

## FREDERICK CHAN BONA, PETITIONER, VS. ST. VINCENT DEVELOPMENT CORPORATION, RESPONDENT.

Ponente: ANTONIO-VALENZUELA, J.

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### ANTONIO-VALENZUELA, J.:

Frederick Chan Bona ("petitioner lessee Bona") files this Petition for Review[1] under Rule 42 of the Rules of Court, questioning the Decision dated 10 August 2011[2] ("assailed Decision"), and the Order dated 04 May 2012[3] ("assailed Order"), of the Regional Trial Court, Branch 222, Quezon City ("RTC"), which affirmed the Decision[4] dated 28 January 2009 ("MeTC Decision") of the Metropolitan Trial Court, Branch 33, Quezon City ("MeTC"), ruling in favor of St. Vincent Development Corporation ("respondent lessor Corporation"), and ordering the ejectment of petitioner lessee Bona on the ground that the month-to-month Contract of Lease had expired.[5]

### THE FACTS

On 18 November 2005, respondent lessor Corporation filed the Complaint[6] for ejectment against petitioner lessee Bona before the MeTC. The Complaint alleged: respondent lessor Corporation was the owner of the premises located in No. 131-A Kanlaon St., Quezon City ("subject property"); on 15 May 2001, respondent lessor Corporation and petitioner lessee Bona, executed the Contract of Lease, where respondent lessor Corporation agreed to lease the subject property to petitioner lessee Bona on a month to month basis, for Php16,000.00 per month; on 27 September 2005, respondent lessor Corporation made a written demand on petitioner lessee Bona to vacate the subject property by 15 October 2005 on the ground of expiration of the term of the Contract of Lease, and to pay Php32,000.00 as back rentals; as of 11 November 2005, petitioner lessee Bona had not paid rent in the total amount of Php48,500.00; due to petitioner lessee Bona's refusal to vacate the subject property despite expiration of the lease, and refusal to pay unpaid rent, respondent lessor Corporation was constrained to hire the services of a lawyer to protect and enforce its interests.

The Complaint prayed that the MeTC order petitioner lessee Bona: 1) to vacate the subject property because the Contract of Lease had expired; 2) to pay Php48,500.00, representing unpaid rent as of 15 October 2005; 3) to pay the amount Php20,000.00 per month, from November 2005, up to the time petitioner lessee Bona vacates the subject property, as reasonable compensation for the use and occupation of the subject property; 4) to pay the amount Php25,000.00, as attorney's fees, and Php2,000.00 for every court appearance of petitioner lessee Bona's legal counsel; and 5) to pay the cost of suit.

Petitioner lessee Bona filed the verified Answer,[7] and averred: petitioner lessee Bona had been leasing the subject property from respondent lessor Corporation since the 1990s; in 2005, due to the worsening economic condition of the country, petitioner lessee Bona asked respondent lessor Corporation for a discount in the rental rate (i.e.: 1) the rental rate of Php16,000.00 per month would be maintained for the entire period of the new lease agreement; 2) the term of the new lease agreement would be for the period of five years, to commence in August 2005, and ending in July 2010, which would be renewable, upon mutual agreement of both parties; 3) the mode of

payment for the rent would be on an annual basis, payable not later than the last day of the year, and would be subject to a discount of fifteen percent (15%) if paid at the beginning of the year); the Contract of Lease attached to the Complaint, reflecting a month to month term of lease, had already been renewed pursuant to the compromise agreement of the parties; the rent for the period 2005 to July 2006 was not yet due; respondent lessor Corporation never made any written demand to petitioner lessee Bona to vacate the subject property, nor was there a demand to pay the back rentals.

By way of counterclaim, petitioner lessee Bona averred: petitioner lessee Bona was constrained to secure the services of a lawyer, and suffered sleepless nights, serious anxiety and besmirched reputation because of respondent lessor Corporation's baseless and umeritorious Complaint.

The Answer prayed that the MeTC dismiss the Complaint, and that the MeTC issue an order directing respondent lessor Corporation to pay petitioner lessee Bona: 1) Php200,000.00, as moral damages; 2) Php200,000.00, as exemplary damages; 3) Php50,000.00, as attorney's fees; 4) Php3,000.00 per appearance of petitioner lessee Bona's legal counsel; and 5) the cost of suit.

