

GERONIMO REALTY COMPANY, PETITIONER, VS. THE COURT OF APPEALS[] AND DOMINGO AVERIA, RESPONDENTS.*G.R. No. L-44563. May 31, 1978*

Ponente: TEEHANKEE, J.

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The Court hereby sets aside the judgment of the Court of Appeals which upheld the city court's judgment and instead reinstates the judgment of the court of first instance ordering the outright ejectment of respondent-defendant from the leased premises. After respondent had accepted the leased premises peaceably in October, 1971 and for 15 months thereafter paid regularly the stipulated monthly rentals without protest, he could not unilaterally stop the rental payments on the ground of an alleged violation at the commencement of the lease (and as to which he himself conceded that he should file a separate action, which he never did). Petitioner is entitled to evict him from the leased premises for willful breach of contract and non-payment of rentals.

The antecedent facts in this ejectment case as set forth in respondent Court of Appeals' questioned decision[1] may be briefly restated as follows:

Petitioner Geronimo Realty Company (hereinafter referred to as petitioner or the company) was the owner of an old building located at the corner of Claro M. Recto and Morayta Streets, Manila, a portion of which was leased to respondent Domingo Averia. Sometime in 1969, the company, preparatory to the construction of a 3-storey concrete building to replace the old one, gave notice to all the lessees, including respondent, to vacate the premises leased by them. Respondent refused to move out, thus compelling the company to file an ejectment suit against him before the City Court of Manila. The said court rendered a decision against respondent, which the latter appealed to the Court of First Instance of Manila, where the case was docketed as Civil Case No. 79158. Due to the pendency of the appeal, the construction of the new building was stopped because the portion leased and occupied by respondent could not be demolished. This circumstance prompted the company to seek settlement of the case with respondent, culminating in a lease agreement dated August 26, 1970 (Exhibit A), which the parties submitted to the court for judgment. Paragraphs 1 and 17 of the Agreement read as follows:

"(1) That this lease shall be for a period of five (5) years from the date of occupancy, extendible at the option of the LESSEE from year to year until a total period of ten (10) years; thereafter the contract may be renewed at the agreement of the parties as to terms, rent and other conditions;

'(A) The rental shall be the sum of three hundred pesos (P300.00) a month for the first three years, three hundred fifty pesos (P350.00) a month for the next two years, four hundred twenty pesos (P420.00) a month for the 6th, 7th and 8th years, and four hundred fifty pesos (P450.00) a month for the 9th and 10th years.'

XXX XXX XXX

"(17) That the ceiling of the twenty (20) square meters space leased to the LESSEE will be of the same height as the ceiling of the first (1st) storey leased to KHAW CHING HONG."

When the new building was nearing completion, respondent noticed a mezzanine being constructed immediately above the 20-square meter space leased to him under the Agreement, Exhibit A. Thereupon, he filed in the aforesaid Civil Case No. 79158 a motion dated August 31, 1971 (Exhibit 7), seeking to prohibit the company from proceeding with the construction of said mezzanine. The trial court in the said case disposed of the motion in this wise:

"With respect to the second phase of the motion, - to stop the plaintiff from causing the construction of a mezzanine above the twenty (20) square meters space leased to the defendants, - there is no express order to that effect in the decision, which may be enforced summarily by an order of execution. The decision merely gave recognition to the contract of lease of the parties, embodied in their Compromise Agreement. If there is any subsequent breach of any condition thereof by any of the parties, relief may be sought in a separate, independent action, and not summarily through a motion for execution. x x x x."

In October, 1971, respondent occupied the leased premises and from that time on he paid the monthly rentals until December, 1972. However, on January 12, 1972, respondent through counsel sent petitioner company a letter protesting the construction of the mezzanine and the installation of three water meters inside the 20-square meter space leased to him.

A year passed without any incident until respondent sent another letter dated January 15, 1973 to petitioner reiterating his objection to the construction of the mezzanine as being in violation of their lease contract and threatening "that if you continue to refuse and fail to comply with our Contract of Lease, I will be constrained not to give you the monthly rentals of the space being occupied by me (20 sq. meters - 2 x 10) in the amount of P300.00 a month" and that he "will hold in my possession the aforesaid rentals until you comply with our agreement."

