

## **HORACIO A. GUANZON ET AL., PLAINTIFFS AND APPELLEES, VS. ANG BAN, ANG CHUNG AND TAN KUE, DEFENDANTS AND APPELLANTS.**

*G.R. No. L-186. August 06, 1946*

Ponente: PERFECTO, J.

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### **PERFECTO, J.:**

On February 24, 1941, Epifania Vda. de Guanzon and defendant Tan Kue entered into a written contract of lease of the former's property located at Nos. 1008 and 1010 Lavezares, Binondo, Manila, at a monthly rental of P130. effective March 15, 1941, up to March 15, 1946.

Tan Kue abandoned the property in December, 1944, because he evacuated with his family to Batangas, failing' to pay the monthly rentals from January, 1945.

Finding defendants Ang Ban and Ang Chung occupying, without any legal ground at all, the premises abandoned by defendant Tan Kue, the original complaint was filed on April 28, 1945, for the ejectment of said two defendants. By amendments in the pleadings, Tan Kue was later included among the defendants in this case.

Alleging that he returned to Manila in March, 1945, and resided with his family at 1522-24 Oroquieta, Manila, where he is keeping a business, Tan Kue, testified that, he failed to offer plaintiff the rents in arrears because he was very busy. Horacio A. Guanzon testified that Ang Ban and Ang Chung transferred to the premises in question because their house was burnt; that he required them to move out of the premises; that on May 4, 1945, Tan Kue asked him for another lease upon the premises, with the promise to sue Ang Ban and Ang Chung, but Tan Kue did not offer . payment of the rents due for the first months of 1945. Ang Ban alleged that he was left in the premises by Tan Kue to take care of the latter's belongings, and that Ang Chung is a mere host from the province.

Judge Mariano L. de la Rosa of the Court of First Instance of Manila rendered a decision, declaring terminated the lease contract between Epifania Vda. de Guanzon and Tan Kue and ordering defendants to move out of the premises and to pay jointly and severally the sum of P130 per month from January, 1945, until the property is vacated, and the costs.

Appealing from the decision, defendants point out two errors allegedly committed by the lower court: (1) that it did not dismiss the complaint notwithstanding plaintiffs' failure to serve the notice required by section 2 of Rule 72 of the Rules of Court; and (2) that it did not declare that Tan Kue's failure to pay the rents was due to force majeure.

Section 2 of Rule 72 is not applicable in the present case.

Defendant Tan Kue can not invoke it because he was and is not sued for ejectment in accordance with Rule 72. In the amended complaint of May 21, 1945, Tan Kue is sued only for a sum of money, consisting of unpaid rents, liquidated damages, attorney's fees, and costs.

Defendants Ang Ban and Ang Chung can not also invoke section 2 of Rule 72, because, they are not tenants of plaintiffs, but are mere intruders.

Whether Tan Kue's failure to pay the rents was due to force majeure or not is immaterial for purposes of determining his obligation of paying the rents due at the time this case was decided in the lower court. Whether he was justified or not in not paying said rents in due time is irrelevant to the question of whether he is duty bound to pay said rents. That obligation is not denied by any one. If there was any reason or justification for delay in the payment of said rents before, now there is none any more. It appearing from defendants' own evidence that Tan Kue had something to do for his co-defendants' unjustifiably occupying the premises, he is equally responsible for the rents until Ang Ban and Ang Chung shall have completely vacated the property.

Rents due up to March 10, 1945, subject to moratorium (Executive Order No. 32 and Presidential Proclamation No. 6), the lower court's decision is affirmed with the sole modification that it is unnecessary to order the ejectment, of defendant Tan Kue, it appearing that he has already ceased to occupy the premises since December, 1944, and his lease contract having been terminated in accordance with the facts of this case and the terms of the contract itself, with the costs against appellants. Paras, Pablo, and Bilado, JJ., concur.

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### CONCURRING

#### **PADILLA, J.:**

I concur in the result. Ang Ban and Ang Chung occupied illegally the premises at 1008-1010 Calle Lavezares, Manila. They had no contractual relation with the plaintiffs. The claim that Ang Ban was the caretaker of the lessee, Tan Kue, cannot be believed. The alleged relation of agent and principal was an afterthought. Ang Ban's house at Calle Juan Luna was burned and he together with Ang Chung moved into the premises at Calle Lavezares when he found that they were empty.

Tan Kue, the lessee of the premises by virtue of a 5-year lease contract (Exhibit A), is no longer entitled to hold the premises leased by him.

Article 1569 of the Civil Code provides that "The lessor may dispossess the lessee by suit for any of the following causes: \* \* \* 2. Default in the payment of the rent agreed upon; 3. Breach of any of the conditions stipulated in the contract;"

Section 2, Rule 72, provides that "No landlord \* \* \* shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of \* \* \* five days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon.

Although no demand for payment of the rentals due and for restitution of the leased premises had been made upon the lessee personally, it may however be inferred from the evidence, that the written notice of demand (Exhibit B) served upon one of the persons found on the premises was handed to the lessee on or before May 4, 1945. On the 9th, the lessee filed a motion to intervene. On the 21st, an amended complaint was filed joining: the lessee with the original defendants. On the last mentioned date the statutory notice, as provided for in section 2, Rule 72, was complied with.

The claim that failure to pay the rentals was due to force majeure is without merit. Tan Kue's failure to pay the rentals was inexcusable after the liberation of Manila and his return to the City in March 1945 to engage, as he

did, in the profitable business of baking bread.

The obligation of Tan Kue to pay the rentals from January 1945 until the premises shall have been vacated complete by his co-defendants springs from his contract to pay the rentals until the premises shall have been vacated and their possession returned to the lessors.

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