

**ALBETZ INVESTMENTS, INC., PETITIONER, VS. COURT OF APPEALS,
HON. JOSE N. LEUTERIO, AS JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, BRANCH II, AND SPOUSES RICARDO CALMA
AND VI...**

G.R. No. L-32570. February 28, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by certiorari from the decision of the Court of Appeals in CA-G.R. No. 39253-R, entitled "Spouses Ricardo Calma and Vicenta D. Calma, and Spouses Francisco Umengan and Maria R. Umengan, Plaintiffs-Appellees, versus Albetz Investments, Inc., Defendant-Appellant", promulgated on May 26, 1970, affirming the judgment of the Court of First Instance of Manila, Branch II, whereby Albetz Investments, Inc. was ordered to pay damages and attorney's fees to the plaintiffs.

The facts, as found by the trial court, and adopted by the Court of Appeals, are as follows:

"This is an action for damages caused to the plaintiffs' properties due to the alleged indiscriminate, negligent, and wanton demolition of the house of the plaintiffs when the sheriff served the writ of execution issued by the Municipal Court.

"The Calma spouses were the lessees of that lot described as Lot No. 27 pt., Block No. BP-52 of a subdivision plan and located at No. 816 Prudencio Street, Sampaloc, Manila. The defendant Albetz Investments, Inc., the lessor, needing the premises in order to construct a new building, demanded delivery of the lot to it and upon refusal of the Calma Spouses, Albetz Investments, Inc. brought an action of unlawful detainer against Vicenta Calma, Civil Case No. 119712 (Exh. C). Judgment by default was rendered by the Municipal Court on March 30, 1964, ordering Vicenta Calma and all persons claiming under her to vacate the premises and to pay the corresponding rentals (Exh. 7). The judgment having become final, Atty. Macario S. Meneses, director and lawyer of Albetz Investments, Inc., filed a motion for execution (Exh. 10). The motion was granted and the Municipal Court issued the writ of execution, Exh. 2, on July 1, 1964, commanding the Sheriff to remove the defendants in the premises and to collect the damages. The Sheriff submitted his return of September 12, 1964, Exh. 12, informing the Court that on the date of the return the defendant has not yet demolished her house and improvements or vacated the lot. Vicenta Calma and others filed a petition for certiorari with pre-liminary injunction on September 7, 1964, in the Court of First Instance of Manila, Civil Case No. 58246, entitled Narciso Nakpil, et al. vs. Hon. Crisanto Aragon, etc. and Albetz Investments, Inc. (Exh. C). Upon the filing of this petition, counsel for Vicenta Calma filed a motion on September 8, 1964, in the unlawful detainer case, Exh. D, praying that all proceedings be suspended until the termination of the petition for certiorari with prohibition, Special Civil Action No. 58246. The Municipal Judge, acting upon the said motion for suspension, issued on September 17, 1964, the following order (Exh. E):

'In view of the special civil action for Certiorari and Prohibition with preliminary and mandatory injunction filed by defendant in the Court of First Instance of Manila bearing No. 58246, all the proceedings in the above-entitled

cases are hereby suspended until after the said special action shall have been finally resolved.'

"The petition for certiorari with prohibition was denied by the Court of First Instance. From the order of dismissal, Vicenta Calma ap-pealed to the Supreme Court on December 19, 1964. Atty. Meneses then filed a motion for demolition on February 9, 1965, Exh. 13, which was duly opposed by defendant Vicenta Calma, Exh. 14. Acting upon the said motion, the Municipal Judge entered an order on April 29, 1965, Exh. 15, granting the defendant 30 days from the receipt thereof to vacate and remove her house on the premises, otherwise a demolition order would issue. Vicenta Calma having failed to remove the house within the 30 day period, upon motion of Albetz Investments, Inc., the Court issued an order on June 21, 1965, Exh. 17, authorizing and ordering the Sheriff to destroy, demolish or remove the house which had been constructed by the defendants.

"The appeal of the Calmas in the certiorari case was dismissed by the Supreme Court. There-after, the spouses Calma filed an action for specific performance with injunction against Albetz Investments, Inc., Civil Case No. 63549, on December 2, 1965, praying that Albetz Investments, Inc. be ordered to sell the lot in question to the plaintiffs at a reasonable price. This complaint, Exh. N, was dismissed on February 15, 1966, Exh. O, and on February 19, or four days thereafter, the Sheriff, at the instance of defendant Albetz Investments, Inc., thru its lawyer, Atty. Meneses, demolished the house of the spouses Calma without any new writ or order for demolition having been issued by the Municipal Court and only on the strength of the order of June 21, 1965."

