

TOMAS MAPUA ET AL., PETITIONERS, VS. SUBURBAN THEATRES, INC., RESPONDENT.

G.R. No. L-2526. September 21, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

On June 24, 1941, plaintiffs Tomas Mapua et al, leased to the defendant Suburban Theaters, Inc. the building named Cine Apolo situated at 1348 Rizal Avenue, City of Manila, for a period of three years beginning July 1, 1941, extendible to another three years with rental at the rate of P700 a month. The stipulation regarding extension reads as follows:

"El termino del arrendamiento es de tres años, a partir del dia 1.[o] de Julio de 1941, prorrogable a otros tres afios a opcion de ambas partes, mediante notificacion por escrito dos meses antes de la explracion de este contrato."

It seems that in spite of the expiration of the period of three years in 1944, the defendant entity continued in possession of the Cine Apolo paying the sum of P1,000 a month as rental. Because of the extension which said entity had been asking for from time to time, by a letter (Exhibit B) dated May 28, 1945, addressed to Francisco Santa Maria, manager of the defendant company, plaintiff Tomas Mapua stated that in confirmation of the conversation had between him and a representative of the defendant, the owners of the Cine Apolo had agreed to again extend the term of the lease until June 30, 1945, warning him however that said owners beginning July 1, 1945, were going to take over the management of the Cine for which reason he (Santa Maria) was requested to vacate the building before that date.

In answer to said letter, Atty. Jose O. Vera, counsel for the defendant wrote the letter (Exhibit C) dated June 3, 1945, expressing the gratitude of the members of the Suburban Theaters Inc. for the extension of one month given, at the same time praying that said entity be permitted to continue with the lease, pleading in support of said prayer the fact that said entity had been the lessee of the plaintiffs for about 20 years, paying regularly the rentals due, even of its own initiative increasing said rental when its business so justified. He insinuated the readiness of the defendant entity to perhaps increase the rentals as may be gleaned from the following portion of his letter which we quote:

"* * * Debido a la destruccion enorme de tropas Americanas, se nota una alza enorme en los alquileres y un ingreso mayor en las taquillas de cines y teatros. Esto, sin embargo, es artificial y pasajero, como Ud, comprende. * * *

"Representantes de la corporacion se veran con Ud. portando esta carta. Creo que la cuestion de los alquileres al tenor de los tiempos se puede arreglar satisfactoriamente. Ojala, asi suplico, merezcan favorable consideracion."

The parties, however, would appear to have failed to come to an agreement about a further extension,for on July 9, 1945, the plaintiffs filed a complaint in the Municipal Court of Manila for ejectment asking that the defendant

be ordered to vacate the building, Cine Apolo, and to pay P1,000 representing the rental due for the month of July, 1945, plus the rentals from August, 1945, until the defendant vacated the premises. After hearing, the Municipal Court dismissed the complaint without pronouncement as to costs, upholding the contention and theory of the defendant that the period of lease had been extended from July 28, 1944 for another three years.

The plaintiffs appealed to the Court of First Instance; where instead of reproducing their complaint in the Municipal Court, they filed an amended complaint dated October 11, 1945, with the prayer that the defendant be ordered to vacate the premises and to pay the rentals of P1,000 a month from July to October, 1945, and the sum of P10,000 as the reasonable compensation for the use and occupancy of the building from November, 1945, until defendant finally vacated the same. Acting upon a motion of defendant-appellee to dismiss the amended complaint on the ground that it alleged a cause of action not raised in the lower court, the Court of First Instance of Manila by order of November 2, 1945, granted said motion to dismiss, at the same time giving the plaintiffs five (5) days within which to amend their amend complaint. Plaintiffs duly excepted to said ruling on November 6, 1945, and on the same date, filed their second amended complaint in which the prayer for rental was limited to P1,000 a month corresponding to July, 1945, and such other rentals as have become due and demandable until defendant finally vacated the building.

After hearing, the decision dated May 15, 1946, the trial court found that after the period of the lease expired, the lease had been tacitly extended from month to month as provided for in Art. 1581 of the Civil Code and ordered the defendant to vacate the Cine Apolo, and to pay P1,000 a month from July, 1945 until the building was vacated. The plaintiffs appealed from the order of the trial court of November 2, 1945 dismissing their amended complaint as well as from that portion of the decision of the trial court which fixed at P1,000 a month the reasonable compensation for the use and occupation of the Cine Apolo. The defendant also appealed from the decision, contending that the lower court erred in interpreting the contract as having been extended from month to month instead of the agreed extension period of three years.

