

[ G. R. Nos. L-9929-30. November 18, 1957 ]

**TENG GIOK YAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND  
YU PHI KHIM, RESPONDENTS.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

Respondent Yu Phi Khim, later referred to as Khim, President and General Manager of the Yek Yu Investment Co., Inc., filed an action for unlawful detainer against petitioner Teng Giok Yan, later referred to as Yan, a Chinese widow, over a store space designated as No. 551 Azcarraga St., Manila, in the Municipal Court of Manila, docketed as Civil Case No. 11896. After hearing, the Municipal Court rendered judgment on October 20, 1950, ordering petitioner Yan to vacate the store, to pay Khim P2,650, aggregate of the rentals due at the rate of P440 a month from January to June, 1950, with legal interest; to pay P440 monthly thereafter until the premises shall have been vacated; to pay P1,500 as liquidated damages, P1,500 for injury to plaintiff's business, P800 as attorney's fees, P1,000 as nominal damages, and costs. Yan appealed the decision to the Court of First Instance of Manila where the case was docketed as Civil Case No. 12522.

While the detainer case was pending in the Municipal Court, Yan filed a complaint in the Court of First Instance of Manila against Khim, docketed as Civil Case No. 11934, alleging that she had a contract of lease with Khim for ten years, at the stipulated rental of P500 a month, but subject to increase or decrease of the rentals according to the rate of rentals paid in the inside stalls of the textile market of Khim; and' that she had refrained from paying the rentals demanded because Kliim refused to reduce the said rentals according to the contract, but that she was depositing in court the back rentals. In the same complaint, she asked for the return to her of the loan of P7,500 that she had given to Khim. The allegations in her complaint were the same grounds alleged by her as defense in the detainer case against her in the Municipal Court.

In view of the intimate relationship between the two cases, Nos. 12522 and 11934, they were tried jointly in the Court of First Instance. Thereafter, a single decision was rendered by the said court on March 27, 1953, dismissing Khim's complaint in Civil Case No. 12522; declaring the monthly rental of the premises of No. 551 Azcarraga St., Manila, reduced to P417 a month, effective July, 1949, and again to P375 a month, effective June, 1950; ordering Khim to adjust accordingly the rentals already paid from July to December, 1949, as well as the rentals deposited by Tan with the court, returning to her whatever accounts may be found in her favor; and ordering Khim to pay Yan the sum of P7,500, with legal interest from the date of the filing of her complaint on August 25, 1950. Khim appealed that decision to the Court of Appeals, which court by its decision of February 21, 1955, modified the appealed decision of the Court of First Instance by declaring that Khim was not obliged to return to Yan the sum of P7,500, the appellate court finding the said amount to have been given by Yan as a premium or for goodwill, for the privilege given to her of occupying the store No. 551 Azcarraga Street. In all other respects, the appealed decision was affirmed.

However, acting upon separate motions for reconsideration filed by Khim and Yan, the Court of Appeals in its resolution of August 27, 1955, denied the motion of Yan, but sustained that of Khim by declaring that its decision

\* \* \* "is hereby vacated and set aside insofar as the same affirms the decision appealed from fixing the rentals to be paid by the appellee, Teng Giok Yan. Let the records of this case be remanded to the lower court for the presentation of further evidence relative to the reduction of rentals of all the inside stalls, after which the trial court is hereby directed to render a new decision in accordance with such new evidence."

Yan, on November 28, 1955, filed a petition with this Court for review of the decision of the Court of Appeals of February 21, 1955 and its resolution of August 27, 1955. The petition was given due course. On December 27, 1955, counsel for respondent Khim filed an urgent motion to dismiss the petition for review on the ground that the decision of the Court of Appeals of February 21, 1955 sought to be reviewed, had become final and executory, and that as to the resolution of the same court of August 27, 1955, remanding the case to the lower court for the presentation of further evidence, it was not subject to appeal or review for the reason that it was an interlocutory order. By resolution of this Tribunal of January 4, 1956, it was ruled that the motion to dismiss will be acted upon when the case is decided on

the merits.

Before going into the merits of the present case, and ruling upon Khim's urgent motion to dismiss the petition for review, we see from the record that according to the certificate of the Clerk of Court of the Court of Appeals of December 19, 1955, page 117 of the record, final judgment of the Court of Appeals was entered on November 3, 1955; that on November 12, 1955, petitioner's counsel asked for the extensions of fifteen days within which to file the petition for review with us, which request was granted; and that on November 28, 1955, the petition for review was filed and docketed in this Court; consequently, we find and hold that the appealed decision of the Court of Appeals had not yet become executory, and that the present petition for review was filed within the period prescribed by law, hence the urgent motion to dismiss the present petition is denied.