Alleging that the demolition was illegal because it was made eight (8) months after the issuance of the demolition order, and that the manner it was carried out was indiscriminate, causing damage to their personal properties, the spouses Calma, owners of the house, and the spouses Umengan, occupants of its ground floor, commenced the instant action in the Court of First Instance of Manila.

On the principal grounds that the order of demolition was no longer in force, having been issued eight (8) months before its enforcement, and that the said spouses were not notified of the order of demolition, and they demolished the house indiscriminately and the personal properties were carelessly placed, resulting in their being damaged, the Court of First Instance rendered judgment in favor of the plaintiffs and against the defendant, awarding them damages in specified amounts, as well as attorney's fees and costs of suit. Defendant appealed to the Court of Appeals.

The Court of Appeals affirmed en toto the decision of the Court of First Instance, saying that "it is not disputed that plaintiffs were only notified of the order of demolition on the day the Sheriff appeared at the place of plaintiffs in the morning of February 19, 1966, with about 35 laborers to carry out the demolition of plaintiffs' house", it further appearing that they had not as yet been notified of the dismissal of their complaint for specific performance with injunction, Civil Case No. 63549.

Alleging that both the Appellate Court and the trial court erred in declaring that an order of demolition, issued under section 13 (now section 14) of Rule 39 of the Rules, which is not implemented within sixty (60) days becomes a nullity, petitioner has filed the present petition.

It is very clear from the records that this case arose out of a judgment in favor of the petitioner in an unlawful detainer case, which judgment had long been final and executory. Writ of execution was not satisfied because defendants Calma spouses refused to vacate the premises subject matter of the action and to remove their house therefrom. From then on, a series of delays in the execution was occasioned by the moves of the Calma spouses to forestall the enforcement of the judgment.

We find, on the basis of the records, that the Calma spouses could not have been unaware of the order of demolition prior to the date when their house was actually demolished. The motion of Albetz Investments, Inc. for demolition which was filed on February 9, 1965 was duly opposed by the Calma spouses. On April 29, 1965, the

Municipal Judge granted the said spouses a period of thirty (30) days within which to vacate the premises and remove their house therefrom, otherwise an order of demolition would issue. The order of demolition of June 21, 1965 was issued only after the certiorari case in the Court of First Instance was dismissed and after the Calma spouses failed to remove their house within the period granted to them by the court. It must also be noted that even after the Municipal Court issued its order of June 21, 1965, authorizing the Sheriff to demolish and remove the house constructed thereon by the Calma spouses, the latter sought to forestall the implementation of said order by filing another action, this time for specific performance on December 2, 1965, after the dismissal of their certiorari case by this Court, which later action was ultimately dismissed by the Court of First Instance on February 15, 1966.

It is also important to note that, by order of the Municipal Court in the unlawful detainer case, the proceedings therein, specifically, the execution of the judgment, were suspended only until after the special civil action for certiorari was finally resolved, and the final resolution took place when the Supreme Court dismissed the appeal of the Calma spouses thereon.

It is apparent, therefore, that the Calma spouses were given more than sufficient time to comply with the order of the Municipal Court to remove voluntarily their house from the premises. It is not even necessary to await the order of demolition to be served upon the said spouses before carrying out the writ of demolition. As stated in *Acibo vs. Macadaeg*:^[1] "Since the order of demolition was not appealable, there was no point in waiting until that order could be served on the adverse party before issuing the corresponding writ of demolition."

The nature of forcible entry or unlawful detainer proceedings is that they are summary in character, "intended to provide an expeditious means of protecting actual possession or the right to possession of property."^[2]

As aptly explained by Chief Justice Moran in *Co Tiamco v. Diaz*:^[3]

"* * * Cases of forcible entry and detainer are summary in nature, for they involve perturbation of social order which must be restored as promptly as possible and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided."

It is for this reason that when judgment is in favor of the plaintiff, it should be executed immediately in order to prevent further damages to him caused by the loss of his possession.^[4] The theory of private respondents is inconsistent with the special, summary character and purposes of an unlawful detainer proceedings.

