

UNIVERSITY OF SANTO TOMAS, PETITIONER, VS. BUENAVENTURA OCAMPO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, DIONISIO PABILOÑA AND YU TUY (ALIAS YU BONTROY), RESPONDENTS.

G.R. No. L-2672. December 13, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is an original petition for mandamus to compel the respondent judge of the Court of First Instance of Manila to issue a writ of execution in a case of unlawful detainer pending before him on appeal from the municipal court.

It appears that the petitioner obtained judgment against the respondents Dionisio Pabiloña and Yu Tuy alias Yu Bontroy in the Municipal Court of Manila ordering said respondents to vacate the building known as the U.S.T. Restaurant and to pay rents and damages, which may be computed as follows:

For the use and occupation of the restaurant building from April to September 1948 inclusive at P600 a month

P3,600.00

For electric fluid consumption from April to September 1948 inclusive at P30 a month

180.00

For water consumption from March 1946 to September 29, 1947

925.84

For the use and occupation of premises occupied by the so-called two small stores from August 1, 1947 and April 1, 1948, up to June 30, 1948, respectively;

1,400.00

and from July to September 1948 inclusive at P200 a month

600.00

As Penalty and liquidated damages

2,000.00

Total

P8,705.84

Said respondents received copy of the decision of the municipal court on September 7, 1948. They filed a notice of appeal, an appeal bond in the sum of P30, and a supersedeas bond in the sum of P11,200 to stay the execution of the judgment, on September 16, 1948. The supersedeas bond, which was given pursuant to section 8 of Rule 72 "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," was duly approved by the municipal court. On September 25, 1948, the appealed case was docketed in the Court of First Instance.

On October 13, 1948, the petitioner filed a motion before the respondent judge for the immediate execution of the judgment of the municipal court on the ground that the respondents (defendants below) had failed to pay to the plaintiff or into court on or before the 10th of October, 1948, the rent corresponding to the month of September. The respondent judge denied said motion, holding that the rent corresponding to the month of September, 1948, was included in the supersedeas bond of P1,200. The respondents have been depositing with the clerk of the Court below the rents for October, 1948, and succeeding months.

The only question to decide is whether the respondent judge was right in holding that the rent for September, 1948, was properly covered by the supersedeas bond.

It is well settled that the rents accruing after the perfection and during the pendency of the appeal must be deposited in court notwithstanding that the supersedeas bond answers for the rents, damages, and costs down to

the time of the final judgment. (Mitschiener vs. Barrios,[1] 42 Off. Gaz., 1901; Zamora vs. Dinglasan,[2] 43 Off. Gaz., 1627, 1631; Garcia vs. Peña,[3] 44 Off. Gaz., 1477; Aylon vs. Jugo,[4] 45 Off. Gaz., 188; Lee Ko vs. De Leon,[5] G. R. No. L-2484, May 18, 1949.)

Of the adjudicated cases above cited, the most similar to the case at bar is Aylon vs. Jugo. In that case judgment was rendered by the municipal court on August 20, 1946, ordering the defendants to vacate the premises and to pay to the plaintiffs rentals at the rate of P60 a month beginning July 1, 1946. The defendants perfected the appeal on September 6, 1946. The respondent judge therein ordered the execution of the judgment of the municipal court for failure of the defendants to pay into court the rents for July and August, 1946. This court revoked that order on the ground that said rentals were covered by the supersedeas bond of P300 given by the defendants to stay the execution. This court, speaking through Mr. Justice Padilla, held:

"To prevent execution of a judgment against the defendant in forcible entry and detainer cases during the pendency of an appeal, only the rentals accruing after the perfection of the appeal need be paid to the plaintiff or deposited with the Court of First Instance, the unpaid rentals that had previously accrued being guaranteed by the bond filed to stay immediate execution in the justice of the peace or municipal court."

