5 Phil. 747

[G.R. No. 2327. March 17, 1906]

LUIS PEREZ SAMANILLO, AS ADMINISTRATOR OF THE ESTATE OF RAFAEL PEREZ SAMANILLO, PLAINTIFF AND APPELLANT, VS. W. A. WHALEY ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

On the 29th day of September, 1898, the duly authorized agent of the owner of the property wrote a letter to the defendant Whaley, by which the former agreed to lease to the latter the building on the corner of the Escolta and the Pasaje de Perez for the term of five years, with the privilege to Whaley of renewing the same for the further period of five years. The barber shop on the lower floor and the room on the second floor, above the barber shop, were excepted from this contract. The parties agreed that a formal lease should be executed, and on the following day the agent of the owner presented to Whaley such a lease in duplicate, each one of the duplicates being duly signed and witnessed by him. Within a few days thereafter Whaley notified the agent that he would not sign the lease because, by the terms thereof, the option which was given to him by the letter of September 29, to continue the lease for five additional years, was omitted from the formal contract, and in lieu thereof there was inserted a clause saying that the lease might be extended if both parties agreed thereto. The lease differed from the letter in another respect: By the terms of the letter the room above the barber shop was excepted from the leased premises, but by the terms of the formal contract it was included. Whaley returned to the agent one of the duplicates which had been delivered to him, and retained the other. The agent destroyed it, thinking that Whaley had returned both papers.

Whaley took possession of the property on the 29th of September, the date of the letter above referred to. He remained in possession until the month of March, 1900. About that time the agent of the owner instituted a criminal proceeding against Whaley for *estafa*, alleging that he had, without right or authority, collected rent for the room over the barber

shop, which room was not included in the terms of the letter of September 29. In accordance with the law then existing the parties appeared before a justice of the peace on the 2d day of March for the purpose of settling the controversy, if possible. In that proceeding the agent of the owner presented a duplicate of the letter of September 29, and stated that that was the contract by virtue of which Whaley was in possession of the premises. Whaley, in response to the claim of the agent of the owner, made the following statement:

> "El demandado contestando expone que no puede conformarse en manera alguna con las pretensiones del que le ha trafdo & este acto conciliatorio toda vez que no ha cobrado ninguna cantidad indebida, que tiene en arriendo los altos de la finca k que el acto se refiere, no reconociendo validez alguna en el contrato cuyo duplicado ha exhibido porque contiene una obligation extinguida por novation."

He admitted, however, that he had collected the rent for this room from subtenants, and claimed that he had a right to do so.

The act of conciliation having produced no result, a criminal complaint was filed against Whaley in the Court of First Instance by the agent of the owner, and in the proceedings in that case the agent of the owner appeared and presented the same duplicate of the letter of September 29, and stated that that was the only contract under which Whaley was occupying the property. Whaley was examined in the proceeding, and stated that he had a contract of lease by the terms of which he was entitled to the possession of this room over the barber shop, and he was asked if he could produce such a contraband having stated that he could, an order was made upon him that he should so produce it. Afterward, on the 27th of April, 1900, he appeared in court and presented the formal contract of lease which had been delivered to him on the 30th of September, 1898, a duplicate of which he had returned within a few days thereafter, and the other part of which he retained as before stated. Before presenting this lease to the court he had signed it, and a witness to his signature had also signed the same, so that when it was presented by him it was a completely executed contract. After the presentation of this lease the court entered judgment in the criminal case acquitting Whaley of the charge of *estafa*, holding that the evidence showed that he had a right to occupy the premises in question by virtue of the contract which he had presented. The agent of the owner thereupon paid the costs and dropped further proceedings. Whaley remained in possession of all of the property until June, 1903.

The five years mentioned both in the letter and in the contract expired on the 1st day of October, 1903. In July of that year the agent of the owner notified Whaley that he did not desire to extend the lease for the further period of five years. Whaley thereupon notified the agent that he (Whaley) did desire to extend and did elect to extend the ldase for the further period of five years, in accordance with the terms of the letter. Whaley refused to vacate the premises on the 1st day of October, 1903, and this action was commenced by the representative of the owner on the 13th of November in the court of a justice of the peace to evict Whaley and his subtenants from the property, and to recover as damages the value of the use of the property from the 1st day of October, 1903, until possession should be obtained. Judgment was entered in the Court of First Instance in favor of the defendants, the plaintiff moved for a new trial, which was denied, and he has brought the case here by bill of exceptions.

The principal question in the case is whether in September, 1903, the appellee was occupying the premises by virtue of the letter of September 29, 1898, or by virtue of the lease of September 30, 1898. If he were occupying by virtue of the letter he had the right to extend the term of the lease for five years from October 1,1903, whether the plaintiff wished to have it extended or not. If, on the contrary, he was holding under the contract of September 30, then he had no right to such extension without the consent of the plaintiff, and was bound to surrender the possession at the termination of the first five years.

It will have been noticed that the parties have changed their position in the two judicial proceedings. In the criminal case the plaintiff claimed that the only contract was the letter, while Whaley claimed that the only contract in force was the formal lease. In this proceeding the plaintiff claims that the only contract in force is the formal lease, while Whaley claims that the only contract in force is the letter. Whaley having refused to sign the lease in 1898 was undoubtedly occupying the premises by virtue of the letter until March, 1900. At that time, in the act of conciliation had before the justice of the peace, he expressly repudiated the letter, and said that the obligations therein contained had been extinguished by novation, and a little later presented in court the formal contract of lease, duly signed by him and witnessed, and stated that that was the contract under which he was in possession. To this contract of lease the owner’s agent had already given his consent. Whaley, from 1898 to 1900, had the contract in his possession, signed by the owner’s agent, and when he attached his own signature thereto and stated in court that that was the contract under which he held the property, there is no question, as far as he is concerned, but that he then gave his consent to the terms of that contract—a consent which he had previously withheld.

