

5 Phil. 316

[G.R. No. 2121. November 15, 1905]

**THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED,
PLAINTIFF AND APPELLANT, VS. ANTONIO IRIBAR, DEFENDANT AND APPELLEE.**

D E C I S I O N

MAPA, J.:

The plaintiff company raises several questions in this court. For the purposes of this decision it will not be necessary, however, to consider them all.

The action was brought to recover rent for the lease of the steam launch *Erica*, the property of the plaintiff. Against the contention of the defendant we find that, as a matter of fact, a contract of lease was entered into between the defendant, on the one hand, and Francisco Gutierrez, on the other, in behalf of the plaintiff company, with respect to the launch in question, under the terms and conditions set forth in a letter dated January 18, 1901, which is copied at length in the complaint. One of the conditions of the contract was that the launch should be at the service of the defendant from the 1st day of February until the 30th of June, 1901, at a rental of 70 pesos per day, payment to be made for 15 days in advance. We also find that the plaintiff anchored the launch in the Pasig River, and placed the same at the disposal of the defendant on the 1st day of February, 1901, keeping it there until the 30th of June of the same year, when the term agreed upon in the contract expired.

It appears also that the defendant refused to receive the launch when it was delivered to him by the plaintiff, and that at no time from February 1, 1901, to June 30, 1901, did the defendant take possession

of the launch, or use it, or have anything whatever to do with it, for the reason, as he says, that the launch was not such as Gutierrez represented at the time the latter offered it to him for hire.

The contract of lease entered into between the parties was accordingly never consummated, the defendant refusing to receive the launch when it was delivered to him. It is not necessary to inquire into the defendant's reason for refusing to accept the launch, or to consider whether or not he had a right to do so. We therefore make no finding in regard to this point. Whether rightly or wrongly, the fact is that the defendant refused to accept and did not accept the launch. The attempt on the part of the plaintiff to deliver the launch was not an actual delivery, and for this reason we hold that the contract was never consummated.

Under such circumstances, the plaintiff could have elected between accepting the fulfillment of the contract and its rescission, with indemnification for damages in either case. (Art. 1124 of the Civil Code.) The plaintiff claims that it decided to exact the fulfillment of the contract, and in accordance with the laws then in force cited the defendant to appear February 21, 1901, before the justice of the peace of Binondo for the purpose of arriving at an agreement. Having failed to come to an understanding, the plaintiff states that he then demanded of the defendant the fulfillment of the contract. This is all that plaintiff did in regard to the enforcement of the contract. The plaintiff never filed a formal complaint, and did nothing during the time covered by the contract or during the rest of the year 1901. It was not until July, 1902, that he filed the complaint in this case. It was then too late to obtain the performance of the contract, the time, covered by it having expired more than a year before.

The contract being impossible to perform, the plaintiff can not exact its performance. Cases of this character are provided for in article 1124, above referred to. If the contract can not be performed, the plaintiff can hardly demand the rent stipulated therein. The payment of the rent being an integral part of the contract, it must necessarily follow the terms and status of the contract. If such

payment were made, it would not be a payment for a good consideration since the contract in which it was stipulated can not be performed.

The obligation imposed upon the lessee by article 1555 of the Civil Code to pay rent in the manner agreed arises where the contract has been actually carried into effect by the delivery to the lessee of the thing leased. That article does not cover cases where delivery has not been, or for any reason can not be, made. If for some unjust and unfounded reason the lessee should refuse to receive the thing which is the subject of the lease, there is no doubt that the lessor can compel him to take it under the terms of the contract; but in the present case it would be impossible to comply with the terms of the contract, and all that the lessor is entitled to is to recover damages from the lessee.

The plaintiff is not trying to recover such damages as may have been caused by the lessee's refusal to receive the launch. He attempts in this suit to recover the 70 pesos per day stipulated in the lease as rent for the use of the launch, making a total of 10,500 pesos, as though the contract had been performed. Such being the case, this action can not, for the reasons above stated, be maintained.

The plaintiff says in its brief that "although the 10,500 pesos (claimed in the complaint) were not due for the use of the launch owing to the defendant's refusal to take possession thereof from the day it became available, the amount would nevertheless be due, together with the interest accruing thereon, as damages resulting from the breach of the contract."

This contention can not be sustained for two reasons; First, Because the plaintiff, in its complaint, and throughout the trial in the Court of First Instance, based its action upon the contract to recover the stipulated rent. It would not be proper for the plaintiff to change its position in this court and attempt to recover damages-an entirely different remedy.

Second. Because, in any event, the plaintiff has not shown that the

damages alleged to have been caused by the breach of the contract amounted to the sum claimed for the lease of the launch.

For the foregoing reasons the judgment appealed front is affirmed, with costs to the appellant. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith, and let the case be remanded to the Court of First Instance for such action as may be proper. So ordered.

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

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