

ENERSA L. BERNARDINO AND ALL PERSONS CLAIMING RIGHTS UNDER HER, PETITIONER, VS. PURCEL DEVELOPMENT CORPORATION, RESPONDENT.

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

At bench is a Petition for Review of the Decision dated August 28, 2012[1] rendered by the Regional Trial Court (RTC) of Antipolo City, Branch 71, in Civil Case No. 10-954, the dispositive portion of which states:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the Decision rendered by the Municipal Trial Court in Cities, Branch 1, of Antipolo, Rizal, dated November 23, 2009 is hereby AFFIRMED en toto.

SO ORDERED.[2]

The Facts

Respondent Purcel Development Corporation ("respondent" / "Purcel") represents itself as the holder of leasehold rights over the so-called Masinag Market, a commercial building and wet and dry market located at Marcos Highway corner Sumulong Highway, Barrio Mayamot, Antipolo City.[3]

Petitioner Enersa L. Bernardino ("petitioner" / "Bernardino") was one of the respondent's sub-lessees.[4]

On January 6, 2009, respondent filed a case for Unlawful Detainer against petitioner, alleging: that after the Contract of Sublease lasting from December 15, 2000 to December 14, 2005 had expired, petitioner refused and failed to sign and execute the new Contract of Sublease despite respondent's demands;[5] that the new contract of sublease is identical to the expired contract of sublease;[6] that despite the expiration of the earlier contract of sublease, petitioner continued with its occupation of Space/Market Stall Nos. R-1 and R-2 at the Masinag Market;[7] that the occupation became an implied new lease on a day-to-day basis as provided for under Article 1687 of the Civil Code;[8] and that final demand was made by respondent for petitioner to sign the new contract of sublease but such went unheeded.[9]

Additionally, respondent alleges that under the expired and the new contract of sublease, it was petitioner who was liable to pay the value added tax (VAT);[10] that respondent made "numerous" written and verbal demands for petitioner to pay the VAT, but the latter only paid the daily rent of Php780, which did not include the VAT of Php93.60 per day;[11] that final demand to pay the VAT was made;[12] that, also, the day-to-day lease was terminated due to petitioner's refusal to sign the new contract of sublease;[13] that final demand to vacate the premises and pay the VAT was also made;[14] and that despite receipt of such final demand, petitioner failed to vacate the leased premises and pay the unpaid VAT.[15]

In her Answer, petitioner denies the material averments of the complaint, specifically her refusal to sign the lease contract and non-payment of VAT, but admits that she was a lessee of Space/Market Stall Nos. R-1 and R-2 through the now expired Contract of Sublease;[16] that the actual coverage period of the lease was December 15,

1999 to midnight of December 14, 2004;[17] that she did not make an oath to a lawyer (notary) on November 20, 2000 as the parties signed the contract on December 10, 1999;[18] that she admits being in possession of the leased premises;[19] that it was not she, but the respondent who "deliberately refused and failed to sign and formalize" the new contract of sublease;[20] that she was merely made to sign a set of blank documents which purportedly were copies of the new lease contract;[21] that she "continuously and religiously" remitted rental payments which respondent "accepted without any other imposition or additional charges;"[22] that respondent began to harass and threaten petitioner and other tenants after the latter organized themselves into a "Samahan ng mga Vendors at Tenants sa Masinag, Inc.," ("Samahan");[23] that on February 28, 2007, respondent wrote the petitioner and other tenants a letter "imposing additional amounts for payment (12% VAT and 5% withholding tax);[24] that other hostile and threatening letters followed;[25] that it is respondent, and not petitioner, who is liable for VAT and the withholding tax;[26] that the provisions on VAT and withholding tax on the sublease do not apply from the year 2005 onwards, as no written contract was executed by the parties for that period;[27] that the holdover provision of the expired lease likewise does not apply because petitioner's stay in the premises is against the will and without the consent of respondent, as admitted by the latter;[28] that respondent's continuous acceptance of petitioner's rental payments, even the latest ones, amounts to estoppel in pais;[29] and that petitioner is entitled to the court's fixing of an extension of the lease period under Article 1687 of the Civil Code.[30]

With the conclusion of the preliminary conference, the parties submitted their respective Position Papers and documentary evidence.[31]

The MTCC's Decision

The Municipal Trial Court in Cities (MTCC), in its Decision dated November 23, 2009,[32] ruled in favor of Purcel, herein respondent. The court found that the new Contract of Sublease as alleged by petitioner does not exist.[33] It also held that the allegation of petitioner that she signed such contract but the details were left unfilled also holds no water.[34] And since petitioner admits that she holds the premises without respondent's consent, then the holdover provisions of the second half of paragraph 20 of the expired sublease contract apply.[35] According to the MTCC, the provision entitles the respondent to collect the latest monthly rent plus a 50% surcharge until petitioner vacates.[36] Lastly, the MTCC concluded that respondent had the right to demand for petitioner to vacate and to collect unpaid VAT dues.[37]

