

## VICTORIA LICHAUCO, PLAINTIFF AND APPELLEE, VS. MANUEL GUASCH, DEFENDANT AND APPELLANT.

*G.R. No. L-51. February 23, 1946*

Ponente: OZAETA, J.

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### OZAETA, J.:

The plaintiff and appellee commenced this action of forcible entry in the Municipal Court of Manila, alleging:

"2. Que el aqui demandado sin conocimiento ni consentimiento de la aqui demandante y a espaldas de la misma y valiendose de la pasada emergencia, entro, ocupo y tomo posesion del local No. 1406 Avenida Rizal, Manila, que retiene ilegalmente y no obstante los varios y repetidos requerimientos que la demandante le ha estado haciendo para desocupar dicho local y ultimamente en o hacia el 12 de marzo de 1945, dicho demandado no ha querido ni quiere desalojar dicho local y lo retiene ilegalmente;

"3. Que la retencion ilegal por el aqui demandado de dicho local esta causando a la aqui demandante danos y perjuicios por la cantidad de P200 mensuales que debe el aqui demandado pagar a la demandante desde el pasado mes de febrero de 1945 hasta que desaloje dicho local."

From the judgment of the Municipal Court against the defendant "for the restitution of the premises described in the complaint and for a monthly rental of P100 from the 1st of March, 1945, up to the date of restitution, and costs," the said defendant appealed to the Court of First Instance and there filed an answer dated May 10, 1945, stating:

"That without prejudice to filing an amended answer in due time, the defendant hereby denies generally and specifically each and every allegation contained in the plaintiff's complaint."

On May 29, 1945, the plaintiff filed a motion asking for judgment on the pleadings, in accordance with section 10 of Rule 35, on the ground that, being a mere general denial, defendant's answer did not tender an issue, as held in the case of *El Hogar Filipino vs. Santos Investments, Inc.* 74 Phil., 79.)

Upon said motion the trial court, Judge Arsenio P. Dizon presiding, rendered judgment (a) ordering the defendant to vacate the premises at 1406 Rizal Avenue, Manila, and to return the same to the plaintiff, and (b) adjudging the defendant to pay to the plaintiff a rental of P100 a month from March 1, 1945, until he vacates the premises, and to pay the costs.

From said judgment the defendant appealed to this Court, alleging that the trial court erred (1) in rendering judgment on the pleadings, (2) in trying the case without due notice to defendant and/or his counsel, and (3) in rendering judgment against defendant and appellant.

The first assignment of error is sustainable only in so far as the "judgment appealed from orders the defendant to pay to the plaintiff a monthly rental of P100. The allegations of the complaint are to the effect that the defendant entered and occupied the premises in question without the knowledge and consent of the plaintiff and refused to vacate the same notwithstanding plaintiff's demands, and that on account of such illegal detainer the plaintiff has

suffered damages in the amount of P200 a month. Defendant's answer was a mere general denial; it did not deal specifically with each material allegation of fact and did not set forth the substance of the matters upon which he would rely to support his denial, as required by section 7 of Rule 9. Under section 8 of the same rule, "material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied." The plaintiff, therefore, had the right to ask for judgment on the pleadings, as held in the case of *El Hogar Filipino vs. Santos' Investments, Inc.*, supra; but inasmuch as under said section 8 of Rule 9 the amount of damage is not deemed admitted, the trial court could not award any damage in the absence of proof as to the amount thereof. Neither could the trial court take into consideration the amount of damage found by the Municipal Court, for the reason that under section 9 of Rule 40 "a perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly entered in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced." The fact that the trial court termed the money judgment as rental and not damages could not serve to alter the nature of the action in that respect. The complaint did not allege and claim rent from the defendant under a contract with the latter; it claimed damages from him on account of his having entered, occupied, and detained the premises in question without plaintiff's knowledge and consent.. As the amount of those damages was not deemed admitted by the general denial, it was incumbent upon the plaintiff to prove it. In a judgment upon the pleadings the plaintiff is entitled to only what is deemed admitted. In the instant case, all that is deemed admitted is the allegation in the complaint that the defendant entered and occupied the premises in question without plaintiff's knowledge and consent and is illegally detaining the same, and that the plaintiff suffered damages; but the amount of damage is not admitted, and in the absence of proof thereof no judgment therefor can be adjudicated.

The second assignment of error to the effect that the defendant or his counsel was not served with notice of trial, is untenable for the reason that when one of the parties is entitled to and asks for judgment on the pleadings no trial is necessary.

The third assignment of error is a mere consequence of the first and needs no further discussion.