Respondent did stop paying the stipulated rentals starting January, 1973 and petitioner wrote him a demand letter of November 7, 1973 demanding payment of the 11-months back rentals in the sum of P3,300.00 within five days and that he vacate the leased premises upon non-compliance.

On January 24, 1974 petitioner filed the present ejectment suit against respondent in the City Court of Manila, which after trial, rendered its decision, ordering respondent to pay the rentals within 15 days from notice under pain of ejectment but substantially reducing the stipulated monthly rentals to P250.00 monthly on the premise that "the reduction of only a few feet of ceiling space" because of the mezzanine's construction entitled respondent to "a proportionate and fair reduction," (notwithstanding its finding that petitioner's building is "strategically situated right in the heart of the so-called university belt, where office and store rent is much higher than other areas") and sentencing petitioner besides to pay P1,000. - attorney's fees and costs, as follows:

"WHEREFORE, the judgment is hereby rendered ordering the defendant to pay the plaintiff the amount of FIVE THOUSAND TWO HUNDRED FIFTY (P5,250.00) PESOS representing back rentals for the period January 16, 1973 to October 15, 1974 within fifteen (15) days from receipt hereof; OTHERWISE, the defendant and all persons claiming possession under him are hereby ordered to immediately vacate the premises located at 1923 Claro M. Recto Avenue, Manila, and to pay the plaintiff the subsequent rentals that had become due and demandable beginning October 16, 1974 at the rate of TWO HUNDRED FIFTY (P250.00) PESOS a month until the said premises are vacated and peaceful possession restored to plaintiff.

"Any and all rentals already paid in excess of P250.00 a month are to be refunded or credited to the account of the defendant effective October 3, 1971. Plaintiff is hereby ordered to pay defendant the sum of ONE THOUSAND (P1,000.00) PESOS for attorney's fees, plus costs of suit."

Petitioner's appeal was upheld by the court of first instance of Manila, (where the case was docketed as Civil Case 96221) which found no violation in the construction of the mezzanine and rendered its judgment for ejectment

and payment of the stipulated rentals as prayed for in petitioner's complaint, as follows:

"That the defense put up by the defendant, to the effect that his failure and refusal to pay said rentals in arrears was due to the plaintiff's violation of clause 17 of the lease contract is legally untenable, first, because it was not proven; and secondly, because the very acts of the defendant in signing the lease contract, occupying the leased premises peaceably, and paying the agreed monthly rentals thereon for 13 months without protest, are strong and convincing proof that such alleged violation of the lease contract never existed and much less committed by the plaintiff."

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"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant. And accordingly, the judgment of the City Court of Manila, Branch XII, herein appealed from, is hereby reversed in part and modified as follows:

"1. Ordering the defendant and all those claiming any right under him to vacate the premises and deliver peaceful possession thereof to the plaintiff;

"2. Ordering the defendant to pay the plaintiff all unpaid rentals in arrears covering the period from January, 1973 to December, 1974, at the rate of P300.00 monthly, or a total of P7,200.00, plus the unpaid rentals covering the period from January to December, 1975, at the rate of P350.00 a month, with a total of P4,200.00 or a grand total of P11,400.00; and such further rentals as are due and demandable until the defendant shall have vacated the premises in question and the peaceful possession thereof restored to the plaintiff; and

"3. Finally, ordering the defendant to pay the plaintiff the sum of P300.00 by way of attorney's fees, plus costs of proceedings."

Upon a petition for review filed by respondent, respondent Court of Appeals in turn issued its decision of August 12, 1976 setting aside the judgment of the court of first instance and sustaining the municipal court's decision adjudging reduced rentals in favor of respondent, *supra*, which it "revived and declared effective."

Hence, the present petition seeking in turn the revival and affirmance of the judgment of the court of first instance granting petitioner's basic complaint for ejectment and recovery of the stipulated rentals in arrears.

We find the petition to be meritorious.

1. Respondent having accepted the leased premises and occupied the same peaceably in October, 1971 and having paid the stipulated monthly rentals thereon for a year and three months without protest to December, 1972 could not unilaterally thereafter on the basis of his belated claim that the construction of the mezzanine violated the lease contract stop or suspend payment of the agreed rentals. When he did so for over a year and disregarded petitioner's demand to pay or to vacate the premises for willful breach of contract and non-payment of rentals, he gave petitioner lawful cause for ejecting him from the premises and for cancellation of the lease.

