

**EDUARDO M. LESACA, PETITIONER, VS. HON. SERAFIN R. CUEVAS,
AS JUDGE CFI OF MANILA, BRANCH IV, ET AL., RESPONDENTS.***G.R. No. L-48419. October 27, 1983*

Ponente: GUTIERREZ, JR., J.

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This is a petition for review of the decision of the Court of First Instance of Manila, Branch IV, which dismissed the complaint in the ejectment case earlier filed with the City Court of Manila, Branch XIII. The respondent court reversed the decision of the city court after finding the latter without jurisdiction over the case on the ground that no demand was made by petitioner as required by Section 2, Rule 70 of the Rules of Court. On a finding that only a question of law was involved, the Court of Appeals certified the case to us for decision.

Petitioner Eduardo M. Lesaca is the owner of the properties located at 80-0 Chica Street and 29-F, Isla de Romero, Quiapo, Manila, both leased to respondent, Tan Chun, on a month-to-month basis, payable in advance within the first five days of each month, at the rate of P770.00 and P562.00 rentals per month respectively.

On April 15, 1974, the petitioner sent two letters to the respondent, advising him of an increase by 50% in the rentals for both premises, to take effect in May 1, 1974. The increased rate was subsequently reduced to 25%, hence, 80-0 Chica Street was raised from P562.00 to P702.50 and 29-F Isla de Romero, from P770.00 to P962.50 rentals per month.

On May 12, 1975, the petitioner's counsel sent two letters to respondent, both stating that:

xxx xxx xxx

"Our client further informed us that as of May 5, 1975, the scheduled date of monthly rental payment for May, you have not complied with the above adjusted monthly rental.

"In the event that the above increased rental is not with your approval, you should vacate the above-mentioned premises within the 1st 15 days of the month of June, 1975, for our client is hereby terminating your month-to-month lease effective May, 1975. This letter will therefore, serve as the demand to pay the increased rental and/or to vacate said premises."

On June 25, 1975, the respondent sent by registered mail to the petitioner, a Metro Bank and Trust Company Check, dated June 25, 1975 in the sum of P2,310.00 in payment for rentals in arrears for the 29-F Isla de Romero premises and a Consolidated Bank and Trust Company Check dated June 25, 1975 in the amount of P1,686.00 for the 80-0 Chica premises. Both payments were based on the old rates.

Petitioner referred the matter to his lawyer who filed a complaint for ejectment before the City Court of Manila. The petitioner alleged in his complaint that the premises are commercial in nature and that the respondent does business under the names "Philippine Cotton Mop Manufacturing" and "Ever Ready Hardware".

In an amended decision, the above court rendered judgment ordering the respondent to vacate the premises in

question and to pay increased rentals beginning May, 1975 until he actually vacates said premises.

In his appeal to the Court of First Instance, the respondent contended that "the inferior court erred in assuming jurisdiction over this case and/or in not holding that the present action for ejectment is premature."

The questioned decision of the respondent court states inter alia:

xxx xxx xxx

"The Court subscribes with the defendant-appellant's view that the demand to vacate in the instant case is almost identical and/or similar to that sent by the plaintiff in the case of *Vda. de Murga vs. Chan*, L-24680, Oct. 7, 1968, Vol. 25, SCRA p. 441. The requisite demand prescribe by law do not exist, (sic) defendant-appellant being in the actual and physical possession of the leased premises pursuant to a verbal contract of lease existing between them and the demand being in the alternative whereby a new increased rental is charged and sought to be collected, an ejectment suit may be instituted against said defendant, only upon default and/or failure to pay the said increased rental after a demand to vacate the same, subject to no condition, has been served upon said defendant-appellant. The evidence on record, however, is totally bereft of any such demand made the plaintiff-appellee upon the defendant-appellant.

"UPON THE FOREGOING CONSIDERATIONS, the Court, therefore, finds the Court a quo to be without jurisdiction over the case; consequently the decision appealed from is, as it is hereby set aside and reversed with costs against plaintiff-appellee."

A motion for reconsideration filed by the petitioner was denied by the lower court, hence this petition for review.

The only question to be resolved in this petition is whether or not the demand to vacate provided under Section 2, Rule 70 of the Rules of Court in unlawful detainer cases is required by the circumstances of the present case.

The above rule provides:

Rule 70, Sec. 2. - Landlord to proceed against tenant only after demand. No landlord, or his legal representative or assign, 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 fifteen (15) days or five (5) days in case of building, after demand therefore, 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.

Petitioner maintains that the contract of lease between him and the respondent is on a month-to-month basis which terminates at the end of each month, without the necessity of a special demand. Therefore, the above-quoted rule does not apply as the action instituted by him is for the termination of the lease because of the expiration of its term. He cites the case of *Co Tiamco v. Diaz* (75 Phil. 672) where the court ruled that "a demand is a pre-requisite to an action for unlawful detainer, when the action is 'for failure to pay rent due or comply with the conditions of his lease', and not where the action is to terminate the lease because of the expiration of its terms."