The MeTC conducted preliminary conference. Thereafter, petitioner lessee Bona and respondent lessor Corporation submitted their respective Position Papers.[8]

On 28 January 2009, the MeTC issued the Decision, which ruled in favor of respondent lessor Corporation.[9] The dispositive portion of the MeTC Decision reads:

WHEREFORE, as warranted by the facts above set forth and applying the afore-stated laws and jurisprudence, this Court hereby renders Judgment, as follows:

- Ordering Defendant FREDERICK CHAN BONA and all persons claiming rights under him to vacate the subject premises particularly situated at No. 131-A Kanlaon Street, Quezon City and completely surrender possession thereof to the plaintiff;
- Ordering defendant FREDERICK CHAN BONA to pay plaintiff reasonable rent for his continued use and occupation of the subject premises in the amount of SIXTEEN THOUSAND PESOS (Php16,000.00) per month computed from October 16, 2005 until the premises shall be fully vacated;
- Ordering defendant FREDERICK CHAN BONA to pay the cost of suit.

SO ORDERED.

On 19 February 2009, petitioner lessee Bona appealed to the RTC.[10] Both parties submitted their respective memoranda before the RTC.[11]

On 10 August 2011, the RTC issued the assailed Decision, affirming in toto the MeTC Decision.[12]

Dissatisfied with the RTC's Decision, petitioner lessee Bona filed the Motion for Reconsideration,[13] and reiterated that respondent lessor Corporation did not make a demand to vacate the subject property, and thus the action for unlawful detainer was premature.

In its Comment,[14] respondent lessor Corporation argued that petitioner lessee Bona's Motion for Reconsideration should be dismissed since it was a pro-forma motion, the petitioner lessee Bona having merely rehashed and reiterated his previous arguments.

On 04 May 2012, the RTC issued the assailed Order, which denied petitioner lessee Bona's Motion for Reconsideration, and affirmed in toto the assailed Decision.[15]

Aggrieved, petitioner lessee Bona files this Petition for Review, and makes the following assignment of errors:

## ERRORS/ISSUES

I.

The Regional Trial Court erred in affirming the Decision of the Metropolitan Trial Court in finding that there was no renewed lease contract between the parties;

II.

The Honorable Regional Trial Court erred in stating that the action for unlawful detainer is based on the expiration of the lease contract;

III.

The Honorable Regional Trial Court erred in finding that there was a complete service of the demand letter to Petitioner;

IV.

The Honorable Regional Trial Court erred in applying Article 1670 of the New Civil Code in the instant case;

V.

The Honorable Regional Trial Court erred in finding that Petitioner should have consigned the rent payment with either a court or a bank.

The issues are: 1) whether respondent lessor Corporation had a cause of action for ejectment against petitioner lessee Bona; and 2) whether the RTC erred in finding that petitioner lessee Bona should have consigned the rental payments with the court or with the bank.

## PETITION FOR REVIEW

With respect to the first issue, petitioner lessee Bona answers in the negative. Respondent lessor Corporation had no cause of action for ejectment against petitioner lessee Bona. The Petition for Review[16] thrusts: the Contract of Lease was not expired because the parties had renewed it; petitioner lessee Bona could not present in court the renewed contract of lease because respondent lessor Corporation did not give him a copy of it; respondent lessor Corporation did not submit any proof that petitioner lessee Bona actually received the demand letter to vacate the subject property, and to pay the rent arrears; Article 1670 of the New Civil Code is not applicable because there was a renewed contract of lease.

Anent the second issue, petitioner lessee Bona answers in the affirmative. The RTC erred in finding that petitioner lessee Bona should have consigned the rental payments with the court or with the bank. Petitioner lessee Bona, believing that the lease agreement had been renewed and that rentals were due at the end of the year, made two attempts to pay the yearly rent, but respondent lessor Corporation refused to accept payment. The Petition for Review thrusts that consignment was not necessary since petitioner lessee Bona was not yet in default in paying the monthly rent, pursuant to the renewed contract of lease.

## COMMENT

With respect to the first issue, respondent lessor Corporation answers in the affirmative. Respondent lessor Corporation had a cause of action for ejectment against petitioner lessee Bona. Respondent lessor Corporation's Comment[17] parries: the contract of lease between petitioner lessee Bona and respondent lessor Corporation had expired; petitioner lessee Bona was not able to prove that there was a renewed contract of lease; there was proper

demand to vacate the subject property and to pay the rent arrears; petitioner lessee Bona never denied having received the notices of registered mail sent by the postmaster; in any event, the demand to vacate was not necessary because the action for ejectment was anchored on the expiration of the contract of lease.