2. Respondent's wanton breach of his obligation to pay the rentals is compounded by the undisputed fact that in the first ejectment case filed against him so that petitioner could proceed with the construction of the new building, *supra*, [2] which was settled by compromise with the execution of their 10-year lease contract, respondents had noticed when the new building was that nearing completion that the mezzanine was being constructed above the 20-square meter space leased to him; he then filed in said case a motion on August 31, 1971 to prohibit petitioner from proceeding with the construction of the mezzanine, but his motion was correctly denied by the court of first instance which ruled that he should seek "relief in a separate, independent action" for any alleged subsequent breach of any condition of the 10-year lease contract embodied in their compromise agreement in that case. No such separate action to stop the mezzanine construction was ever filed by respondent. (And

respondent cannot in the ejectment case filed against him for willful non-payment of the stipulated rentals claim a right to "suspend" payment of rentals for this alleged grievance involving an alleged right to specific performance of contract which he well knew and admitted was beyond the municipal court's jurisdiction.)

Furthermore, the record fully supports petitioner's averment from the beginning that "before the lease contract was entered into, the plans and specifications of the building were presented to the court where the private respondent and his counsel scrutinized the same, completely aware as to where the now questioned mezzanine will be placed; that the building's plans and specifications were approved by the City Engineer's Office before the compromise agreement was submitted and the lease contract entered into thereby precluding the private respondent now to cry that he was unaware of the building's structural design; and that after examining the plans and specifications, the private respondent was given the option to choose which side of the building he would want to occupy and he chose the portion where the mezzanine was to be constructed."

3. Under the established facts and circumstances wherein respondent had peaceably accepted the leased premises and paid the stipulated rentals of P300.00 monthly without protest from October, 1971 for a period of 15 months, respondent must be deemed to have waived his initial faint protest and was estopped from resuscitating the same and stopping all rental payments. He has only himself to blame for the legal consequences thereof of cancellation of the lease and ejectment from the property for non-payment of the agreed rentals. This is more so because he was expressly informed in the first ejectment case that if he claimed that the mezzanine construction was in violation of their lease agreement, he should pursue the same in a separate action, and yet accepted the premises and paid the stipulated rentals without ever having filed such separate action which he well knew, as admitted through counsel in the case below, should be an action of specific performance.[3] (Any such action would have been subject, as respondent surely realized, to the defenses and counterclaims of petitioner that respondent's illegal detainer of the premises in the first ejectment case which held up the construction of the new building cost petitioner damages of thousands of pesos "to the point of increase in contract price wherein the contract price of P240,000.00 reaches around P400,000.00"[4] as a result of the delay and increase of prices.) Worse, it turned out that his belated protest after 15 months against the construction of the mezzanine and stoppage of rental payments as stipulated was merely to "ask for a reasonable reduction in the payment of the premises because of the unlawful construction of the mezzanine," as brought out during the trial although such reduction was not asked in his answer.[5]

4. Respondent appellate court's decision must therefore be overturned because of the erroneous conclusions drawn by it from the facts at hand, as hereinabove set forth. Said court 's upholding the municipal court's decision that respondent by virtue of the mezzanine construction had the right to suspend the payment of rentals and ruling that "it would be impractical for the court to order the demolition of the oft-mentioned mezzanine since the same is a permanent concrete structure" (losing sight of the consideration that even under its erroneous factual conclusions, this matter of contractual enforcement was beyond the limited jurisdiction of the municipal court in the ejectment case below), and hence sustaining the municipal court's reduction of the stipulated rentals retroactively since respondent occupied the leased premises in October, 1971 (notwithstanding that such payments of the stipulated rentals were made voluntarily and without protest by respondent and that respondent had not prayed for such reduction in his answer to the complaint[6]) are but the result of its erroneous conclusions.

