

**MARY BURKE DESBARATS, ET AL., PLAINTIFFS AND APPELLEES, VS.
JOSEFINA SEGARRA VDA. DE LAUREANO, ET AL., DEFENDANTS,
JOSEFINA SEGARRA VDA. DE LAUREANO, DEFENDANT AND
APPELLANT.**

G.R. No. L-21875. September 27, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of First Instance of Manila (in Civil Case No. 35054), ordering her to vacate the premises in question, defendant Josefina Segarra Vda. de Laureano appealed raising the issue of jurisdiction of the court a quo to entertain and render judgment in the case.

On January 21, 1958, Mary Burke Desbarats, Alain Mialhe, Victoria Desbarats Mialhe, Monique Mialhe Sichere, May Eliane Mialhe de Lencquesaing, Edouard Mialhe, Rene Sichere, and Herve de Lencquesaing, filed a complaint in the Court of First Instance of Manila against Josefina Segarra Vda. de Laureano, the Rehabilitation Finance Corporation (RFC), and E. S. Baltao & Co., Inc., (Civil Case No. 35059) for recovery of possession of a parcel of land consisting of 7,262.40 square meters, located at Herran Street, Sta. Ana, Manila. The action was based on a contract of lease of the aforementioned parcel of land, entered into by plaintiffs, represented by their attorney-in-fact Pierre M. Deleplanque, as lessor, and defendant Laureano, as lessee, on September 2, 1949, at a monthly rental of P155.00 for a period of 10 years, and subject to the condition that any building or improvement built thereon by the lessee shall belong to the lessor upon termination, revocation, or cancellation of the contract. This agreement was amended on November 28, 1949, to enable the lessee to assign in favor of the RFC, her leasehold rights on the land, together with the machineries to be acquired and the building to be constructed out of the proceeds of a loan she had contracted from the assignee bank, to secure the payment of the said loan of P50,000.00

It appears also that on November 12, 1953, the lessee conveyed unto E. S. Baltao & Co. her leasehold right on the land and the improvements and machineries found thereon, in virtue of which, E. S. Baltao & Co. took possession of the premises and paid the monthly rentals to the lessor, through the lessee, until November, 1954. This contract was never approved by the RFC and the lessor.

On March 11, 1955, the lessor addressed a letter to the lessee demanding payment of the unpaid rentals which, as of that time, amounted to P899.92 or vacate the premises. A demand for payment of the lessee's outstanding accounts, as well as of the real estate tax thereon for 1954, in the sum of P124.92, was also made on the RFC on June 28, 1955. E.S. Baltao & Co., which was in possession of the property, was also asked by the lessor to vacate the premises, on December 12, 1956.

Previous to these dates, or on April 29, 1955, the lessor already filed in the Court of First Instance of Manila an action for rescission of the contract and damages against the lessee, docketed as Civil Case No. 20685. On defendant's motion, however, the case was dismissed by the court on June 10, 1955, for lack of jurisdiction over

the subject matter, "without prejudice to the right of the plaintiff to file another complaint in the proper court." Thus, on July 30, 1955, the lessor filed a complaint for unlawful detainer in the Municipal Court of Manila (Civil Case No. 38823), which, in view of Laureano's objections, was amended twice. This case was ultimately dismissed upon the lessor's own motion on November 26, 1955.

On August 2, 1957, a new complaint for unlawful detainer was filed by the lessor in the Municipal Court of Manila (Civil Case No. 52060), impleading the lessee Laureano, the RFC, and E.S. Baltao & Co. as parties-defendants. Defendant Laureano objected to the jurisdiction of the court, on the ground that the complaint was filed more than one year from the letter of demand of March 11, 1955. Sustaining this motion, the court dismissed the case on October 31, 1957, for lack of jurisdiction. Then, on January 28, 1958, and after the lessee was sent another letter dated December 27, 1957, the present action for recovery of possession was filed by the lessor in the Court of First Instance of Manila.

Defendant lessee once again challenged the jurisdiction of the court, claiming that the action, which was commenced on January 28, 1958, was filed within one year from the demand made on December 27, 1957, and, therefore, comes within the jurisdiction of the Municipal Court. The lower court, however, in its decision of July 2, 1960, ruled that it has jurisdiction over the subject matter, because the demand for payment and the return of the premises was made by plaintiffs on defendant lessee as early as March 11, 1955. The letter of December 27, 1957, was declared a mere reiteration of that demand of March 11, 1955. Thus, the lessee was ordered to vacate the leased premises and to pay to the plaintiff the unpaid rentals at the rate of P155.00 a month, from November, 1954, until she actually vacates the same, plus costs. The lessee's counterclaim against the defendants RFC and E.S. Baltao & Co. were both dismissed. The lessee appealed.

