

4 Phil. 643

[G.R. No. 1786. August 12, 1905]

**MATTIE E. LEVY, ADMINISTRATRIX OF THE ESTATE OF SAMUEL J. LEVY,
PLAINTIFF AND APPELLANT VS. L. M. JOHNSON, W. A. WHALEY, PAUL BLUM,
AND HENRY BLUM, DEFENDANTS AND APPELLEES.**

D E C I S I O N

WILLARD, J.:

Prior to October 21, 1898, Thomas E. Evans and Walter Jackson were the owners of an establishment known as "The Alhambra" situated on the Escolta, Manila, consisting of a stock of goods, furniture, and fixtures, and a lease for a term of years of the building in which the business was conducted. They carried on there a drinking saloon and later the place was used also for a theater. They were heavily in debt, and Evans attempted to secure a loan from the defendant Paul Blum of 32,443.35 pesos. Blum agreed to make him the loan on the condition that he (Evans) should buy the interest of his copartner, Jackson, should convey to the defendant Whaley an undivided half of the property, and should allow Whaley to manage the business as he (Whaley) saw fit. Evans accepted these terms, acquired the interest of Jackson in the property, and on October 21, 1898, conveyed to the defendant Whaley an undivided half of the property, for the expressed consideration of \$1. Whether this consideration of \$1 was paid by Blum or Whaley we consider of no importance. It was not shown that the business was worth more than the debt against it, and the evidence indicates that it was not.

On the same day Evans and Whaley executed to the defendant Paul Blum a bill of sale of the entire property for the expressed consideration of 32,443.35 pesos. On the same day Evans and Whaley on the one part and Paul Blum on the other part executed an agreement in which it was

recited that the Alhambra had been mortgaged to Blum to secure the payment of 32,443.35 pesos, it being further provided in this agreement that Evans and Whaley should be equal partners in the business, which Whaley should manage, and that the net receipts should be duly deposited with the American Commercial Company. The copy of this agreement in the bill of exceptions bears the date of the 2d of October, 1898, but for the reason stated in the judgment of the Court of First Instance in the case of Jackson vs. Blum, hereinafter referred to, we think the correct date was the 21st. No question is made in the case but that Paul Blum actually advanced at this time the 32,443.35 pesos in cash, all of which was received by Evans, and none of it by Whaley.

The business was apparently carried on under the terms of this agreement up to the 4th of December, 1899, when the defendant Henry Blum, acting for the defendant Paul Blum and the American Commercial Company, notified Evans and Whaley in writing that the amount then due upon the date aforesaid was 28,927.97 pesos, and that if this amount was not paid at the first of the ensuing year they should take steps to collect it. Nothing was done by Evans looking to the payment of this sum or any part of it, and on the 4th day of January, 1900, Paul Blum took possession of the establishment under the aforesaid two documents of the 21st of October, 1898, Whaley, who was in possession at that time, surrendered the property to him in payment and satisfaction of the debt, and then delivered the keys into his possession. On the next day Whaley notified Evans in writing that Paul Blum, on fee day before, had made demand on him for the payment of the debt, but he was unable to pay it, and that he had turned over the property to Blum in satisfaction thereof, and had delivered him the keys.

Blum left Whaley in control and management of the business, and there was no outward change in the appearance thereof. It is shown, however, that the keys were delivered to Blum every night. This condition of things continued until the 26th of January, 1900. On that day four documents were executed and delivered. One of them was a deed of the entire property by Paul Blum to Whaley; another was a deed of an undivided half of the property by Whaley to the defendant Johnson; a

third was a mortgage by Whaley to Paul Blum of his undivided half of the property, to secure 19,000 pesos; a fourth was a contract of partnership between Whaley and Johnson for carrying on the said business, by the terms of which it was provided that Whaley should continue to act as the manager of the business, and exercise full control over it until the mortgage made by him to Blum for 19,000 pesos had been paid.

In payment of the undivided half of the property conveyed by Whaley to Johnson, Johnson paid to Whaley 15,000 pesos, and this money was paid to Paul Blum as a part of the purchase price of the whole property conveyed to him by Blum on the same day. The 15,000 pesos paid by Johnson for this undivided half was the money of the deceased Samuel J. Levy. Fourteen thousand pesos of it had been sent by Levy from Shanghai to Johnson at Manila some time prior to the 26th of January, 1900, to be invested in the purchase of an interest in the Alhambra. Some time prior to January 26, 1900, Levy himself arrived in Manila and paid to Johnson 1,000 pesos more, which made up the sum of 15,000 pesos paid by Johnson to Whaley and by Whaley to Blum.

