failing to comply with the said order of the Board of Health within the time required therein, and was found guilty of said offense and fined the sum of $100, gold. Said Velasco was the legal representative of the plaintiffs.

(15) The manager of the said hotel company was present in the said municipal court at the trial of said cause and was ready and willing to testify, but he was not called as a witness by either the prosecution or defense.

(16) Immediately after said conviction the manager of said hotel company offered to appeal said case on behalf of the said Velasco, but the latter refused to take an appeal and at once paid the fine.

(17) Immediately thereafter the said manager offered to pay said Velasco the amount of said fine, which he refused to accept.

(18) On the 16th day of January, 1904, the plaintiffs commenced an action before the justice of the peace of the city of Manila to recover possession of said premises, alleging that the defendants had forfeited their lease under said paragraph 6 of said lease by their failure to make the repairs as demanded by the health authorities. From the judgment of the said justice of the peace the cause was appealed to the Court of First Instance.

(19) The defendant, the hotel company, in its answer presented in the Court of First Instance, offered to pay to the plaintiffs the line imposed upon him in said municipal court and made a tender of the same.

(20) On the litth of January, 1004, the day following the conviction of the said Velasco in the said municipal court, the plaintiffs entered into a contract for the purpose of making some of the repairs required by the said Hoard of Health, but when the said contractor went to the said building for the purpose of making said repairs they found that the said hotel company was actually engaged in making the said improvements, whereupon the plaintiffs paid to their contractor the sum of $25, gold, to cancel his contract.

An examination of the evidence adduced during the trial of said cause presented to this court by the record justifies the foregoing finding of facts by the lower court. They are not sufficient, in our opinion, to warrant a forfeiture of the lease or of the fund on deposit with the plaintiffs. If the defendants did not comply with the duties imposed upon them under paragraph 6 of said contract above quoted, the plaintiffs were at liberty at any time after receiving the notice from the Board of Health to make such necessary repairs and charge the cost of the same to the defendants, or either of them. And if the defendants refused to pay the cost of said repairs, the amount thereof might have been deducted from the funds in their possession. However, inasmuch as the delay in making the repairs required by the Board of Health was caused by the said hotel company, which delay caused the plaintiffs to pay the sum of $100, gold, in the municipal court and the sum of $25, gold, to their contractor, the said hotel company should be required to pay this amount.

The lower court rendered judgment against the defendants for the sum of $125, gold, or 250 pesos. In our opinion this judgment should be and the same is hereby affirmed. After the expiration of twenty days let judgment be entered in accordance herewith. So ordered.

Carson, Willard, and *Tracey, JJ.,* concur.

Arellano, C. J., did not sit in this case.

DISSENTING

TORRES, J., with whom concurs **MAPA, J.:**

However much I might desire to concur with the majority opinion, I could not give my consent to the same after a careful reading of the record, and, being thus compelled to state how, in my opinion, the case should be decided, I shall proceed to give the reasons why I think the judgment of the court below should be reversed.

The decision is based upon the tenants' breach of contract, they having failed to comply with the obligations imposed upon them by a clause of the lease relating to the cleaning of the water-closets and the performance .of other work required by the Board of Health, and consequently the decision to the contrary of the court below is directly opposed to the provisions of article 1091 of the Civil Code which provides;

> "Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations."

It is also in direct opposition to the well-established rule that the stipulations of a contract have the force of law between the parties. (Judgments of the Supreme Court of Spain, of the 20th of February, 1897, and 13th of February, 1904.)

For the failure to comply with the orders of the Board of Health, after the expiration of the last extension granted for the performance of the work required in said orders, the representative of the minor owners of the property leased was convicted and lined by the municipal court of Manila, all of which appears from the record in this case.

If, on the 12th of January, 1904, the extension of time granted for the performance of the work was still in force, on the 9th of the same month the complaint would not have been filed and there would have been no reason whatsoever for imposing a fine upon the owners of the house. The fine was imposed because, although the extension granted to the 15th of December had expired, the work was not commenced until the 11th of January. It was so stated by the sanitary engineer, August Jardin (record, p. 4(J), who testified that he Avas living at the time in the house then occupied by the Hotel Delmonico; that on the 12th of January, 1904, the work ordered by the Board of Health had not even been begun, and that the installation of the electric light which was then being made could not have interfered