The dispositive portion of the MTCC decision stated:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Purcel Development Corporation and against defendant Enersa L. Bernardino and all persons claiming rights under her, and she is hereby ordered the following, to wit:

- to vacate the leased premises known as Space/Market Stall Nos. R-1 and R-2 in Masinag Market, Antipolo City;

- to pay plaintiff the following amounts:

a)

by way of actual damages, the amount of P93.60 per day for unpaid VAT, including interest charges at the rate of 3% monthly computed from December 2004 until defendant and all persons claiming rights under her finally vacate the leased premises;

b)

by way of just compensation on defendant's continuous use of the leased premises against the will of plaintiff,

the amount of P1,170.00 per day from October 2, 2008 until defendant and all persons claiming rights under her finally vacate the leased premises;

c)

by way of penalty charges, the amount of P46,800.00 equivalent to 2 months rental based on the latest monthly rate;

d)

the amount of P30,000.00 as attorney's fees; and

e)

the cost of suit.

SO ORDERED.[38]

Petitioner appealed the above decision of the MTCC to the RTC.[39]

The RTC's Ruling

On August 28, 2012, the RTC issued the Decision subject of this petition. The RTC affirmed the decision of the MTCC and concurred with all of its findings. The RTC held that the petitioner failed to pay the VAT and failed to renew the lease contract on the subject premises.[40] It agreed with the lower court that payment of rent alone does not subvert the right of the lessor to recover possession of the leased premises from the lessee.[41] Further, the National Internal Revenue Code states that VAT may be shifted or passed on to the lessee.[42]

Hence, the instant petition for review.

The Issues

Petitioner seeks the reversal of the appealed decision on the following errors ascribed to the RTC:

- x x x IN FINDING THAT RESPONDENT HAS A CAUSE OF ACTION BY AFFIRMING THE EJECTMENT OF THE PETITIONER ON THE BASIS OF A NON-EXISTENT WRITTEN CONTRACT WITHOUT ANY FACTUAL AND LEGAL BASIS.

- x x x IN AFFIRMING THE LOWER COURT'S FINDINGS THAT PETITIONER IS LIABLE TO PAY ACTUAL DAMAGES, THE AMOUNT OF P93.60 PER DAY FOR UNPAID VAT INCLUDING INTEREST CHARGES AT THE RATE OF 3% PER MONTH COMPUTED FROM DECEMBER 2004, UNTIL DEFENDANTS AND ALL PERSONS CLAIMING RIGHTS UNDER HER FINALLY VACATE THE LEASED PREMISES IN THE ABSENCE OF A WRITTEN CONTRACT OF LEASE.

- x x x IN AFFIRMING THE FINDINGS OF THE LOWER COURT ORDERING PETITIONER TO PAY BY WAY OF JUST COMPENSATION ON PETITIONER'S CONTINUOUS USE OF THE LEASED PREMISES AGAINST THE WILL OF RESPONDENT, FROM OCTOBER 2, 2008, UNTIL DEFENDANT AND ALL PERSONS CLAIMING RIGHTS UNDER HER FINALLY VACATE THE LEASED PREMISES.

- x x x IN AFFIRMING THE LOWER COURT'S DECISION ORDERING DEFENDANT TO PAY BY WAY OF PENALTY CHARGES, THE AMOUNT OF P46,800.00 EQUIVALENT TO TWO MONTHS RENTAL BASED ON THE LATEST MONTHLY RATE.

- x x x IN AWARDING ATTORNEY'S FEES IN THE AMOUNT OF P30,000.00.

- x x x IN NOT FIXING THE TERM OF THE OCCUPANCY OF PETITIONER ON THE SUBJECT STALLS

(R-1 & R-2).[43]

The Court's Ruling

The petition is dismissed for lack of merit.

On the alleged lack of cause of
action to eject petitioner, and

On the non-fixing of the term
of the implied new lease

Petitioner alleges that refusal or failure to sign a new contract of sub-lease is not a ground to eject a lessee.[44] She insists that the fact that she was allowed to occupy and the rentals were accepted by the lessor means that an implied contract was created.[45] She alleges that it was she and the other tenants who verbally and in writing demanded for their copy of the contract of lease from respondent, but the latter did not heed their demands.[46] Likewise, petitioner argues that non-payment of VAT is also not a ground for ejectment, as VAT belongs to the government, and not to respondent.[47]

We are unswayed by petitioner's contentions.