Whaley and Johnson at once took possession of the property, and continued in the management of it until the month of July, 1901. The business was then closed by reason of a law of the Commission passed at that time prohibiting, the sale of liquor on the Escolta.

On the 22d of March, 1900, Johnson being about to leave for Australia for the purpose of securing attractions for the theater, Levy suggested to him that he (Levy) should have some document in writing from Johnson showing his (Levy's) interest in the Alhambra. Thereupon Levy drew up and Johnson signed a document by the terms of which Johnson promised to convey, on January 26, 1901, to Levy, all his right and interest in an undivided half of the property. Levy died in July, 1900 and the plaintiff was appointed administratrix of his estate.

In August, 1900, Jackson commenced an action against Johnson, Whaley, Paul Blum, and Henry Blum, in which he alleged that he had acquired the interest of Evans in the property; that he was the owner,

therefore, of an undivided half of it, subject to the payment of the amount still due on the mortgage of 32,000 pesos, made by Evans and Whaley to Blum. He asked for an accounting as to the amount due on the mortgage, and a judgment that he was the owner of an undivided half, subject to such balance. The defendants made a joint answer in the case, and it was tried in the Court of First Instance of Manila, and decided on the 11th of February, 1901, in favor of the plaintiff Jackson, the court declaring that the attempted foreclosure of the pledge or mortgage made by Paul Blum on January 4, 1900, was invalid; that it did not destroy the interest of Evans in the property, and that his assignee, Jackson, was the owner of one-half of it, subject to the amount due on the mortgage. The defendants appealed from this judgment to the Supreme Court, and this court, on the 28th of August, 1901, affirmed the judgment in all its parts. At the time this final judgment in the Supreme Court was rendered, the place had been closed, as before stated, and a receiver was appointed in that suit, to take possession of what assets there were left belonging to the establishment, and dispose of them. This he did, showing a net balance of 6,000 pesos. What disposition was made of this 6,000 pesos does not appear from the evidence.

On November 2, 1900, one of the present counsel for the plaintiff, acting for her, notified the American Commercial Company in writing that she was the owner of Johnson's half interest in the Alhambra, and that they should not permit the sale or other disposition of the leasehold estate thereon to the prejudice of plaintiff's interest.

On January 26, 1901, the same attorney, acting for the plaintiff, made a demand upon Johnson for the possession of his half of the property, pursuant to the agreement made between Levy and Johnson on the 22d of March, 1900, under which Johnson had agreed to turn the property over to Levy on that date (January 26, 1901). Johnson refused to make such delivery.

In December, 1901, plaintiff commenced this action against Johnson, Whaley, Paul Blum, and Henry Blum. Three amended complaints were filed. In the last complaint plaintiff seeks to recover the 15,000 pesos upon

the ground that defendants, in January, 1900, entered into a fraudulent conspiracy to cheat and defraud Levy out of 15,000 pesos and for that purpose concocted this sale on the 26th of January, 1900, to Whaley by Blum, and the subsequent sale of one-half by Whaley to Johnson, plaintiff alleging that at that time Blum did not own the property, or at least only one-half of it, and that Johnson acquired nothing at all by his deed from Whaley. Judgment was rendered in the Court of First Instance on the 25th of July, 1903, in favor of the plaintiff and against the defendants Johnson and Whaley, and in favor of the defendants Paul Blum and Henry Blum and against the plaintiff. From the judgment, so far as it held Paul Blum and Henry Blum not responsible to the plaintiff, plaintiff has appealed. Considerable time was devoted in the trial below in showing the relations between Paul Blum and Henry Blum on the one part and the American Commercial Company on the other. It appeared that Paul Blum was director and manager of the American Commercial Company, which was engaged in selling wines, liquors, and beers in Manila, and that Henry Blum was also interested in the same enterprise, but we do not think it is of any importance to determine exactly what their relations were. It is enough to say that all the documents relating to this property were made in the name of Paul Blum, and that if the plaintiff has any right of action against anyone connected with the company she has it against him, and that if she has no right of action against him she has no right of action against the company.