The facts in this case as may be gathered from the findings of fact of the Court of Appeals may be briefly stated as follows: In the year 1947, a large building on Azcarraga Street, Manila, for textile stalls was constructed by Khim, and was known as "Ilaya Textile Center". By verbal agreement, in September of the same year, Khim leased one of said stalls, No. 551 Azcarraga, for ten years, at P500 a month, to Yan, who forthwith occupied it. By reason of the construction of said textile market building, and the leasing of stall No. 551 to Yan, the latter delivered to Khim the sum of P7,500 Khim now claiming that said amount was given as a sort of premium or goodwill, Yan equally insisting that it was a loan to help finance the construction of the building, to be returned or paid back by Khim later. The contract or agreement between the parties about the lease of the stall and the delivery of the amount of P7,500 was later embodied in a formal written contract, in Chinese characters, Exhibit A for Khim and Exhibit 1 for Yan, dated February 26, 1948, the official translation of which we reproduce below for purposes of reference:

"KNOW ALL MEN BY THESK PRESENTS:

"The undersigned Yu Yek Chiong and Yu Phi Khim, having constructed in Azcarraga Street a building, hereby agree to lease No. 551 of said building to Ting Giok Yan for business for a period of ten (10) years, viz. from September 1, 1947, to September 1, 1957; and also agree that after the expiration of the term, Ting Giok Yan shall have priority to lease the same again.

“The undersigned, having received from Ting Giok Yan in advance seven thousand and five hundred pesos (P7,500) for the construction, agree to the following terms:

“That Ting Giok Yan has full right over the said part of the building including up and downstairs under the payment of a rental of five hundred pesos (P500) monthly.

“That the increase and decrease of rental shall be adjusted in proportion with the rental of the textile market value;

“That in case of fire, the owner of the building shall rebuild it for Ting Giok Yan without charging any construction fee from the occupant.

“The undersigned also acknowledges the receipt of four months’ rental from September to December of 1947 and agrees, that subsequent rental will be paid starting from January 1 of 1948.

“All the agreed terms are included in this present contract and a copy of which shall be in English.

(Sgd.) YU PHI KHIM  
*Lessor*

“Done on February 26, of the 37th year of the Republic of China (equivalent to February 26, 1948).

“This is to certify that the above English translation is true and correct to the best of my knowledge and belief.

(Sgd.) FLORENCE LEUNG  
*Interpreter*

Court of First Instance  
of Manila” (Exhibit ‘1-A’)  
(Underlining supplied.)

As already said, the contract as above reproduced, is the official translation from the

original Chinese made by the interpreter of the lower court. Another translation of the same contract was presented by Khim, prepared by the Chinese Embassy and ratified by the Adviser of said embassy, but said translation was not admitted and considered either by the lower court or the Court of Appeals, which gave preference to the official translation made by the interpreter of the trial court. The only difference between the two translations is that while in the official translation accepted by both courts, the word “inside” is found on the last line of the fourth paragraph of the contract (which we have underlined), the corresponding paragraph of the Chinese Embassy translation does not contain said word “inside”. As may be explained later, the presence of that word “inside” is very important and decisive in the determination of the increase or decrease of the rentals to be paid by Yan during the period of the lease.

It is the contention of Khim that the basis of the increase or decrease of the rental to be paid by Yan should be the fluctuations of the rate of rentals in the textile business or market, presumably, in the whole City of Manila, whereas Yan affirms that the fourth paragraph of the contract, Exhibits A and 1, having in mind the inclusion and use therein of the word *inside*, confines or limits the field of determination of the increase or decrease to the rate of rentals within the market, that is to say, inside the Ilaya Textile Center, and this latter contention was the one adopted by the lower court and the Court of Appeals. We agree with both courts on this point. The trial court was certainly not bound by the translation given by the Chinese Embassy, specially in the absence of a definite assurance that said translation was correct and that it was made by the Embassy Adviser himself. On the other hand, the translation made by the court interpreter is official and reliable not only because of the recognized ability of said interpreter to translate Chinese characters into English, but also because said interpreter was under the direct supervision and control of the Court. We therefore rule that the increase or decrease in the rentals to be paid by Yan is to be based on the increase or decrease in the rate of rentals paid by other stall lessees or tenants inside the Ilaya Textile Center.