Respondent lessor Corporation is silent anent the second issue.

### THE COURT'S RULING

With respect to the first issue, we rule in the affirmative. Respondent lessor Corporation had a cause of action for ejectment against petitioner lessee Bona.

It is elementary that the allegations in the complaint determine the cause of action.

Further, as in any civil case, the burden of proof lies with the complainant (the respondent lessor Corporation, in this case) who must establish his case with preponderance of evidence. As correctly found by the MeTC and the RTC, the respondent lessor Corporation was able to prove by a preponderance of evidence, its cause of action for ejectment, anchored on the expiration of the contract of lease, and the non-payment of rent, thus: 1) initially, petitioner lessee Bona was occupying the subject property pursuant to the Contract of Lease dated 01 October 2001, under a month-to-month term;[18] 2) petitioner lessee Bona's occupation of the subject property became illegal when he received respondent lessor Corporation's written demand requiring him to vacate the subject property on or before 15 October 2005, and informing petitioner lessee Bona that the contract of lease would no longer be extended;[19] 3) despite receipt of the written demand, petitioner lessee Bona still continued to occupy the subject property;[20] and 4) within one year from making the written demand to vacate the premises, respondent lessor Corporation instituted the complaint for ejectment; 5) petitioner lessee Bona admitted not paying the rent (on the justification that it was not due,[21] and that respondent lessor Corporation refused to accept tender of rent).[22]

There was no renewed contract of lease.

Petitioner lessee Bona argues that respondent lessor Corporation had no cause of action for ejectment because on the date the Complaint was filed, the term of the alleged renewed Contract of Lease had not yet expired. Petitioner lessee Bona avers that the parties had renewed the Contract of Lease dated 01 October 2001 (which respondent lessor Corporation had attached to the Complaint before the MeTC), and that the new term of the lease was five (5) years, or until July 2010, thus making respondent lessor Corporation's Complaint for ejectment without merit.

We are not persuaded.

Aside from petitioner lessee Bona's bare allegations, there is nothing in the records of the case that would substantiate his (petitioner lessee Bona's) claim that the parties had renewed the Contract of Lease. We find no compelling reason to disturb the findings[23] of the MeTC, which found that:

1. There is no evidence adduced on record that there is an extended contract of lease between the plaintiff and the defendant, except the bare and self serving allegation of the latter.

As correctly ruled by the MeTC, allegations do not constitute proof. As held in *Real v. Belo*,[24]" it is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."

We cannot give credence to petitioner lessee Bona's assignment of error, i.e. that it was incorrect for the RTC to have applied Article 1670 of the New Civil Code. In effect, petitioner lessee Bona argues that the RTC should not have cited Article 1670 (on implied new lease) because it did not come into play, as the parties had renewed the

contract of lease. As we already stated, there was no evidence to prove that the parties had renewed the lease agreement.

Demand to vacate is not necessary in actions for unlawful detainer, anchored on the expiration of the contract of lease.

Petitioner lessee Bona further argues that respondent lessor Corporation had no cause of action for ejectment because there was no proof that petitioner lessee Bona actually received the letter making a demand to vacate the subject property.

We do not agree.

It is well settled in jurisprudence that in an action for ejectment on the ground of expiration of the contract of lease, a notice to vacate is no longer necessary. Thus in *Tubiano v. Razo*,<sup>[25]</sup> the Supreme Court ruled in this wise:

... In *Racaza v. Susana Realty, Inc.*, reiterated in *Labastida vs. Court of Appeals*, the court held that:

xxx The averment that the lease was on a month-to-month basis is equivalent to an allegation that the lease expired at the end of every month. It is therefore immaterial that rents had not been paid since July, 1955, since what made petitioner liable for ejectment was the expiration of the lease. This being the case, demand to vacate was unnecessary. As this Court explained in *Co Tiamco v. Diaz*, 78 Phil. 672 (1946), Rule 70, section 2 requires previous demand only when the action is 'for failure to pay rent due or to comply with the conditions for his lease.' Where the action is to terminate the lease because of the expiration of its term, no such demand is necessary. In the latter case upon the expiration of the term of the lease, the landlord may go into the property and occupy it, and if the lessee refuses to vacate the premises, an action for unlawful detainer may immediately be brought against him even before the expiration of the fifteen or five days provided in Rule 70, section 2.