The claim of the plaintiff, reduced to its lowest terms, is that Johnson, by his deed from Whaley of an undivided half of the property, acquired no interest whatever therein, and that that contract was made by the fraud of the defendants Paul and Henry Blum. There is no evidence in the case that either Paul or Henry Blum made any representations whatever, either to Johnson or Levy, as to the value of the property or its condition. It appears affirmatively that Johnson knew the exact condition of the title to the property prior to the 4th of January, 1900, and knew that the only interest which Paul Blum had at that time was the interest which he derived by virtue of this bill of sale and pledge, and he was waiting for the foreclosure by Paul Blum

of his claims in order to make the purchase in behalf of Levy. There is no doubt, under the evidence, but that Johnson had full authority from Levy to invest the 15,000 pesos in this business, and there is nothing to show that he had not the right to invest it on such terms and conditions as he saw fit, and in any event there is no evidence to show that Paul or Henry Blum knew of any limitations upon his authority in this respect. A great deal of time was spent in the court below in attempting to show that Paul and Henry Blum knew that the 15,000 pesos paid by Johnson was furnished by Levy, but we consider this a matter of no importance. Under the evidence in the case the rights of the parties are exactly the same whether they knew or did not know of this fact. It further appears that Levy arrived here between the 1st and 15th of January, 1900; that he lived with Whaley and Johnson, and that he investigated the whole matter and saw some if not all of the papers that were made. Immediately after the purchase by Whaley and Johnson, Levy went into the business as cashier and bookkeeper. He and his wife, the plaintiff, lived in the upper story of the building occupied by the Alhambra for some time,. and until his death, in July.

We see no evidence anywhere in the case showing any fraud whatever on the part of Paul or Henry Blum. On, the 4th of January, 1900, Blum held an absolute deed of the property, given to him by the owners of it. For this deed he had paid more than 28,000 pesos, for which he had not been reimbursed. Acting upon the advice of counsel, and accompanied by counsel and witnesses, he went to the establishment and formally demanded possession thereof under this document. Whaley, one of the owners of the property, and the person who, under the terms of the partnership between him and Evans, had the absolute control of it, being unable to pay the debt, surrendered the property to Blum in satisfaction thereof. Blum then took possession and retained possession. That he had a valid claim against the property for over 28,000 pesos, which had not been paid; that he acted in good faith in taking possession and in receiving the property in satisfaction of the debt, and that he, on the 26th of January, 1900, believed that he had good title to the property, is, we think, abundantly established by the evidence. Whether or not he did thus acquire title to the property

depended altogether upon the decision of the Supreme Court. If that decision had been the other way, and if this court had decided that the proceedings taken by Blum on the 4th of January, 1900, were sufficient to vest him with the title to the property, this case, of course, would never have been heard of. There would have been no claim of conspiracy or fraud, because Johnson would in any event have gotten by his deed from Whaley what he paid for. That the legal question involved in that suit of Jackson vs. Blum was not free from doubt, and that Blum was justified in believing that his proceedings were sufficient to transfer the title to him, is shown by an examination of the authorities presented by the appellants in the argument of that case in this court, and in the petition for re argument. It is difficult to maintain an action for fraud, when the question as to the existence or nonexistence of the fraud depends on a decision by a court of a doubtful question of law.

To our minds the case involved, if anything, nothing more than a breach of warranty of title under articles 1461, 1474, and the following articles of the Civil Code. In her brief of 131 pages in this court the appeljant devotes less than two pages to the discussion of this phase of the case, giving some reasons why she did not commence such an action. It is not, of course, necessary to decide whether, if she had commenced such an action, she could have prevailed or not. It is said repeatedly in appellant's brief that Johnson got absolutely nothing by his deed from Whaley of the undivided half, because the particular half which was conveyed by Whaley was Jackson's half, which Blum did not own, and the appellant assumes that the half which Blum did own went to Whaley, and was by him mortgaged back to Blum. We see no ground whatever for this contention. Blum conveyed the entire property to Whaley, without any distinction of parts, claiming that the interest of Jackson, Evans, and Whaley had been extinguished. Whaley conveyed an undivided half of the property to Johnson. This half was not in any way identified. The title to an undivided half of the property having failed, and it resulting that Johnson had an apparent title to one-half, and Blum, through his mortgage, had an apparent title to the other half, and Blum being the guarantor of the title to

the whole, it would seem that his half would be the half that was lost, and that Johnson would be protected in his half; but, as we have said, there is no necessity for deciding that question, for, notwithstanding the claim made by the appellant in her reply brief, this is not an action to recover on a warranty, but an action for fraud, and such fraud has not been proved. Nor is there anything in the other points made by the appellant in her reply brief. A simple failure of title to property conveyed gives rise to an action under articles 1461 and 1474 of the Civil Code, but does not make a case of error under article 1265, nor a case of want of cause under article 1275. Moreover, there was no want of cause in the contracts. Blum conveyed to Whaley and Whaley conveyed to Johnson, and each promised to guarantee the title. This was sufficient. (Art. 1274.) Under these conveyances Johnson went into and remained in possession nearly a year and a half.