The resolution of the sole issue presented in this appeal, which involves the jurisdiction of the Court of First Instance to take cognizance of the present case filed on January 28, 1958, hinges on the nature of the letter dated December 27, 1957, sent by the counsel for the lessor to the lessee, which reads.

"Dear Mrs. Laureano:

"At the hearing of Civil Case No. 52060, entitled 'Mary Burke Desbarats et al. vs. Josefina S. Vda. de Laureano et al.' on October 31, 1957 in the Municipal Court of Manila it was agreed between your counsel, Atty. Suarez and the undersigned, upon proposition of the Court that a formal surrender by you of the land leased to you by the plaintiffs in said case and subject matter of the case, would be effected so that the plaintiffs could lease it to some other party. Said proposition was agreed upon and your lawyer, Atty. Suarez further stated that he would refer this proposition to you for confirmation and action.

"Two months have passed now since that agreement between Atty. Suarez and the undersigned and neither he nor you has made the formal surrender of said premises. In behalf therefore of our clients, Mary Burke Desbarats et al. through their administrator Mr. Deleplanque, we are demanding from you the immediate formal surrender of the land in question in accordance with the contract of lease between the owners and you, and the payment of back rentals amounting to Six Thousand Three Hundred Forty-three and 53/100 pesos (P6,343.53) representing back rentals due up to October, 1957, and all other amounts that may be due up to the present.

"We have been giving and are still giving you this opportunity to settle this case with us but if within five (5) days from receipt of this letter we do not hear from you, we will construe your silence to be an absolute refusal to settle this case with us and in such eventuality, much to our regret we will take the necessary legal action against you.

Respectfully,"

(Exh. 8-Laureano).

There is no question that if this letter is construed as a "new demand", as claimed by appellant, the action filed on January 28, 1958 would be one for unlawful detainer, falling within the jurisdiction of the municipal court. For, although it is true that the lessee was required to pay the rentals or vacate the premises by letter of March 11, 1955, which should make the lessee's possession unlawful from that time, the lessor has also the privilege to waive the right to bring the proper action, or to allow the lessee to continue in his occupation, thereby legalizing the same.[1] Thus, in one case, [2] where despite the lessee's failure to pay the rent after the first demand, the lessor did not choose to bring an action in court, but "suffered the lessees to continue occupying the lands for nearly two years", the lessor's inaction was construed as waiver of his right to file the case, and his tolerance of the lessees' possession of the property, considered to have legalized the said otherwise unlawful possession. Consequently, the cause of action for illegal detainer was therein declared to have accrued only when the second demand for rents and for surrender of possession was not complied with.

In the case at bar, there is hardly any doubt about the lessor's efforts to collect the unpaid rentals or to repossess the property, since the demand was made on March 11, 1955. Not only did they persistently bring court action to enforce their rights, but that, demands were made even on the RFC and the actual occupant of the premises, E.S. Baltao & Co. The letter of December 27, 1957 itself, cited by appellant, shows that it was not just another demand, but a reminder to her to comply with an alleged agreement reached by their counsels, that she was going to voluntarily vacate the premises. It appears therefrom, that if no action was taken by the lessor from October 31, 1957 when the complaint for unlawful detainer (Civil Case No. 52060) was dismissed by the Municipal Court of Manila, until December 27, 1957 when the reminder was made, it was because the plaintiffs (lessor) were expecting that the lessee would voluntarily give up the possession of the property as allegedly agreed upon. Clearly, since the making of the demand in March, 1955, the lessee's occupancy of the property has always been unlawful. Consequently, the accion publiciana, for recovery of possession of the property instituted on January 28, 1958 was properly filed in the court of first instance.

WHEREFORE, the decision of the lower court appealed from is hereby affirmed, with costs against the appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Regala, J., on leave, no part.

[1] Lucido vs. Vita, 25 Phil. 414, cited in Zobel vs. Abreu, et al., 98 Phil. 343.

[2] Cruz, et al. vs. Atencio, et al., G.R. No. L-11276, February 28, 1959.

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