We also agree that the computation and determination of the rate of decrease of said rentals as made by the lower court is satisfactory and acceptable, based as it was on receipts presented in evidence. In fact, the appellate court in its decision of February 21, 1955, said that it had no reason for modifying or altering that portion of the decision of the lower court, regarding the reduction of rentals, saying:

“El apelante no discute autenticidad de los recibos expedidos tx Ambrosio

Martinez, marcados Exhibitos '3' a '3-11' y como tampoco se discute la correccion de la computacion heeha por el Tribunal *a quo*, no tenemos motiyos para modificar o alterar los parrafos "A" y "B" de la parte dispositiva de la decision dol Tribunal a quo referente a la reduction de alquileres."

However, in the Court of Appeals' resolution of August 27, 1955, it changed its stand on the correctness and propriety of the computation and determination of the reduction of rentals made by the lower court and remanded the case to said court for the reception of further evidence on that point, on the plea of Khim that the computation of the lower court was based only on the rentals paid by one single tenant, Ambrosio Martinez, instead of several others. For various reasons, we are inclined to disagree to this action of the Court of Appeals. Aside from said action in effect needlessly and unduly prolonging this case already seven years old, having been commenced in the year 1950, we believe that the remanding of the case to the trial court so as to give Khim specially, a chance to present evidence which he should have presented during the original trial, is unwarranted and not exactly fair to Yan. Besides, according to counsel for Yan, many of the receipts for rentals relied upon by Khim to attack the finding of the trial court, as to the amount of reduction in the rentals to be paid by Yan, refer to rentals outside the Ilaya Textile Center, which evidence is clearly irrelevant and immaterial. In the second place, the receipts in the inside market also relied upon by Khim for the grant of new trial could hardly be considered as newly discovered evidence, for the reason that they were available to him during the original trial.

Now, we come to the sum of P7,500, which the trial court found to be a loan given to Khim by Yan to help finance the construction of the building, but which the Court of Appeals equally found to have been paid as a premium or goodwill. The Court of Appeals in support of its conclusion on this point, said that it was a matter of common knowledge that in 1946 and 1947, tenants were usually required to pay a certain amount for the privilege of renting stalls, the amount paid being considered as a premium or goodwill. It also said that when said amount was paid to Khim, he issued no receipt for the same, and the construction of the market had already been terminated. Moreover, according to the Court of Appeals, when Yan failed to pay rentals from October to December, 1947, and January 1948, in the latter month, Khim filed an action against her for illegal detainer and for the collection of back rentals, but the complaint was later dismissed at the instance of counsel for Khim, on the ground that the case had been amicably settled; that Khim testifying about said case, said that through the intervention of the Tay Guan Family Association, the case was amicably settled upon the agreement of the parties thereto, that from the sum of P7,500

paid to him as a premium or goodwill, the amount of P2,000 corresponding to back rentals for four months had been applied. From this, the Court of Appeals concludes that the P7,500 was not a loan but only a premium for the privilege of occupying stall No. 551. Besides, according to the Court of Appeals, if the amount of P7,500 were really a loan, nothing was said about its return or repayment to Yan. After considering these reasons given by the Court of Appeals, the writer of the present opinion is still inclined to agree with the trial court that the said sum of P7,500 was a loan, for according to the trial court P7,500 was too large a sum to pay in 1947 for the goodwill of a business that had not yet begun to operate. Besides, the second paragraph of the lease contract, Exhibit A, refers to this sum of P7,500 as Khim "having received from Ting Giok Yan in advance seven thousand and five hundred pesos (P7,500) for the construction, \* \* \*."

But the majority of the members of this Tribunal believe that it is a matter of common knowledge that shortly after the last Pacific War, in view of the scarcity of store space and the great demand for the same, it was not unusual for owners of store space to require of prospective tenants to pay a certain amount as a premium for the privilege of renting store premises in preference to other applicants, and so opine and hold that the amount of P7,500 was given by Yan, not as a loan, but as a premium for the privilege of renting the premises in question. I defer and yield to the authoritative opinion of my colleagues.

In view of the foregoing, setting aside the resolution of the Court of Appeals of August 27, 1955, we hereby affirm the decision of the same appellate court of February 21, 1955. No costs.

*Paras, C.J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

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