

**JUANITO CHAN, PETITIONER, VS. GREGORIO B. MONTEJO, JUDGE,  
COURT OF FIRST INSTANCE, ZAM-BOANGA CITY; AND JESUS VDA.  
DE MURGA, RESPONDENTS.**

*G.R. No. L-23699. December 18, 1967*

Ponente: ANGELES, J.

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**ANGELES, J.:**

An original petition for certiorari with preliminary injunction to review an order of the respondent court, dated July 21, 1964, ordering the execution of the judgment of the Municipal (now City) Court of Zamboanga City, pending the appeal and before the trial of the case before the said respondent court.

On March 19, 1959, Jesusa Vda. de Murga, herein private respondent, filed an action for unlawful detainer before the Municipal Court of Zamboanga City against Juanito Chan, petitioner herein, to recover the possession of two parcels of land, known as lots 36 and 38 of the cadastral plan of Zamboanga City, which were leased to the defendant for a term of ten(10) years from January 31, 1949, as evidenced by a written contract of lease attached to the complaint.

Upon the allegations in the complaint and the answer, the bone of contention revolves around clause "7" of the contract of lease which reads thus:

"7. That upon the expiration of the term of ten (10) years above expressed, the said Jesusa Vda. de Murga shall have the option to purchase the building or buildings belonging and constructed by the said Juanito Chan, and the price of said building or buildings shall be determined by three(3) commissioners, two of whom shall be appointed by each of the parties, and the remaining commissioner to be appointed by both. However, in the event that the said Jesusa Vda. de Murga shall not exercise the right herein granted her for any reason or cause, this contract of lease shall be automatically renewed but the period for said renewal shall, however, be fixed and adjusted again by the parties. It is agreed further that in case of said renewal, the rental shall also be adjusted by the parties depending on the business condition which shall then at that time prevail."

It appears that on July 23, 1958, the plaintiff sent a letter to the defendant expressing her intention to renew the contract of lease based on an increase rental of P700.00 instead of P500.00 as stipulated in the contract of lease. Replying to the offer of the plaintiff, the defendant said - "Much as I am willing to consider the suggested increase of rental, however, I would like to please (plead) with you that, due to very poor business at present, I may not be able to consider your indicated increase." On December 19, of the same year, the plaintiff sent another letter to the defendant inviting the latter to a conference to discuss the matter. So on January 15, 1959, the plaintiff, thru her representative, and the defendant met at the office of attorney Fernando Blanco to discuss the terms of a new contract of lease, more particularly as to the amount of the rent. The parties, however, failed to come to an agreement. On January 19, 1959, the plaintiff again wrote the defendant informing the latter that "she is waiving her right to exercise the aforementioned option and offers a new rental of P100.00 more than the prevailing, without signing a contract, or P200.00 more than the old rent with a five (5) year contract." The defendant having declined the offer of the plaintiff, the latter filed the present case before the Municipal Court of Zamboanga City.

After a trial of the case, on February 12, 1964, the Municipal Judge rendered a decision, the dispositive portion of which reads as follows:

"x x x judgment is hereby rendered in favor of the plaintiff, sentencing the defendant to immediately vacate and return the possession of lots 36 and 38, subject of the present action, and removing therefrom all the improvements introduced thereon by the defendant, to pay monthly rental of P600.00 pesos from the month of February 1, 1959, up to the time he actually and completely vacates and surrenders the possession of lots 36 and 38 to the plaintiff due to the expiration of the period of lease fixed in the contract of lease which was not renewed, Exhibit A, of the plaintiff; to pay attorney's fees of P500.00, and the costs."

The defendant appealed from the decision to the Court of First Instance of Zamboanga City.

On July 9, 1964, and before the trial of the case, the plaintiff filed a motion for execution of the judgment of the Municipal Court alleging that, although the defendant had filed a supersedeas bond to guarantee the payment of the rentals fixed in the decision of the Municipal Court, said defendant, however, "has failed and omitted to deposit the said difference of P100.00 monthly within the first ten (10) days of each calendar month, x x x"; that is, the difference between P500.00, the stipulated rental in the contract of lease, and P600.00 adjudged in the decision of the Municipal Court from February to July 1964.