There is no question that the Municipal Court had full authority to order the demolition of the Calma's house by the Sheriff in order to give effect to its judgment in the unlawful detainer case. It is not enough for the Sheriff, in the enforcement of a judgment for delivery or restitution of property, to direct the defeated party to make such delivery or restitution. It is the duty of the Sheriff to oust the defeated party from the property and make the restitution by placing the winning party in possession of said property. If to accomplish this he has to remove an improvement constructed by the defeated party, he cannot effect such removal without special order of the court, which order can only be issued upon motion of the prevailing party with notice and after hearing, and upon the defeated party's failure to remove the improvement within the reasonable time given to him by the court.^[5]

Thus, Section 14, Rule 39, of the Revised Rules of Court, specifically provides:

"SEC. 14. Removal of improvements on property subject of execution. ? When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court."

This provision has been taken from section 1 of Commonwealth Act No. 39, which states that: "The Provincial Sheriff, in executing the decision of a competent court in ejectment cases, shall not destroy, demolish, or remove the improvements constructed or planted by the defendant or his agent or servant on the premises, unless expressly authorized by the Court. The court may authorize the Provincial Sheriff to do so, upon petition of the plaintiff or his attorney, after due hearing, and upon failure of the defendant to remove the after-mentioned improvements within a reasonable time after being so ordered by the Court."

Evident from the foregoing is the statutory purpose which is to grant to the defeated party a reasonable time to remove his improvement from the premises. Therefore, any delay in the implementation of the order of demolition accrues to the benefit of the deforciant. The grant of such a reasonable period to remove the improvements is predicated upon reasons of fairness and justice to enable the defeated party to look for another place wherein he can transfer his improvements and personal effects. The law does not specify the period within which the order of demolition should be carried out. The reason is obvious. There may be factors and circumstances which would justify deferment of the implementation of the order of demolition.

Anent the manner in which the demolition was carried out, however, We affirm the finding of the trial court and the Court of Appeals that the same was indiscriminate, without due regard to the safety of the personal properties belonging to the Calma and Umengan spouses, resulting in their destruction. As found by the trial court and the Court of Appeals:

"* * * In the course of the demolition, which was, according to the evidence for the plaintiffs, indiscriminate, the personal properties were just carelessly placed between the house and the fence, and the others were left in the house and they were damaged by falling debris. As there was no one to take care (of them), many of the properties were lost."

While it is true that Albetz Investments, Inc. had the legal right to the surrender to them of the parcel of land leased by the Calma spouses, which could only be achieved thru the demolition of the house standing thereon, nevertheless, such right should not have been exercised in such a manner as to unduly prejudice its owners. Urged by the lawyer of petitioner, the Sheriff, aided with petitioner's laborers, wantonly, maliciously and indiscriminately demolished the house, destroying in the process many of the personal properties therein which belonged to the spouses Calma and Umengan. The extent of the damage has been determined by the trial court and affirmed by the Court of Appeals, upon a finding that the same was not contested by petitioner.

We find that the provisions of the Civil Code on Human Relations (Chapter 2) are applicable, specifically Article 19 which provides, thus:

"Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

Certainly, the demolition complained of in the case at bar was not carried out in a manner consistent with justice and good faith. At the instance of petitioner, it was done in a swift, unconscionable manner, giving the occupants of the house no time at all to remove their belongings therefrom. No damage worth mentioning would have been sustained by petitioner Albetz Investments, Inc. if their men, led by the Sheriff, had been instructed to allow said occupants to remove their personal properties, considering that this would not have taken a considerable length of time.

WHEREFORE, with the foregoing modifications, the appealed decision is hereby **AFFIRMED**, without pronouncement as to costs.

Fernando, (Chairman), Barredo, Muñoz Palma, and Aquino, JJ., concur.

Concepcion, Jr., J., took no part.
Muñoz Palma, J., was designated to sit in the Second Division.

[1] 11 SCRA 446, 452.

[2] Co. Tiac v. Natividad, et al., 80 Phil. 127.

[3] 75 Phil. 672, 686.

[4] Sec. 8, Rule 70, Revised Rules of Court: ????? v. ?????, 71 Phil. 186; Yu Tiong Tay v. ?????, 79 Phil. 597; Sumintac v. CFI of Rizal, 71 Phil. 415; ?????illa v. Del Rosario, et al., 74 Phil. 445.

[5] Guevara v. Laieo, et al., 64 Phil. 144.

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