5. Finally, it has been brought to light in the parties' memoranda that since respondent unilaterally stopped the rental payments in January, 1973 up to now (the month of May, 1978, inclusive) or a total of 5 years and 5 months, respondent has not deposited or covered by supersedeas bond the rentals in arrears adjudged against him (P5,250.00 representing back rentals for January 16, 1973 to October 15, 1974, under the city court judgment, and P11,400.00 for three years' back rentals from January, 1973 to December, 1975 under the court of first instance

judgment) nor has he deposited in court the monthly rentals adjudged against him (P250.00 reduced monthly rental, after crediting him with the P50. - differential of all previously paid rentals under the city court's judgment, and at the stipulated rates of P300.00 monthly rental for the first 3 years of the lease, P350.00 monthly rental for the next 2 years, and P420.00 monthly rental for the 6th, 7th and 8th years under the court of first instance judgment) in order to avoid immediate execution of judgment pending appeal, as provided by sections 8 and 10 of Rule 70. It must be noted that the city court judgment specifically rendered judgment against respondent ordering him to vacate the premises upon failure to pay the rentals in arrears "within 15 days from receipt hereof," and to pay the subsequent monthly rentals, while the court of first instance judgment likewise ordered respondent outright to vacate the premises and to pay the rentals in arrears as well as all subsequent rentals until restoration of the premises. Under the cited Rule, failure of respondent-defendant to file the supersedeas bond and to deposit on time (on or before the tenth day of each succeeding month) the monthly rentals is a mandatory, ministerial and imperative ground for execution of the judgment pending appeal.[7]

Respondent's contentions in his memorandum that the judgments "did not become final" pending the appeals and "there is no legal requirement for (him) to comply with the aforesaid decisions" and his right "to suspend payment of the monthly rentals was sustained and/or upheld by the city court" are totally erroneous. It is elementary that ejectment or detainer proceedings under Rule 70 are special civil actions which provide as against the general rule that the judgment for ejectment and restoration of the premises should be executed immediately even during the pendency of the appeal(s), unless the defendant files a supersedeas bond for the rentals in arrears and continues making payments to the appellate court(s) of the monthly rentals provided in the appealed judgment, the nature of the action being a sufficient special reason for execution of judgment pending appeal and the plaintiff being entitled to immediate execution of judgment in order to prevent further damages to him caused by the loss of his possession.[8]

Respondent's manifestation in his memorandum "that as a symbol of good faith, he is ready to deposit the total amount of the 'suspended payments' (which are anyway deposited in a reputable bank) to this Honorable Tribunal anytime that it issues an order to that effect," does not constitute compliance with the cited Rule. At any rate, with the determination herein made by the Court reinstating the court of first instance's decision and considering that for 5 years and 5 months since January, 1973 up to now, respondent has been wrongfully enjoying possession of the premises without payment or deposit of the rentals which substantial accumulated amounts he has made use of and deposited instead with his bank for his own benefit to the grave prejudice of petitioner-lessor, a writ of execution of this judgment shall issue forthwith upon promulgation hereof.

ACCORDINGLY, judgment is hereby rendered setting aside respondent Court of Appeals' decision and in lieu thereof the judgment of the court of first instance hereinabove reproduced[9] is hereby reinstated and affirmed, with the modification that the attorney's fees awarded petitioner are hereby increased to Three Thousand Pesos (P3,000.00) considering that the case has gone through four courts up to this Court, with costs in all instances against respondent.

This judgment shall be immediately executory and the City Court of Manila is ordered to forthwith issue the writ for execution of this judgment at petitioner's instance upon being furnished a copy hereof without need of awaiting the remand of any records.

SO ORDERED.

Makasiar, Santos,[**] Fernandez, and Guerrero, JJ., concur.

[*] Third Division, composed of Ramos, Vasquez and Escolin, ponente JJ.

[1] The statement is substantially reproduced from respondent Court of Appeals' decision, but no quotation marks are placed, since the parties' roles therein as petitioner and respondent have been reversed herein and some portions have been paraphrased for brevity's sake.

[2] See page 2 hereof.

[3] Petitioner's memorandum, pp. 9-10, quoting t.s.n. July 18, 1974, pp. 29-30.

[4] T.s.n. May 7, 1974, p. 7, quoted in Municipal Court's decision.

[5] T.s.n. July 18, 1974, pp. 29-30, quoted in petitioner's memorandum, pp. 9-10.

[6] Supra, fn. 5.

[7] 3 Moran's Comments on Rules of Court, 1970 ed. 334.

[8] Idem, at pp. 329, 339.

[9] At page 5 hereof.

[**] Designated vice Mme. Justice Cecilia Muñoz Palma who is on official leave.

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