Both appeals eventually reached the Court of Appeals. As regards the appeal of plaintiffs, involving as it did only questions of law, it was indorsed or elevated to the Supreme Court where it was docketed under G.R. No. L-797.

Pending consideration of the appeal in the Court of Appeals, that Tribunal was advised on July 7, 1947, that appellant Suburban Theaters Inc. had already vacated the Cine Apolo, the building in question on June 30, 1947, Ruling that the main question submitted in the appeal has already become moot, the Court of Appeals by a resolution promulgated on June 25, 1948, dismissed the case without pronouncement as to costs.

Counsel for the plaintiffs on June 30, 1948, moved for a reconsideration of the said resolution asking for a clarification of the same with a statement that the decision of the lower court had been affirmed, and that defendant's appeal has been dismissed because the question thus raised has become moot; or that a decision on the merits of defendant's appeal be made. No action seems to have ever been taken on that motion. Then, on June 24, 1948, the Supreme Court in G.R. No. L-797, which was the appeal of the plaintiffs elevated to it by the Court of Appeals, promulgated a resolution returning said appeal to the Court of Appeals on the ground that the appeal from the order of November 2, 1945 was merely an incident in the appeal from the judgment of May 15, 1946, and could not be prosecuted independently or separately from the latter, and inasmuch as the appeal from the judgment of May 15, 1946 involved questions of fact and law, it must be taken cognizance of by the Court of Appeals.

Considering both appeals of the plaintiffs and the defendant, the Court of Appeals on September 15, 1948, promulgated a decision wherein it held that the trial court did not err in dismissing the plaintiffs' amended complaint dated October 11, 1945, and in limiting the monthly rental of the building in question to P1,000 for the

entire period of unlawful detainer for the reason that in the opinion of said appellate Tribunal the amended complaint completely changed the theory and the nature of the cause of action in the Municipal Court. Reiterating its opinion contained in its resolution of June 25, 1948, it again dismissed the case on the ground that the principal question raised by the defendant in its appeal had become moot.

The plaintiffs as petitioners have now filed the present petition for certiorari to review said decision of the Court of Appeals.

The first question to be determined is whether after re-amending their amended complaint of October 11, 1945, so as to conform to the one filed in the Municipal Court, because of the adverse order of the trial court of November 2, 1945, the plaintiffs may still on appeal question the legality and propriety of the trial court's order dismissing their amended complaint. It will be recalled that plaintiffs duly excepted to the order of the court and as shown by the record of the case, in open court they reserved their right to question the said ruling on appeal.

While in some jurisdictions, it is a rule that a waiver of an exception to an adverse ruling on a demurrer results when the demurrer pleads over and goes to trial on the merits, other jurisdictions follow the rule that the right to a review of a ruling on a demurrer to a pleading cannot be denied because the complaining party goes to trial, takes proof, and a verdict and judgment result. (3 Am. Jur. 54.)

We believe and hold that the sound rule to be followed in our jurisdiction and under our law is that when a demurrer to a complaint (motion to dismiss) is sustained, (under the new Rules of Court, demurrer has been eliminated and in its place we now have the motion to dismiss,—Rule 8), the plaintiff may except to the court's ruling if he wishes, altho now, exception is no longer necessary, reserve his right to have said ruling reviewed on appeal and amend his complaint so as to conform with the order of the court. By so doing and by pleading over he does not lose his right to appeal from the ruling.

"As a general rule, if a party, after an order or judgment upon demurrer to pleadings is given against him, under leave of court, amends the pleading demurred to, or substitutes another therefore so as to remove the grounds of the demurrer, he acquiesces in the judgment or order upon the demurrer, and will not be permitted to appeal therefrom, or, unless an exception is duly saved, to assign it for error in the appellate court, * * *." (4 C. J. S. 399)

We then come to the principal legal point in issue—whether the amended complaint of the plaintiffs filed by them of October 11, 1946, was admissible and did not violate any rule of good pleading and practice.

There is no dispute as to the rule that the parties on appeal to the Court of First Instance may not in their pleadings therein change the nature of the cause of action raised and pleaded in the inferior court. Did the plaintiffs in their prayer in their amended complaint asking for the payment by the defendant of P10,000 a month as the reasonable compensation for the use and occupancy of the theater from November 1, 1945, until defendant vacated the premises change the cause of action raised in the municipal court where they asked for only P1,000 a month as rental from July 1, 1945, plus the rentals that may be due for August, 1945 until the premises were restored to them? We do not think so. Almost invariably, a complaint in ejectment or unlawful detainer is accompanied by a prayer for the payment of rentals, reasonable compensation for the use of the property or damages, depending upon whether there was a contract or agreement between the plaintiff and the defendant as to the amount to be paid for the use of the premises or whether there was now such agreement for the reason that the premises were being illegally detained. In either case, whether the amount involved is denominated rental or reasonable compensation for use, it is the amount to be found by the court on the basis of the evidence, as justly due to the plaintiff for the occupation of the property leased or detained, a sum called rental when agreed upon by the parties, and reasonable compensation or damages in the absence of such agreement. In the present case we should