The Court is unanimous as to all that has been stated above but is divided as to the final disposition of the case. A majority composed of Justices De Joya, Perfecto, and Bengzon are of the opinion and so vote that the plaintiff and appellee is not entitled to any damage because she has not proved the amount thereof, and that therefore the judgment of the lower court should be modified by eliminating the damage awarded in the sum of P100 a month as the rental value of the premises in question. Justice Hilado is of the opinion and so votes that the judgment appealed from should be set aside and the case remanded to the lower court for the reception of plaintiff's proof as to the amount of the damage alleged and for the rendition of a new judgment. The writer, on the other hand, is of the opinion and so votes that the judgment should be affirmed in so far as it orders the defendant to vacate and restore the premises in question to the plaintiff and to pay the costs, and set aside in so far as it orders the defendant to pay the plaintiff the sum of P100 a month from March 1, 1945; that the case should be ordered remanded to the lower court for trial as to the amount of damage; but that the judgment as affirmed for the restitution of the premises to the plaintiff may be executed without the necessity of waiting for the outcome of the trial as to damages.

Conformably to the vote of the majority, the judgment is modified by eliminating therefrom portion (b) whereby the defendant is adjudged to pay to the plaintiff a rental of P100 a month from March 1, 1945, and is affirmed in all other respects, with costs against the defendant in the three instances.

De Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

Judgment modified.

## RESOLUTION ON MOTION FOR RECONSIDERATION

February 23, 1946

**OZAETA, J.:**

Counsel for the appellee moves to reconsider the decision of this Court, the dispositive part of which reads as follows :

"Conformably to the vote of the majority, the judgment is modified by eliminating therefrom portion (b) whereby the defendant is adjudged to pay to the plaintiff a rental of P100 a month from March 1, 1945, and is affirmed in all other respects, with costs against the defendant in the three instances."

and prays that the case be remanded to the lower court so that the parties may adduce proofs as to the value of the use and occupation of the premises during the pendency of this case, and that in the event this Court should not deem it proper to do so, the defendant and appellant be ordered to pay the amount admitted by him as the monthly rental he ought to pay, namely, the sum of P35 a month, from March 1, 1945, until he vacates the premises.

The vote of the majority of this Court to eliminate the rental of P100 a month adjudged by the trial court was premised on the absence of proof as to the rental value of the premises in question claimed by the plaintiff by way of damages, and not on the assumption that said premises had no rental value whatsoever. The defendant, in the answer which he filed in the Municipal Court and which he transcribed in his printed amended record on appeal, alleged among other things the following:

"7. Que la cantidad de P200 que la demandante exige ahora al demandado como renta de dicha puerta es excesiva y contraria a la orden ejecutiva que provee, que solamente se podra anadir un 25% sobre la renta pagada en 1941, y como dicha puerta en 1941 solamente rentaba P30 o P35, luego P200 es excesiva y contraria a la ley." (Page 5.)

That answer was substituted by the defendant with a general denial in the Court of First Instance. In deciding the appeal from the judgment rendered by the Court of First Instance upon the pleadings, wherein the defendant was adjudged to pay to the plaintiff a monthly rental of P100, and in modifying said judgment by eliminating such monthly rental for lack of proof thereof, this, Court did not take into consideration the monthly rental of P35 previously admitted by the defendant as the reasonable value of the use and occupation of the premises in question, because it did not appear from the record that said amount was acceptable to the plaintiff, for which reason two members of the Court voted to remand the case to the lower court so as to give the plaintiff an opportunity to prove the amount of damages claimed by her, to wit, P200 a month.

In her motion for reconsideration the plaintiff and appellee invokes the admission made by the defendant and appellant in his record on appeal to the effect that the reasonable rental value of the premises in question was P35 a month; and the said appellee manifested her conformity to said amount if this Court should decide not to give her an opportunity to adduce proofs of the greater amount of damages claimed by her. In his answer to said motion the appellant urges that the same be denied.

While the writer maintains his original vote to give the plaintiff and appellee an opportunity to prove the rental value alleged by her, and Justice Bengzon likewise maintains his original vote to deny such opportunity to the plaintiff and appellee, the three other members of the Court—Justices De Joya, Perfecto, and Hilado—are of the opinion that, in view of the agreeableness of the plaintiff and appellee to accept the sum of P35 a month claimed by the defendant as the reasonable rental value of the premises in question, it is not necessary to remand this case to the lower court for further proceedings, and that the ends of justice could be better subserved by modifying the

dispositive part of the decision heretofore rendered by this Court in the sense of awarding to the plaintiff a judgment for the sum of P35 a month as the reasonable value of the use and occupation of the premises in question. The majority think that the defendant has no valid reason to complain against the payment of said amount which he himself alleged before the Municipal Court as the reasonable rental value of the premises in question, considering that one should not be permitted to enrich oneself at the expense of another, and considering further that by accepting said amount the plaintiff is waiving in favor of the defendant the right to a much greater amount of rent, judging from the judgment of both the Municipal Court and the Court of First Instance in the present case.

Wherefore, upon reconsideration of the decision herein, its dispositive part is hereby amended to read as follows:

"Conformably to the vote of the majority, the judgment of the trial court is modified by reducing to P35 the amount of monthly rental which the defendant shall pay to the plaintiff from March 1, 1945, until said defendant vacates the premises, and is affirmed in all other respects, with costs against the defendant in the three instances."

De Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

Dispositive part amended.

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