The appellant devotes some attention to another transaction occurring at the time of the sale on the 26th of January, 1900, which we think is of no importance. It appears that when Blum on that day transferred the property to Whaley he gave to Whaley a check for 30,000 pesos, Whaley, in payment for the property, gave to Blum a check for 28,878.27 pesos, and some time after that (February 6) Whaley gave to Blum another check for 1,121.73 pesos—the exact difference between Blum's check for 30,000 pesos and Whaley's check for the purchase of the property, 28,878.27 pesos. This shows that the transaction connected with this 30,000 pesos check was a mere form, and did not in any way affect the rights of any of the parties. Why this course was pursued does not appear, although Blum testifies that it was done under the advice of counsel.

It will have been noticed that when Whaley mortgaged his half to Blum on January 26, 1900, the mortgage was made for 19,000 pesos, and not for one-half of the purchase price of 28,878.27 pesos, and a good deal of time was spent in trying to ascertain how the difference was made up. We consider this a matter of no importance. Johnson had no interest whatever in Whaley's one-half. Whaley was entitled to encumber that in any way he saw fit, and to any amount which would be satisfactory to Blum. That the mortgage was for 19,000 pesos and not

for 13,000 pesos did not in any way prejudice the interests of Johnson, upon whose half this mortgage, no matter what it was, was not a lien.

A great deal of space in the appellant's brief is devoted to the discussion of a mortgage made by Whaley to Blum on May 12, 1900, which was satisfied and discharged on August 28, 1900. The original mortgage was not produced in evidence, but the satisfaction was. The appellant claims that Whaley and Blum committed a criminal offense in executing this instrument, in view of the fact claimed by the appellant to exist, that Whaley in the mortgage represented himself to be the owner of the entire property. As this mortgage was afterwards satisfied, we do not see how it has any bearing upon the case; and moreover, it appears from the evidence, and is not disputed, that this mortgage was made practically at the request of Johnson, who at that time was in Australia on business of the company, and that from the proceeds of the mortgage (5,000 pesos) Whaley sent to Johnson in Australia 4,557.37 pesos. This was sent in two amounts, and the entries therefor were made by Levy himself in the books of the company. The statement in the appellant's brief that this mortgage was made without Levy's knowledge or consent is not supported by the evidence. It will be noticed, moreover, that under the terms of the partnership agreement between Johnson and Whaley, Whaley had authority to mortgage the whole of the property for the purposes of the partnership. Considerable fault was found by the appellant with this provision of the articles of partnership, but we do not see how that has any bearing upon the question of fraud. Blum had a right to sell the property upon such terms as he saw fit. He had a right to insist at this time, as he had insisted in his dealings with Evans, that Whaley should be the manager of the business. Johnson, as has been said, had authority to invest this money of Levy's on such terms as he (Johnson) saw fit, and Levy, according to the evidence, was thoroughly informed as to the whole transaction.

It is said repeatedly in the appellant's brief that in the Jackson suit the defendants Paul and Henry Blum made a joint answer for all the defendants, in which they denied that Johnson and Whaley had any interest in the property, and that during the trial of the case they

concealed that fact, and that the Court of First Instance rendered the judgment declaring that Blum was the sole owner of an undivided half of the property, and Jackson of the other half. We find no evidence in the record to sustain any one of these claims. Only a small part of the answer made in that case appears in this record, and an examination of that part does not support the contention of the appellant. It appears, moreover, from the decision of the Court of First Instance in the Jackson case, that Johnson testified in that case that when the summons was served upon him he was acting as a partner of Whaley in the Alhambra, and Whaley testified in the same trial that during the year 1900 he and Johnson announced themselves as proprietors of the establishment. It is also to be noticed that the judgment of the court orders, not that Blum should account to Jackson, but that all the defendants, Paul Blum, Henry Blum, Whaley, and Johnson, should account, and that they should pay to Jackson the value of his interest in the property, which was one-half. The decision says nothing about the ownership of the other half.