Respondent as lessor terminated the lease with petitioner in a letter dated September 29, 2008, which the latter received on October 3, 2008.[48] Hence, as of the latter date, petitioner's right to possess the leased premises had terminated, and her continued possession of the same had become unlawful.

Depending on which party is alleging, both lessor and lessee used to have a formal written Contract of Sublease covering the periods December 15, 2000 to December 14, 2005[49] or December 15, 1999 to midnight of December 14, 2004.[50] Hence, past December 14, 2005, at the latest, petitioner's occupation as lessee, with the tolerance of respondent as lessor, was without the benefit of a formal written contract executed in a public instrument and was only by virtue of an implied new lease. It is a case of tacita reconduccion, which signifies a lease that has expired but with the lessee continuing to enjoy the thing leased with the acquiescence of the lessor; absent notice from either party of a contrary intention, an implied new lease arises whose duration is based on the periods stated in Article 1687 of the Civil Code,[51] which states:

Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month. (Emphasis supplied.)

Thus, a lease with no fixed period, but wherein rentals are paid daily, is deemed to be from day to day; it is, however, a lease with a definite period and, like month-to-month leases which expire after the last day of any given thirty-day period,[52] a day-to-day lease expires after the end of each day, upon proper notice of termination by the lessor. At the end of this definite period, the lessee who has been notified of the termination but continues to remain in possession already does so unlawfully, and may be evicted.[53]

Such is the situation in the case before Us. After October 3, 2008, the day petitioner received respondent's letter of termination, the lease had expired and the occupant lessee may already be ejected. Although respondent, the lessor, cited the "failure and/or refusal" by petitioner to execute a new contract as well as the latter's refusal to pay the VAT as reasons for the termination, in reality, in implied lease contracts such as the above, respondent did not

even have to do so, as it had the right to terminate the lease even without citing any violation in the lease agreement or in the law. It was well within its right to terminate the implied lease even for no reason at all.

In an analogous case, the Supreme Court has clearly stated,

The allegation that the contract is on a month-to-month basis becomes material in this sense because it signifies that the lease contract is terminable at the end of every month. Thus, petitioners may exercise their right to terminate the contract at the end of any month even if none of the conditions of the contract had been violated, and such right cannot be defeated by the lessee's timely payment of the rent or by his willingness to continue doing so. The lease contract expires at the end of every month unless there is an implied or tacit renewal thereof as when the lessee is allowed to continue enjoying the leased premises for fifteen (15) days after the end of every month with the acquiescence of the lessor. Such exception, however, cannot be invoked when notice to vacate is given to the lessee in which case the contract of lease expires at the end of the month.[54] (Emphasis supplied.)

The exception to this, however, is that stated in Article 1687, where the court may be asked to fix a longer period (other than day-to-day) for the lease in case the lessee paying a daily rent had stayed in the place for over one month.[55] The right, however, is not absolute nor unrestricted. Any extension of the lease contract must be sought before the term of the contract expires, and not after.[56] Also, the grant of an extension is not automatic nor a certainty, because the power of the courts to do so is potestative or discretionary; it depends on the particular circumstances of each case.[57] Equity plays a big role; so does the recognition of the parties' freedom to contract.[58] Always, the operative word in granting such an extension is "may." [59]

In the case at bar, petitioner did not ask the court for the fixing of the period of the new lease contract before its termination; rather, she merely sought the same after the lease had been terminated in a letter dated September 29, 2008, which she had received on October 3, 2008. She made such request, not even in a formal prayer before the court hearing the case for unlawful detainer against it, but as a mere allegation in paragraph 18 of its Answer therein.[60] However, by this time, the lease had been terminated and was no longer in effect. Petitioner had no more cause of action for the fixing of the term of the lease because case law requires that in such instances, any extension of the lease contract must be sought before the term of the contract expires, and not after; (a day-to-day) contract expires at the end of each day unless prior thereto, the extension of the term has been sought by appropriate action and judgment is, eventually, rendered therein granting the relief." [61]

By petitioner's own admission, as early as February 28, 2007, respondent had demanded additional payments of 12% VAT and 5% withholding tax on the tenants including her. This was after the expiry of the original contract and during the effectivity of the implied new lease. When petitioner rejected such additional payments, which effectively amounted to increases in the rent, then there was already sufficient ground for respondent to terminate the implied lease contract, even if the latter, as earlier stated, is not required to present one to do so. Then, it may seek judicial ejectment, per the Civil Code, to wit:

Art. 1673. The lessor may judicially eject the lessee for any of the following causes:

- (1) When the period agreed upon, or that which is fixed for the duration of leases under articles 1682 and 1687, has expired;
- (2) Lack of payment of the price stipulated;
- (3) Violation of any of the conditions agreed upon in the contract;

On the liability of petitioner
for P93.60 per day for unpaid
VAT plus interest computed
from December 2004.