It is claimed by the defendant that Whaley presented in the Court of First Instance in the criminal case both the letter and the lease. This claim is not supported by the evidence. It is very apparent that the letter was presented both before the justice of the peace and in the Court of First Instance by the plaintiff's agent, and that the only document presented by Whaley was the lease itself.

It is further claimed that Whaley presented the lease merely for the purpose of showing that when the letter was written a mistake had been made in the description of the property, and that this was shown by a comparison of the two instruments. There is nothing in the case to sustain this view of Whaley's acts. His statement before the justice of the peace is entirely inconsistent with any such claim. He there declared that the obligations imposed by the letter had been extinguished by novation, and in the Court of First Instance he stated that he was holding under the lease which he presented. It is further to be noticed that if this was the purpose with which Whaley presented the least1 in the Court of First Instance, it was entirely unnecessary for him to have signed it; and more unnecessary still for him to have procured a witness to his signature. The difference between the letter and the lease would have sufficiently appeared by producing the lease unsigned. Only one conclusion can be drawn from this proceeding, and that is that for the purpose of escaping from the criminal prosecution Whaley thought it necessary to give his consent to the lease. The fact that he was advised to sign it by counsel of course can not affect the result.

It is also claimed by the appellee that even if Whaley did give his consent to the lease in March and April, 1900, yet there is nothing to show that the owner's agent ever agreed that the lease which he had signed two years before should still be binding upon him, and the appellee supports this claim by calling attention to the fact that when Whaley returned the duplicate of the lease to the agent in 1898 the latter destroyed it. The evidence, however, does not support this claim. The agent testified at the trial of this case that although he was very much surprised at the presentation of this lease by Whaley in the criminal case, yet as long as it bore his signature and Whaley's he was bound to recognize it, and it is very evident that he did so.

The agent testified in this case that it was his intention, in signing the letter of September 29, to include in the lease the room above the barber shop; that it was left out by mistake, and this mistake he corrected in writing the formal lease. We do not see how that fact can change the result. This admission by the agent, if it had been made in the criminal case, might have relieved Whaley from the necessity of signing this lease for the purpose of freeing himself from prosecution, but no evidence was given at that trial in regard to this

mistake, and no admission was then made by the agent that such mistake existed. Such an admission was made for the first time in this case.

The agent also testified in this case that at the time he commenced the criminal prosecution he kneAv that that mistake had been made, and that he commenced that prosecution maliciously and for the purpose of revenging himself for what he considered the ungentlemanly conduct of Whaley in refusing to sign the lease. We do not see how this fact either can change the result. No matter what the cause for the criminal prosecution was, or how unfounded it was, it is certain that as a result thereof Whaley gave his consent to the contract of September 30, and that consent having been given and having been accepted and adopted by the plaintiff, it can not now be withdrawn. The judgment in favor of the defendant is unfounded, and it must be reversed.

There remains another question to be considered, and that is the damages which the plaintiff is entitled to recover for the use of the property from the 1st day of October, 1903. When a judgment is reversed we may either enter a final judgment in this court or remand the case for further proceedings. (Sec. 496, Code of Civil Procedure; Cason *vs*. Rickards,[1] 4 Off. Gaz., 236.) In the case at bar we think that further proceedings should be had in the court below for the assessment of damages.

It appears in the case that Charles C. Cohn, on the 17th day of December, 1903, filed a complaint in intervention in this case, in which he alleged that in action No. 483 in the Court of First Instance of Manila, in which Mattie J. Levy, as administratrix of the estate of Samuel J. Levy, was plaintiff and the defendant Whaley was a defendant, judgment had been rendered in favor of the plaintiff in that suit against Whaley for the recovery of a certain sum of money. He further alleged that on the 6th day of October, 1903, he, the said Cohn, had been duly appointed by the Court of First Instance in said action, as the receiver of all the rights or property which the defendant Whaley had in the contract of lease here in question, and he alleged that since the 9th day of October, 1903, he, as such receiver, had been in possession of this contract of lease, and had been collecting the rents from the subtenants of said property.

In accordance with the views above expressed the judgment of the court below in this case is reversed, and the case remanded, with instructions to that court to assess the damages which the plaintiff is entitled to recover, after hearing such evidence thereon as the parties may present, and to enter judgment, with costs, in favor of the plaintiff and against all of the defendants for the restitution of the possession of the property; against the defendant

Whaley for the amount of the damages suffered between the 1st day of October, 1903, and the 9th day of October, 1903, and against the intervenor, Charles C. Cohn, as receiver appointed in the case of Mattie J. Levy as administratrix, against L. M. Johnson and others, for the amount of the damages suffered since the 9th day of October, 1903, until the plaintiff obtains possession of the property. No costs will be allowed to either party in this court. After the expiration of twenty days let judgment be entered in accordance herewith. So ordered.

Torres, Mapa, and *Carson, JJ.,* concur.

Johnson, J., dissents.

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[1] Page 611, *supra*.

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