

AMBROSIO CARBUNGCO, PETITIONER, VS. RAFAEL AMPARO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.*G.R. No. L-2245. May 20, 1949*

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/25bb50a1f950/>**MONTEMAYOR, J.:**

As far back as March 1947, the petitioner Ambrosio Carbungco filed a complaint for forcible entry and detainer against the defendant Vicenta Foz, in the municipal court of Manila, claiming that, although the regular tenant Jose Santos who was formerly occupying the premises designated as Nos. 1775 and 1777 Andalucia Street, Sampaioc, Manila, which belonged to the plaintiff, upon the latter's demand, had already vacated and delivered said premises to him, the defendant Vicenta Foz claiming to have received as sublessee said premises, particularly the second story of house No. 1775, from the lessee, refused to vacate the same. Failing to either appear in the municipal court or answer the complaint, either by herself or counsel, Vicenta Foz was declared in default and judgment was rendered against her, ordering her to vacate the premises, restore possession thereof to the plaintiff, and to pay P100 as monthly rental from February 16, 1947, until she shall have left the premises, with costs.

The defendant appealed the case to the Court of First Instance of Manila which has been docketed there as civil case No. 2886. Pending appeal, and because of the appellant's failure to deposit the rental corresponding to the month of April 1948, the appellee Ambrosio Carbungco filed a motion, dated May 11, 1948, in the Court of First Instance of Manila for execution of the judgment. After the filing of said motion, or rather on May 13, 1948, the appellant made the deposit of the rental corresponding to the month of April 1948. On May 15, 1948, Hon. Rafael Amparo, presiding branch V of the Court of First Instance of Manila, in the absence of Judge Buenaventura Ocampo who was on vacation, issued an order denying the motion for execution on the ground that the deposit had already been made on May 13, 1948. A motion for reconsideration filed by Carbungco was likewise denied by order of May 29, 1948. Carbungco has now filed in this Court a petition for mandamus praying that Judge Rafael Amparo be commanded to issue an order of execution against the defendant Vicenta Foz in said civil case No. 2886.

The facts in the present case are quite simple. Contrary to the provisions of law, particularly Rule 72, section 8, Rules of Court, the appellant in this detainer case failed to deposit in court within the first ten days of the succeeding month (May 1948) the rental corresponding to the previous month (April 1948). This deposit was actually made three days after the end of the ten-day period, that is to say, on May 13, 1948. The law and the authorities are, however, clear that this legal provision about the deposit of the rental corresponding to the previous month within the first ten days of the succeeding month, is mandatory; that upon violation thereof by the defendant-appellant, the plaintiff-appellee has the right to ask for execution pending appeal; and that the court is left no discretion to either extend the period of deposit prescribed by law, postpone the making of said deposit, or otherwise relieve the appellant of the consequences of her or his failure to make the deposit within the precise period prescribed by law. (Zamora vs. Dinglasan, 77 Phil., 46; Lee Tian Po & Co. vs. Rodas, 81 Phil., 395; Cimaan vs. Rodas, 78 Phil., 800; Meneses vs. Dinglasan, 81 Phil., 170.) We want to add here that the fact that the

actual deposit was made shortly after the expiration of the first ten days of the succeeding month should not and cannot make any difference. The law has prescribed a period, and this requirement should be complied with strictly, and its observance and compliance should be enjoined and enforced by the courts, not only for the protection of parties in whose favor the law happens to have been made and promulgated, but also for the information and guidance of those otherwise affected thereby. Otherwise, there would be confusion and misunderstanding as to whether or not an appellant in a forcible entry and detainer case could avoid execution if he shall have made the monthly deposit, say, on the 11th, 12th, 13th or 14th day etc. of the succeeding month, just as long as the delay is not too long. We hold and declare that pending appeal, failure to make the deposit of rental within the period fixed by law, however short the delay, gives the appellee the right to execution of the judgment, which the court is bound to grant and enforce.

We are aware that in two cases previously decided by this Court (Thomas vs. Garcia, G. R. No. L-1285, and Santos vs. Alvarez, 78 Phil., 503), it was held that under Commonwealth Act No. 689, as amended by Republic Act No. 66, a tenant cannot be ejected for nonpayment of rents unless such nonpayment be deliberate and intentional. In the present case, however, there is every reason to believe and to hold that appellant's failure to deposit within the period fixed by law was deliberate and intentional. No reason or explanation whatsoever was given for the delay in making the deposit. It could not have been due to inability to pay or to any financial embarrassment, for the reason that, since the appeal was perfected in April 1947, the appellant had apparently all along been able to make the deposit on time. Moreover, there is reason to doubt that appellant herein possesses the status of a regular tenant. According to the uncontradicted claim of the plaintiff contained in his complaint in the municipal court, which appellant did not even answer,—in fact she never appeared in said court, and so she was declared in default,—the appellant was a mere intruder or squatter, having had no previous contract or understanding with the plaintiff about the occupancy of the premises in question.

In view of the foregoing, the petition for mandamus is hereby granted and the respondent judge, or anyone presiding over Branch V of the Court of First Instance of Manila, or any other branch of said court taking cognizance of civil case No. 2886 (Ambrosio Carbungco vs. Vicenta Foz), is hereby commanded to order the execution of the appealed judgment rendered by the Municipal Court of Manila requiring the defendant Vicenta Foz to vacate the premises in question. No pronouncement as to costs.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, and Reyes, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.