The petition is impressed with merit.

A lease contract "on a month-to-month basis" provides for a definite period and may be terminated at the end of any month. (See *Rantael v. Court of Appeals*, 97 SCRA 453; *Cruz v. Puno, Jr.*, 120 SCRA 497).

In the case at bar, when respondent Tan Chun refused to pay the increased rentals for the month of May, 1975, the lease contract was deemed terminated as of said month, not only because of the letters sent to him by the petitioner informing him that the lease was to be terminated effective May, 1975, but more so by his refusal to pay

the increased rate while remaining in the premises. In the case of *Vda. de Kraut v. Lontok*, 7 SCRA 281, we ruled:

"x x x Considering that appellee was occupying the premises in question on a month to month basis, it can not be denied that appellant had the right to terminate the lease at the end of any month. The contract between the parties herein must therefore be deemed terminated upon appellee's refusal to pay the P60.00 monthly rental demanded by appellant — which does not appear to be exorbitant."

Similarly, in *Bulahan, et al., v. Tuason, et al.*, 109 Phil. 251, we ruled:

"x x x The rule is settled that the owner of the land leased has the right not only to terminate the lease at the expiration of the term, but also to demand a new rate of rent. The tenant or lessee has the option either to accept the new rent or vacate the premises. (*Iturralde v. Alfonso*, 7 Phil., 576; *Iturralde v. Evangelista*, 7 Phil., 588; *Iturralde v. Magcauas*, 9 Phil., 599; *Cortez v. Ramos*, 46 Phil., 189). As plaintiffs, after the termination of their lease, refused either to pay the new rent or to vacate the lots after the termination of their lease, they have evidently become deforciants, and can be ousted judicially without the need of a demand. (Citing *Co Tiamco v. Diaz*, 75 Phil. 672; Art. 1669, new Civil Code; reiterated in *Gindoy v. Court of Appeals*, 97 SCRA 453)."

We distinguish the facts of this petition from the *Vda. de Murga* case, 25 SCRA 441, where the Court applied the ruling in *Manotok v. Guinto*, 101 Phil. 383, as follows:

"x x x We, however, do not find such notice (the alternative either to pay the increased rental or otherwise to vacate the land) to be the demand contemplated by the Rules of Court in 'unlawful detainer' cases. When after the notice the appellant elected to stay, he thereby merely assumed the obligation of paying the new rental and could not be ejected until he defaulted in said obligation and necessary demand was first made."

Such was the ruling in *Vda. de Murga* because in said case, the lease contract provided that upon its expiration, the lessor had the option to purchase the improvements introduced by the lessee on the leased premises; but in the event that the lessor did not exercise such option, then the contract was auto-matically renewed. Therefore, the court correctly ruled that a more definite demand to vacate was necessary to give the lessor the right to eject the lessee from the premises. However, in the present case, the petitioner had the right to terminate the lease at the end of every month as he did so in May, 1975, when the lessee refused to pay the increased rentals. The lessee, therefore, had no alternative but to vacate the premises and his refusal made him a deforciant who could be ousted judicially without the need of the more specific demand he insists upon. Furthermore, even assuming that there was a need for such a demand in the instant case, we believe that the alternative demand to pay the increased rental onto vacate the premises is sufficient under the law to enable the lessor to bring an ejectment case because as stated earlier, the lessee lost all his rights to remain in the premises upon the expiration of the lease contract in May, 1975. There is, therefore, no need for a more definite and unconditional demand to vacate as he had no legal right to remain in the premises. In *PNB v. Animas*, (117 SCRA 735) where similarly, the possessor had no right to remain in the premises, we ruled:

"x x x It is a fact that private respondent was tolerated by herein petitioner to stay in the property after September 11, 1956. It was only on December 12, 1968 when petitioner wrote private respondent 'to vacate the premises thereof, or to deliver plaintiff's share of the income derived from the fruits of the land.' Thus, it was only after written demand was made upon the defendant to leave the premises that her possession became unlawful."

In the above-cited case, we construed the demand made by the petitioner to vacate the premises or to deliver the fruits of the land sufficient to make the respondent's possession of the premises illegal. The demand in the case at bar should be construed in the same manner.

WHEREFORE, the decision of the Court of First Instance and its order denying the motion for reconsideration are

hereby reversed and set aside. Respondent Tan Chun and any and all persons claiming under him are ordered to vacate the premises located at 29-F Isla de Romero, Quiapo, Manila, and at 80-0 Chica Street, Quiapo, Manila, and to restore to the petitioner the possession thereof. The judgment of the City Court of Manila in Civil Case No. 002526-CV, is ordered reinstated.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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