Petitioner argues that with the finding of no written contract of sublease over the premises, then she can not be held liable for VAT based on section 3 of the expired contract.[62] According to her, the terms of the old contract do not apply to the implied contract.[63] Secondly, petitioner contends that liability for VAT and the responsibility to remit the same is on the lessor, per the National Internal Revenue Code and the revenue regulations.[64] Thirdly, she contends that the withholding tax is an advanced payment of the income tax and is the responsibility of the lessor.[65] Fourth, she adds that in the expired contract, respondent did not include the VAT in the rental price, but only does so afterwards, which makes the latter now estopped from doing so.[66]

On this, We sustain petitioner.

Firstly, respondent, as lessor, is not the proper party-in-interest to collect from petitioner, through the instant court action, the VAT and other taxes due from the rental payments. For the collection of taxes via court action, only the Bureau of Internal Revenue (BIR) is the proper party with a cause of action to do so, since taxes are payable to the government through the BIR and not to any private person. The lessor is merely a collecting agent for the VAT. Secondly, if what respondent seeks is a "reimbursement" of the VAT it had paid on the rental payments collected from petitioner, then We agree with petitioner that it is now estopped from doing so, for the "shifting" of the VAT burden on the lessee should have been done at the time of the payment of the rent; the fact that no such shifting was made at that time only meant that the lessor has waived or "opted not to avail" of its right to shift such burden.[67] The same may be said of the withholding tax; its remittance to the BIR is the responsibility of the lessee[68] and it is the BIR, and not the lessor, which has the right to collect the same from the lessee via court action.

On the payment of P1,170.00
per day by way of just
compensation beginning
October 2, 2008 until
the leased premises are
vacated,

On the liability for penalty
charges amounting to
P46,800.00 equivalent
to 2 months rental, and

On the liability of
petitioner for P30,000.00
in attorney's fees.

Petitioner argues that it is not liable for anything more than the amount of rent that she and respondent orally agreed upon.[69] She contends that since there is no new written contract of lease, then there is no basis to compute other charges under the rent verbally agreed upon.[70] She also argues that no basis was provided by the trial court in the award of attorney's fees, which she contends should not be awarded without awarding exemplary damages.[71]

We find no merit in the petitioner's contentions.

Under Article 1670 of the Civil Code, the provisions of the original lease are deemed to have been revived upon the forging of an implied new lease, albeit on day-to-day basis, between the parties. The provisions on just compensation due to holdover without the consent of the lessor, as well as penalties for violation of the contract

and liability of the lessee for attorney's fees, are found in Sections 17, 20 and 25 of the old Contract of Sublease.[72] These became the basis of the trial court's computation of the same, which We sustain.

The above provisions are deemed revived in the implied new lease as they are germane to the lessee's right of continued enjoyment of the property leased, i.e., they pertain to the consequence of the lessee's abuse of its possession after the termination of the lease period. Such things considered as germane to the right of enjoyment include "the amount of rental, the date when it must be paid, the care of the property, the responsibility for repairs, etc." [73] It is Our view that the penalty clause for the withholding of possession is included in these. On the contrary, what are considered in jurisprudence as "not germane" to such right of enjoyment, and therefore not revived in an implied new lease include: a lessee's option to purchase; [74] and the prescriptive period to file an action for reformation of the lease contract. [75] Damages or penalties for unduly withholding possession of the lease premises are not described as "not germane" to the right of enjoyment.

At any rate, the amount of daily rentals already paid by petitioner beginning October 2, 2008 until she vacated the premises should be subtracted from the P1,170.00 per day in just compensation imposed by the court.

Further, attorney's fees are collectible when the plaintiff is forced to incur expenses to protect its interest. [76] However, such must in all cases be reasonable. [77] Following this guideline, We deem the amount of P10,000.00 to be reasonable and not excessive.

WHEREFORE, the foregoing premises considered, the petition is DENIED for lack of merit. The Decision dated August 28, 2012 of the Regional Trial Court of Antipolo City, Branch 71, in Civil Case No. 10-954, is hereby AFFIRMED with the MODIFICATION ON THE AWARD GIVEN BY THE MUNICIPAL TRIAL COURT IN CITIES, by DELETING Item 2(a) thereof which awards actual damages in unpaid VAT, (including interest charges at the rate of 3% monthly computed from December 2004) and REDUCING the attorneys fees awarded in Item 2(d) to P10,000.00. All other parts of the said Decision stand.