Avith the work in any way. His statement is corroborated by the testimony of Kicardo Klores and Hugh Hidel, who testified that they examined the premises on the 7th of January and that the work ordered by the Board of Health during the month of the previous August had not been performed, and that complaint Avas filed in the municipal court on the 9th of January, and the trial took place on the 12th of said month, when the representative of the plaintiffs attempted to comply with the order of the Board of Health after he had been fincMl by the municipal court. On the 12th of January aforesaid the tenants prevented the contractors from going ahead with the work and they, the defendants .themselves, undertook to do it at their own expense, as appears from a letter introduced in evidence. (Record, p. 70.) It should be borne in mind, however, that the Board of Health granted the representative of the minor OAvners fifteen days to do the work und that the tenants, acknOAvledging their breach of the contract, undertook to do this Avork themselves within the aforesaid fifteen days granted to the said representative from the 13th of the said month of January.

The twelfth finding of the court below,, which has been accepted by the majority of this court, is to the effect that the time within which the said repairs Ayere to be made was forty-five days, which was extended from time to time by the Board of Health at the request of the manager of the Manila Hotel Company until the 31st of January, 1894, inclusive. This finding of the court below is not right.

The first period of forty-five days granted August 30, 1903, Avas several times extended, the last extension expiring on the 15th of December of that year, as appears from the record. But it was satisfactorily shown that no other extension was applied for and granted prior to the 31st of January, as the witness, Dr. R. E. L. Newberne, medical inspector, (record, p. 52), testified that at the request of the tenants, time for performing the work required by the Board of Health was extended to the 15th of December, 1903, notwithstanding that Robert Hartwig, manager of the Manila Hotel Company, requested by letter, on the 6th of October, an extension of the said time until the 31st of said month of December, which was the last extension granted for the performance of the work, there being no evidence to show that the tenants applied for a new extension or that any extension was granted after the 15th of December, 1903. The extension of fifteen days granted the representative of tfie minor owners on the 13th of January, 1904, was a new extension obtained by him and not by the tenants who, knowing what their obligation was, insisted upon doing the work required by the Board of Health themselves. The work was completed within J;he special extension and not Within the original time granted in subsequent extensions. As has already been said, the last extension granted by the Board of Health expired on the 15th of December,

and there is no proof that there was any further extension applied for or granted after the 15th of December.

The note in red ink which appears in the books of the department to the effect that an extension had been granted to the 31st of January, 1904″, referred to the extension granted Seiior Velasco for an additional fifteen days; there is no evidence that the extension to the 15th of December was subsequently enlarged so as to include the 31st of January, as found by the court below.

The court below found that there was a delay on the part of the lessees in the performance of the work required by the Board of Health, and by way of indemnification to the plaintiffs he ordered the defendants to pay to them the sum of 250 pesos, local currency. This shows that the court below recognized that there had been a breach of contract of lease between the parties. Notwithstanding the note in red ink which was improperly entered upon the books, it has been shown that no further extension was granted by the Board of Health after the 15th of December.

The finding of the court below to the effect that the lease in question did not require the lessees to comply with the obligations mentioned in clause 6 of the contract, within any specified time, is also erroneous and contrary to law as shown by a mere reading of the documents evidencing the contract between the parties.

The most notable and singular thing in this case is the answer filed by the defendants Ricardo and Jos6 Flores, appearing on page 68 of the record. They admitted all the allegations of the complaint. They also admitted that the Manila Hotel Company, sublessee of the premises, not only did not perform the work which it was. bound to perform under the contract within the time required by the Board of Health and the various extensions granted by it, but it did not even commence such work, and under section 124 of the Code of Civil Procedure, prayed that it be determined and adjudged that the liability rested solely with the Manila Hotel Company.

Therefore, there can be no doubt that there was a breach of the contract of lease between the parties. This is clearly shown by the evidence taken at the trial. The defendants have consequently lost their right to the P3,905, the value of the furniture purchased by them. Even considering the obligation contracted by them as a penal clause, the most that the court below could have done under article 1154 of this Civil Code would have been to mitigate the penalty in case of nonfulfillment of any of the obligations stipulated in the

contract, but it would be unjust and illegal not to admit that the plaintiffs were entitled to the whole amount, or at least to two-thirds of the money deposited.

Considering, therefore, that the judgment of the court below is plainly and manifestly against the weight of the evidence introduced by the plaintiffs, and that the same is contrary to law, I am of opinion that the said judgment should be reversed and the case decided in accordance with the prayer of the complaint.

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