The appellant attempted to show at the trial that when Johnson, on the 26th of January, 1901, refused to deliver possession to the plaintiff of her half of the property, his action was advised by the defendants Blum, or by their counsel. The evidence does not show such advice, and if it did we do not see how that in any way could affect the defendants Paul and Henry Blum. Johnson's refusal to deliver in accordance with the terms of his contract of March 22, 1900, with Levy, might have made him liable to some action on the part of Levy's administratrix, but we do not see how it had any tendency to prove any fraud on the part of Henry or Paul Blum. It is further to be noticed that such delivery by Johnson might be claimed to be in violation of the contract between Johnson and Whaley on the one part and Blum on the other, entered into on the 26th of January, 1900, by the terms of which the property was not to be disposed of by either Whaley or Johnson until the mortgage of 19,000 pesos had been paid. There is no evidence in the case that this sum ever has been paid. The appellant admits that the evidence does not show whether the Alhambra made money or lost money during the time that Johnson was connected with it, but it must

be apparent that when the place was closed by the operation of the Manila liquor law of July, 1900, a great loss must have been suffered.

It is claimed repeatedly by the appellant in her brief that the business was conducted in exactly the same way after the 26th of January, 1900, as it was before. There is no evidence to support this claim. On the contrary, the evidence is conclusive that after January 26, 1900, the daily receipts of the business were not paid either to the American Commercial Company or to the Blums, but that the American Commercial Company submitted bills once a month for merchandise sold to Whaley and Johnson, and these bills were some of them paid. It also appears from the evidence, and is not contradicted, that neither of the Blums nor the American Commercial Company, after the 26th of January, 1900, had any interest whatever in the theatrical part of the establishment.

That the question of liability on the part of Paul and Henry Blum rested entirely, in the opinion of counsel for the appellant, upon the result of the Jackson suit, is shown by his conduct of the affairs of the administratrix. In November, 1900, he gave notice to the American Commercial Company that the Levy estate was the owner of one-half of the property. He did not at that time take any action looking to a rescission of the contract of the 26th of January, 1900, either on the ground of fraud or any other ground. On the 26th of January, 1901, when he made the demand for the possession of the property, he gave no indication of a disaffirmance in any way of the contracts made between Johnson and Whaley for the benefit of Levy. He testified at the trial that he knew of the case between Jackson and Blum just before judgment was rendered in the Court of First Instance, and that he knew from Judge Rohde, counsel for the defendant in that case, that he had obtained a judgment, but he took no action looking to the rescission of the contract from the time of the decision in the Court of First Instance, in February, until the decision of the Supreme Court in August. He testified that he first knew of the relations between Levy and Johnson when he discovered the document of March 22, 1900, which was some time before Mrs. Levy was appointed administratrix.

The citation by the appellant of the cases relating to following trust funds in the hands of third persons has no bearing upon this case. There was no misapplication by Johnson of the 15,000 pesos in his possession. He applied it to the very purpose for which it was given to him, viz, the purchase of an interest in the Alhambra, and this application was made with the knowledge and consent of Levy, and practically in his presence. The fact that the title to a part of the property thus purchased may have failed does not make the case one of misapplication of trust funds.

The appellant, in her brief, in speaking of the claim of the defendant Paul Blum to the effect that he believed that at the time of executing these papers on the 26th of January, 1900, he was the sole owner of the property and acted in good faith, says that the evidence overwhelmingly discredits this statement. We do not agree with this assertion. The evidence not only supports it but there is in our opinion no evidence to show the contrary. Johnson, who was thoroughly informed of the whole transaction, testified that he believed that Blum or the Commercial Company was the owner.

The claim made on page 129 of the appellant's brief to the effect that Johnson never took possession of the property purported to be conveyed to him by his deed from Whaley, finds no evidence in the record to support it. The evidence is conclusive that Johnson did take possession on the 26th of January, 1900, with Whaley, and that he remained in such possession until the place was closed in July, 1901. The judgment, so far as it relates to Paul Blum and Henry Blum, is affirmed, with costs of this instance against the appellant, and after the expiration of twenty days judgment will be entered in accordance here with and the case returned to the lower court for execution. So ordered.

Arellano, C.J., Torres, Mapa, Johnson, and Carson, JJ., concur.