Accordingly, upon the expiration of the lease in this case, petitioner became a deforciant unlawfully withholding possession of the property. There was no need for a demand to be served on him, except to negate any inference that respondent, as lessor, had agreed to an extension of the term of the lease under article 1687 of the Civil Code."

Verily, demand to vacate is not a jurisdictional requirement when the ground for ejectment is expiration of term of the lease contract. Notice/demand to vacate serves no other purpose than to make known the lessor's intention to terminate the lease contract... (Emphasis supplied.)

A perusal of the Contract of Lease attached to the respondent lessor Corporation's Complaint shows that the term of the lease agreement was month-to-month basis. Hence, consistent with the above cited jurisprudence, the term of the said Contract of Lease is understood to expire at the end of every month. As such, no notice to vacate was necessary.

Nevertheless, respondent lessor Corporation's filing of the Complaint was a categorical act on its part of terminating the lease agreement with petitioner lessee Bona.

Consignation was proper.

Anent the second issue, we rule in the negative. The RTC did not err in finding that petitioner lessee Bona should have consigned the rental payments with the court or with the bank.

Petitioner lessee Bona argues that consignation was not necessary because pursuant to the alleged renewed

Contract of Lease, the mode of payment for the rent is on an annual basis. Hence, petitioner lessee Bona contends that he was not yet in default of the rent payments, and as such consignment was not yet necessary.

We do not agree.

As earlier discussed, no evidence was presented to substantiate petitioner lessee Bona's allegation that there was a renewed Contract of Lease. As such, the terms of the Contract of Lease dated 01 October 2001 was applicable (i.e., that rent was due every 15th of the month).

Thus, the RTC did not err in finding that petitioner lessee Bona could have availed the legal remedy of consignment, in relation to his allegation of respondent lessor Corporation's refusal to accept the rent payments.

We DISMISS the Petition for Review, and AFFIRM the Decision dated 10 August 2011, and the Order dated 04 May 2012, issued by the Regional Trial Court, Branch 222, Quezon City, in Civil Case No. Q-19-64730.

**IT IS SO ORDERED.**

Veloso (Chairperson) and Lantion, JJ., concur.

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[1] Dated 31 July 2012, C.A. Rollo, pp. 07-20.

[2] Annex "B" (of the Petition for Review), C.A. Rollo, p. 23-29.

[3] Annex "A" (of the Petition for Review), C.A. Rollo, pp. 22.

[4] Annex "G" (of the Petition for Review), C.A. Rollo, p. 64-72

[5] Ibid.

[6] Annex "C" (of the Petition for Review), C.A. Rollo, pp. 30-32.

[7] Dated 14 January 2006, Annex "D"(of the Petition for Review), C.A. Rollo, pp. 40-47.

[8] Defendant's Position Paper, Annex "E" (of the Petition for Review), dated 14 December 2007, C.A. Rollo, pp. 48-60; and Plaintiff's Position Paper, Annex "F"(of the Petition for Review), dated 14 December 2007, C.A. Rollo, pp. 61-63.

[9] Supra note 4.

[10] Notice of Appeal, dated 19 February 2009, Annex "H" (of the Petition for Review), C.A. Rollo, p. 73.

[11] Memorandum, dated 20 July 2009, Annex "I" (of the Petition for Review), C.A. Rollo, p. 76-90; and Appellee's Memorandum, dated 26 August 2009, Annex "J" (of the Petition for Review), C.A. Rollo, p. 91-113.

[12] Decision, supra note 1.

[13] Dated 22 November 2011, Annex "L" (of the Petition for Review), C.A. Rollo, pp. 124-129,

[14] Comment to the Defendant-Appellant's Motion for Reconsideration of the Decision dated August 10, 2011, dated 25 January 2012, Annex "M" (of the Petition for Review), C.A. Rollo, pp. 130-133.

[15] Order, supra note 2.

[16] Supra note 1.

[17] Dated 07 September 2012, C.A. Rollo, pp. 137-151.

[18] Annex "C" of the Complaint (Annex "C" of the Petition for Review), C.A. Rollo, pp. 35-37.

[19] Dated 27 September 2005, Annex "D" of the Complaint (Annex "C" of the Petition for Review), C.A. Rollo, p. 38.

[20] Complaint, *supra* note 6, p. 31.

[21] Paragraph 7, Answer, *supra* note 7, p. 42.

[22] Paragraph 11, *ibid.*, p. 42.

[23] Decision, *supra* note 4, p. 215.

[24] G.R. No. 146224, 26 January 2007.

[25] G.R. No. 132598, 13 July 2000.

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