bear in mind that according to the complaint in the Municipal Court the plaintiffs had demanded the return of the premises to them by the defendant since June, 1945. In other words, beginning with July of that year there no longer was a lease agreement between the parties and that from the point of view of the plaintiffs the defendant was illegally detaining the building. There could therefore have been no agreement between the parties as to rentals for the use of the building detained. The plaintiffs in their original complaint chose to demand only the amount of P1,000 per month beginning with the month of July until the building was restored to them and called that amount "rental". They could equally have demanded more than P1,000 and called it "reasonable compensation" for the use of the premises.

The idea that we wish to convey is that the amount demandable and recoverable from a defendant in ejectment proceedings regardless of its denomination as rental or reasonable compensation or damages, flows from the detainer or illegal occupation of the property involved and as admitted in respondent's brief, p. 10, is merely incidental thereto. In the present case, the cause of action in the Municipal Court was the alleged detainer of the building by the defendant after the expiration of the period of the lease and after the plaintiffs had refused with due notice to continue with the month to month tacit extension of the lease. The amount to be paid by the defendant for such illegal use and as demanded by the plaintiffs, was merely an incident to and flow&iv; from the cause of action. From this, it should be clear that by filing an amended complaint on appeal in the court of first instance and praying for payment by the defendant for the detainer or illegal occupation of the theater after July, 1945, a monthly rental of P1,000 from July 1st to October 31st and the sum of P10,000 a month from November 1st as reasonable compensation for the occupancy of the theater, the complaint did not change the cause of action raised in the Municipal Court, It merely increased the amount payable and collectible from the defendant flowing from the same cause of action raised in the Municipal Court, The following authorities are pertinent.

In the case of *Edward P. Merrill vs. Marietta Torpedo Company*, involving a Judgment in plaintiff's favor in an action to recover damages for injuries, appealed to the West Virginia Supreme Court of Appeals, we quote a pertinent portion of the appellate tribunal's decision:

"Plaintiff was permitted to amend his declaration, and did so by adding thereto five additional, counts, and by enlarging his damages to \$20,000, instead of \$10,000, as in his original declaration and the overruling of defendant's demurrer to the amended declaration is assigned as error. It is insisted that it in effect alleges a new cause of action. The amended counts simply describe with more particularity the manner in which the injury occurred than was done in the original declaration. It was clearly no departure from the original declaration, either in respect to the averments of defendant's duty in the premises, or the acts of negligence complained of. The amendment is beneficial rather than prejudicial to the defendant, because it more certainly informs it of the particular acts of negligence which plaintiff expected to prove. Increasing the damages certainly constituted no new cause of action. Courts are very liberal in allowing a plaintiff to amend so long as there is no departure from the original cause of action. There is no departure in this case. Increasing the amount of damages is not a departure. *Bentley vs. Standard F. Ins. Co.* 40 W. Va. 729, 23 S. E., 584; *Clarke vs. Ohio River R. Co.* 39 W. Va. 732; 20 S.E. 696; and *Hoggs, Pl. & Forms*, sec. 190, note 5." (L.R.A., 1917-F, p. 1047.)

In the case of *Samuel D. Hall vs. Pennsylvania Railroad Company*, a cross appeals from a judgment of the Court of Common Pleas for Philadelphia County to the Pennsylvania Supreme Court, involving recovery of damages for unlawful discrimination in freight rates, the appellate court ruling on the question whether an amendment to a complaint increasing the amount of damages sought was equivalent to setting up a new cause of action, said:

"The action of the court below in the present case makes it clear that no treble damages were included in the verdict, and the question, therefore, is whether the amendment offered at the trial, followed by the motion for treble damages, sets up a new cause of action which was barred by the Statute of Limitations, because the claim was not made within six years following, the time the fraud was discovered in September, 1905. The

proposed amendment of April 18, 1913, increases the damages claimed in the first paragraph of the statement of claim to \$400,000. This additional damage claimed is not by virtue of a distinct cause of action, but merely increases the amount of plaintiff's claim for the cause already alleged in the original statement." (L.R.A., 1917-F, p. 418)

In this connection we may add that amendments to pleadings are favored and should be liberally allowed in the furtherance of justice (*Torres vs. Tomacruz*, 49 Phil. 915). The end to be achieved in such liberality is to determine all the differences and matter in dispute in the action between the parties in a single proceeding, to avoid multiplicity of suits. Rule 17, section 2 of the Rules of Court clearly embodies this theory.