The defendant opposed the motion, and alleged that the contract of lease is "subject to the term of automatic renewal, and which under the contract, the former (defendant) was to pay to the latter (plaintiff) the monthly rental of P500.00, and which rent has been collected every month by the plaintiff", up to and including the month of July 1964.

In other words, admittedly, the defendant had paid to the plaintiff the stipulated rental of P500.00 every month up to and including July 1964, when the motion for execution of the decision was filed in court. Admitted, likewise, is that the difference between P500.00, stipulated rental, and P600.00 awarded in the decision, or the sum of P100.00 every month, from February to July 1964, a total of P600.00, has not been paid to the plaintiff or deposited in court on or before the 10th day of each calendar month, from February to July 1964, although the amount of P600.00 was deposited in court on July 10, 1964, by the defendant.

Acting on the motion for execution and the opposition thereto, the court granted the motion, and ordered the execution of the judgment of the Municipal Court. In the order, the court said:

"That during the pendency of this case before the Municipal Court, and when a compromise agreement was about to be reached by the parties, the plaintiff pursuant to defendant's plea, accepted the P500.00 monthly rental due under the expired contract so that the same may not accumulate to an unpayable proportion; x x x.

"While it is true that plaintiff has been collecting P500.00 as monthly rental yet it should be noted that the adjudged rental of the Municipal Court is P600.00 monthly having found the contract of lease to have expired and the defendant only deposited the sum of P600.00 on July 10, 1964 which amount represents the difference between the rents agreed in the expired contract and the adjudged rental for the period covering February to July 1964. This failure on the part of the defendant to deposit the adjudged rent in full is fatal and thus entitled the plaintiff to a perfect right to secure immediate execution."

The issue to be resolved upon the pleadings and the annexes thereto is, whether the failure of the defendant to pay or deposit the sum of P100.00 every month from February to July 1964, although he had paid to the plaintiff P500.00 every month for the same period of six months up to and including July 1964, which stands for the stipulated rental under contract, the execution of the judgment of the Municipal Court, as ordered by the respondent Judge, is warranted under the facts obtaining in the case.

Although under Sections 8 and 9 of Rule 72 of the Rules of Court, the landlord, in whose favor a decision for

ejectment has been rendered by the court, is entitled to ask for the execution of the judgment if the tenant fails to pay or deposit, on or before the 10th day of each calendar month, the rent for the proceeding month, as determined in the decision, which requirement is mandatory, however, there is nothing to preclude the judgment creditor from waiving his right.

In the present case, the facts clearly show, as found by the respondent Judge, that acceding to defendant's plea, the plaintiff accepted the pay-ments of the monthly stipulated rental of P500.00 up to July 1964, without demanding the payment of P100.00, which is the difference between the stipu-lated rental and that fixed in the decision of the court. The conduct of the plaintiff implicitly constitutes an acceptance of the plea of the defend-ant to pay only the sum of P500.00 a month instead of P600.00 fixed in the judgment, otherwise, the plaintiff would have raised a voice of protest and would have asked the execution of the judgment immediately upon default. The permissible logical inference upon the foregoing is, that the plaintiff, by accepting the payment of P500.00 every month, the stipulated rental from February to July 1964, with-out demanding the payment of the difference of P100.00 every month therefrom, had waived the right to demand payment of the full amount of the monthly rental as fixed in the judgment, for the purpose of staying the execution thereof. And considering that the defendant had deposited with the court the sum of P600.00 on July 10, 1964, to cover the unpaid difference of the rental for the said period of six months, the plaintiff suffered no material damage or prejudice in her rights. It is the defendant who would stand to suffer irreparable damage and injury should the buildings he had constructed on the land, which according to him is valued at no less than P70, 000.00, would be demolished. Under the special conditions of the case, the mantle of equity should be extended to petitioner who, in good faith, had acted under the circumstances in the manner indicated.

WHEREFORE, the writ is granted. The order com-plained of is set aside, and the preliminary injunction heretofore issued is made permanent. Without costs.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

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