

YU PHI KHIM, PETITIONER, VS. TENG GIOK YAN AND JUDGE FIDEL IBAÑEZ, ETC., RESPONDENTS.

G.R. No. L-5441. November 29, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

In October 1950, in the Manila municipal court, Yu Phi Khim obtained judgment requiring Teng Giok Yan to vacate plaintiff's premises, on Ilaya Street, Manila, to pay the rentals theretofore unpaid, and monthly thereafter to pay P440. Judgment was likewise rendered for damages and attorney's fees.

Teng Giok Yan appealed to the court of first instance, and during the pendency of his appeal he deposited in court the monthly rentals. But on December 10, 1951 Yu Phi Khim filed a motion for execution of the judgment, alleging failure of the defendant Teng Giok Yan to pay the rents "in advance on or before the fifth day of each month". The motion was denied.

Hence this petition for mandamus, based upon the undenied fact that the rent for December 1951 was deposited on the sixth day of that month and upon Rule 72 section 8 partly providing that execution shall issue unless the defendant during the pendency of the appeal "pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist". Petitioner alleges that under the lease contract he had with Teng Giok Yan, the monthly rental was payable in advance on or before the fifth day of each month; and as the rental for December was paid on the sixth day, execution must issue.

In his answer filed here, respondent Teng Giok Yan denies that the contract contained such stipulation as to time for payment.

We are all of opinion that under the circumstances the petition may not prevail. The judgment of the municipal court attached to this petition did not declare that a contract of lease existed between the parties. Neither did it declare that under the terms of such contract the rents were payable within the first five days of the month in advance. And respondent denies that the contract requires payment within five days. As we understand it, the portion of the Rules invoked by petitioner requires as condition sine qua non that the judgment shall make specific findings as to the existence and the terms of the contract. The words "as found by the judgment" are very material.

Section 8 Rule 72 reads in part:

"If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract he pays to the plaintiff or into the court, on or before the tenth day of each calendar

month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment."

We think this case falls under the portion underlined by us. The words "in the absence of contract" covers not only the situation where there is no contract actually, but also where the judgment does not make findings as to the existence and/or terms of the contract. The amount required to be paid in such case being equivalent to the reasonable value of occupation.

In other words where the time for payment under the contract of lease is not specifically declared in the judgment of the justice of the peace or municipal court, the ten day period must be followed. There is no desire or purpose to permit the court of first instance, in a motion like this, to go beyond the judgment receiving evidence as to the terms of the contract and the time of payment.

Anyway in this case, waiver might be imputed to the petitioner, it appearing that although all monthly payments from January 1951 to December of that year had been made after the fifth he did not protest until December 10th 1951.[1]

Wherefore the petition is denied with costs.

Paras, C. J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] Manotok vs. Legaspi, 43 Off. Gaz., 4625.

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