Another question that may be asked is whether a change in the amount collectible from the defendant, especially an increase, is reasonable. If circumstances justify the change or increase there can be no valid objection. One must bear in mind that damages or reasonable compensation in illegal detainer are continuing and changeable in nature. The allegations in the complaint in the Municipal Court in an ejectment case are naturally based on the circumstances and conditions then obtaining. But such conditions may have radically changed by the time the appeal reaches the Court of First Instance, The tax assessment may have been materially increased, even doubled with the corresponding increase in real estate taxes. New taxes may have been imposed not only on the property involved but also on the business of the owner of said property, such as the tax on real estate dealers who give out lots or buildings or both for rent. All these, may justify an Increase in the reasonable compensation for the use of property. Were the plaintiff on appeal to be precluded from amending his complaint so as to increase the amount of his demand for the use of his property, what remedy would remain to him? Must he and could he bring another action to collect the increase? Plaintiffs may not be accused of mistake or negligence in limiting their claim in the original complaint to P1,000 a month because they could not perhaps without departing from the truth ask for more than what the conditions and circumstances obtaining at the time that he filed his complaint in the Municipal Court warranted.

"The assessment of damages is usually governed by the situation or condition of affairs existing at the time the action is brought; hence for a recovery of loss or damages occurring thereafter plaintiff should amend or file a supplementary petition." (17 C. J. 1000.)

But this rule we are now laying down is not for the benefit of the plaintiff in every case. It may equally accrue to the benefit of the defendant, A change in conditions may be just the reverse. By the time the appeal reaches the Court of First Instance, similar new properties and buildings may have been made available for lease and occupancy. Taxes may have been reduced, or even eliminated. The business for which the property involved was devoted may have decreased, gone down or deteriorated so as to work a radical reduction of the reasonable compensation for its occupancy. Surely, at the trial, the defendant occupant may take advantage of and plead this change in conditions so as to substantially reduce the amount collectible from him.

Anent this proposed increase in the reasonable compensation for the use of the Cine Apolo, we may recall that according to Atty. Jose O. Vera himself, speaking as a lawyer for the defendant, thru his letter (Exhibit C), after liberation due to the great destruction of buildings in Manila, during the battle of liberation, there was an enormous increase in building rentals and box office receipts in movie houses (like Cine Apolo), and he intimated that an increase in the rental of the building could be satisfactorily arranged. The increase proposed by the plaintiffs was therefore nothing new to the defendant, nor was it a surprise to it in the matter of its defense. As a matter of fact, as emphasized by petitioners in their brief, the increase was intended to commence and become due only on November 1, 1945, more than half a month from the filing of the amended complaint on October 13, 1945. There seems to be no inequity or unfairness in the whole arrangement. As to the amount of the increase, that is entirely a matter of evidence to be submitted at a new trial by both parties.

In conclusion, we hold that in a case of unlawful detainer or ejectment appealed to the Court of First Instance, the plaintiff may amend his complaint so as to increase the amount sought by him as reasonable compensation or damages for the use and occupation of his premises detained, over and above that claimed by him in his complaint in the Municipal on justice of the Peace Court. When a motion to dismiss such amended complaint is sustained and granted by the trial court, and the plaintiff pleads over, amends his amended complaint so as to conform the order of the court and goes to trial, he may still on appeal question the validity and correctness of said order of the trial court, especially if he has made of record his non-acquiescence in said ruling or order and his intention to have the same reviewed on appeal.

In view of the foregoing, we set aside the order of the trial court of November 2, 1945 and reverse its decision of May 15, 1946, in so far as it limits to P1,000 the amount payable to the plaintiffs petitioners for the use and occupancy of the Cine Apolo from November 1, 1945, until the building was vacated by the defendant; in all other respects said decision is affirmed. The decision of the Court of Appeals is reversed in so far as it holds that the trial court did not err in dismissing plaintiffs' amended complaint of October 11, 1945, and in limiting the monthly rentals of the building in question to P1,000 for the entire period of unlawful detainer. In all other respects said decision is affirmed.

Let this case be returned to the trial court for a new trial for the reception of evidence regarding the reasonable compensation for the use and occupancy of the building, Cine Apolo, from November 1, 1945 until it was vacated by the defendant. Thereafter, the trial court will render decision on the basis of said evidence fixing said amount to be paid the plaintiff by the defendant, said decision to form part of the decision already rendered on May 15, 1946, Responds pay costs.

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

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