SO ORDERED.

Rosario, and Dimagiba, JJ., concur.

[1] Rollo, pp. 34-41; penned by Judge Kevin Narce B. Vivero.

[2] Id. at 41.

[3] Id. at 55.

[4] Id.

[5] Id.

[6] Id.

[7] Id. at 56.

[8] Id.

[9] Id.

[10] Id. at 57.

[11] Id. at 58.

- [12] Id.
- [13] Id.
- [14] Id. at 58-59.
- [15] Id. at 59.
- [16] Id. at 90, 92.
- [17] Id. at 91.
- [18] Id.
- [19] Id.
- [20] Id. at 92.
- [21] Id.
- [22] Id.
- [23] Id. at 92-93.
- [24] Id. at 93.
- [25] Id. at 93-95.
- [26] Id. at 95.
- [27] Id. at 95-96.
- [28] Id. at 96.
- [29] Id.
- [30] Id. at 97.
- [31] Id. at 101-231.
- [32] Id. at 232-239; penned by Presiding Judge Antonio M. Olivete.
- [33] Id. at 235.
- [34] Id.
- [35] Id.
- [36] Id. at 236.
- [37] Id. at 237.
- [38] Id. at 238.
- [39] Id. at 240-289.
- [40] Id. at 40.
- [41] Id.
- [42] Id. at 40-41.

[43] Id. at 16-17.

[44] Id. at 18.

[45] Id.

[46] Id.

[47] Id. at 19.

[48] Id. at 87-89.

[49] Id. at 55.

[50] Id. at 91.

[51] Per CIVIL CODE, Art. 1670; also Art. 1687, which applies to immovables found in urban areas.

[52] Legar Management and Realty Corp. v. CA, G.R. No. 117423, January 24, 1996; De Vera v. CA, G.R. No. 110297, August 7, 1996; Heirs of Suico v. CA, G.R. No. 120615, January 21, 1997; Ferrer v. CA, G.R. No. 115968, June 19, 1997; Arquelada v. Philippine Veterans Bank, G.R. No. 139137, March 31, 2000; Yap v. CA, G.R. No. 140249, March 6, 2001; La Jolla Inc. v. CA, G.R. No. 115851, June 20, 2001; Tagbilaran Integrated Settlers Association Inc. v. CA, G.R. No. 148562, November 25, 2004; Dula v. Maravilla, G.R. No. 134267, May 9, 2005; Lopez v. Fajardo, G.R. No. 157971, August 31, 2005; Quevada v. CA, G.R. No. 140798, September 19, 2006; Urban Realty Inc. v. Uy, G.R. No. 163763, November 10, 2006.

[53] Id.

[54] Racaza v. Gozum, G.R. No. 148759, June 8, 2006, citing CIVIL CODE, Art. 1687 and Cruz v. IAC, G.R. No. 72313, December 29, 1989, 180 SCRA 702.

[55] Chua v. CA, G.R. No. 140886, April 19, 2001.

[56] Yap v. CA, G.R. No. 140249, March 6, 2001; LL and Company Development and Agro-Industrial Corporation v. Huang Chao, G.R. No. 142378, March 7, 2002.

[57] La Jolla Inc. v. CA, G.R. No. 115851, June 20, 2001.

[58] Urban Realty Inc. v. Uy, G.R. No. 163763, November 10, 2006; Acasio v. Corp. de los PP Dominicas de Filipinas, G.R. No. L-9428, Dec. 21, 1956.

[59] Acasio v. Corp. de los PP Dominicas de Filipinas, G.R. No. L-9428, Dec. 21, 1956.

[60] Rollo, p. 87.

[61] Yap v. CA, *supra*.

[62] Rollo, p. 20.

[63] Id. at 21.

[64] Id.

[65] Id.

[66] Id. at 22.

[67] Almeda v. Bathala Marketing Industries, Inc., G.R. No. 150806, January 28, 2008.

[68] Citibank NA v. Court of Appeals, G.R. No. 107434, October 10, 1997.

[69] Rollo, p. 26.

[70] Id.

[71] Id. at 30.

[72] Id. at 69-70.

[73] Dizon v. CA, G.R. No. 122544, January 28, 1999.

[74] Id.

[75] Rosello-Bentir v. Leanda, G.R. No. 128991, April 12, 2000, cited in Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation, G.R. No. 146726, June 16, 2006.

[76] CIVIL CODE, Art. 2208 (2).

[77] Id., last paragraph.

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