In the present case the appeal and the supersedeas bond were approved by the municipal court on September, 16 and the appeal was docketed in the Court of First Instance on September 25, 1948. Since the greater part of the rent for the month of September had already accrued when the appeal was perfected and docketed in the Court of First Instance, and since in executing the supersedeas bond the defendants included therein the rent for the entire month of September and the municipal court approved said bond, we are inclined to believe and so hold that the respondent Judge acted within the purview of section 8 of Rule 72, as applied by this Court in Aylon vs. Jugo, *supra*, in denying the petitioner's motion for execution.

The petition is denied, with costs against the petitioner.

Moran, C.J., Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] 76 Phil., 55.

[2] 77 Phil., 46.

[3] 77 Phil., 1008.

[4] 78 Phil., 816.

[5] 83 Phil., 623.

EXCERPTS FROM THE MINUTES OF JANUARY 11, 1950

"Considering the motion for reconsideration filed by the petitioner in G.R. No. L-2672, University of Santo Tomas, petitioner, vs. Hon. Buenaventura Ocampo, etc., et al., respondents, the Court resolved as follows:

"The question involved is whether in a case of unlawful detainer the defendant-appellant must pay to the plaintiff or to the Court of First Instance from time to time the rent accruing from the date of the judgment of the municipal or justice of the peace court, or only the rent accruing after the perfection of the appeal provided that the rent accruing previous thereto is covered by the supersedeas bond given by the appellant. In the decision of this court under consideration it was held, following the decision in the case of Aylon vs. Jugo (45 O. G. 118),[1] that since the appeal was docketed in the Court of First Instance on September 25, 1948, and

since the rent for September, 1948, was included in the supersedeas bond given by the defendant-appellant, the latter was required to deposit in the Court of First Instance only the rent for October and succeeding months. Petitioner's contention that the portion of the syllabus in *Aylon vs. Jugo* quoted by this court in its decision in this case, to the effect that 'only the rentals accruing after the perfection of the appeal need be paid to the plaintiff or deposited with the Court of First Instance,' is not supported by the body of the decision, is unfounded. The portion of the decision in *Aylon vs. Jugo* from which the syllabus was taken reads as follows:

"There is no dispute that, by virtue of the petitioner's appeal perfected on 6 September, the case was transmitted to, and docketed in, the Court of First Instance of Manila on 10 September. Beginning from this last date or at the earliest from 6 September, when the Municipal Court lost jurisdiction over the case by virtue of the appeal perfected by the petitioner, the case may be said to be pending on appeal in the Court of First Instance. Whether the bond filed by the petitioner as appellant is sufficient to answer for what the rule contemplates it must answer is not involved herein. The fact is that the bond was approved by the municipal court. Such being the case, the only question to determine is whether on the date of the order of execution of the judgment of the municipal court issued by the respondent court or during the pendency of the appeal, the petitioner, as appellant, failed to pay to respondent Pablo or to deposit into court the stipulated rental or the reasonable value for the use and occupation of the premises. The judgment rendered by the municipal court on 20 August 1946 ordered the defendants to pay to the plaintiffs the rentals thereof at the rate of P60 per month beginning 1 July 1946 until they vacate and surrender said premises to the plaintiffs. The first rental to be paid by the petitioner, as appellant, to the respondent Pablo, as appellee, or to the Court, was for the month of September 1946 which had to be paid on or before the 10th day of October 1946. The payment of rentals for the preceding months of July and August is guaranteed by the bond for P300 filed by the petitioner, as appellant and principal, and the Luzon Surety Co., as surety. Consequently, the writ issued by the respondent Court on 24 September for the execution of the judgment rendered by the municipal court on 20 August and the order of 10 October denying in effect the motion for reconsideration of the previous order constitute a grave abuse of discretion which may be corrected by means of certiorari applied for herein.' (Underscoring supplied,)

"Wherefore, reaffirming the above-quoted doctrine that only the rent accruing after the perfection of the appeal need be paid to the plaintiff or into court provided that the rent accruing previous thereto is covered by the supersedeas bond, the COURT DENIED the motion."

Motion denied.

[1] 78 Phil., 816.

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