

**CONSUELO BANZON AND HON. ALBERTO Q. UBAY, JUDGE,
CFI-RIZAL, BRANCH XXXII, PETITIONERS, VS. COURT OF APPEALS,
FLORESTO ARIZALA AND ESTRELLA ARIZALA, RESPONDENTS.**

G.R. No. L-46464. November 21, 1979

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ce6f572cf6fc/>

DE CASTRO, J.:

Petition for review on certiorari of the decision dated May 24, 1977 of the Court of Appeals in CA-G. R. No. SP-06520-R, entitled "Floresto Arizala, et al., petitioners, vs. Hon. Alberto Q. Ubay, as Judge, CFI of Rizal, Branch XXXII, et al., respondents," which set aside the decision of the Court of First Instance of Rizal (Civil Case No. C-5076).

The facts of the case as found by the Court of Appeals are as follows:

Herein petitioner Consuelo Banzon is the owner of a duplex apartment located at 17 Bernadette St., Grace Park, Caloocan City which was being leased to private respondents herein for a monthly rental of P180.00. Private respondents have been staying in the said apartment for about six or seven years. In November, 1975, they stopped paying their rentals for the reason that the septic tank in the premises had been emitting foul odor. Private respondents made demand on petitioner to repair the septic tank but the latter replied that the former should first vacate the premises. Private respondents did not agree on the ground that the repair could be done even if they do not vacate the premises. Private respondents failed to pay their rentals starting November, 1975 and so in a letter dated February 2, 1976, petitioner made a formal demand on the former to vacate the premises. Private respondents having refused to vacate the premises in question, an ejectment case was filed against then on March 3, 1976 in the City Court of Caloocan. The City Court dismissed the case on the ground that non-payment of rentals was justified as a valid exercise of herein private respondents' authority to suspend the payment due to the failure of the lessor to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased, as provided in Article 1658 of the New Civil Code.

On appeal to the Court of First Instance, the decision of the City Court was reversed and herein private respondents were ordered to vacate the premises and to pay the monthly rentals of P180.00 from November, 1975, until they vacate the same, plus attorney's fee of P300.00 and other costs.

Herein private respondents appealed to the Court of Appeals, and on May 24, 1977, the appellate court rendered judgment setting aside the decision of the Court of First Instance of Rizal, Branch XXXII, the dispositive portion of which reads as follows:

"WHEREFORE, the judgment appealed from is hereby set aside. In lieu thereof, another one is rendered (a) ordering the private respondent to repair or remedy the defective condition of the septic tank complained of by the petitioners; (b) upon the completion of the work necessary for such purpose, the petitioners are ordered to pay to the private respondent or to deposit in court the rentals starting from November 1975 at the rate of P180.00 a month within fifteen (15) days from receipt of the order of respondent court certifying to the

completion of such work on the septic tank; and (c) in the event of the failure of the petitioners to pay or deposit such rentals within such time, they shall be evicted from the premises in question and ordered to return the possession of the same to the private respondent, and to pay all the rentals in arrears from November 1975 until they shall have vacated the premises. There shall be no costs.

"It is so ORDERED." [1]

Not satisfied with the decision, petitioner Consuelo Banzon filed the present petition for review on certiorari.

In the resolution of October 24, 1977, the petition was given due course, the filing of briefs and memoranda were dispensed with and the case was submitted for decision.

On April 23, 1979, petitioner Banzon filed a "motion to compel private respondents to pay private petitioner or to deposit in court the rentals starting November, 1975 at P180.00 a month up to the present" [2] alleging that the repair of the septic tank has already been completed on October 23, 1976 but no certification of such completion of work can be made however, because the Court of First Instance of Rizal, Branch XXXII has lost its jurisdiction, the case being on appeal before this Court.

In the comment dated May 26, 1979, [3] private respondents stated that although the Court of First Instance has lost jurisdiction over this case, they are willing to deposit the rentals in the said court upon order of this Court.

In the resolution of June 15, 1979, the Court granted petitioners' motion and required private respondents to deposit in the court of origin the rentals in arrears of P180.00 a month from November, 1975 and thereafter within ten (10) days from notice.

On September 18, 1979, petitioners filed a "motion for issuance of writ of execution of the judgment in unlawful detainer action" [4] stating that herein private respondents failed to deposit in the court of origin the rentals in arrears as shown by the certification to that effect by the Clerk of Court of the City Court of Caloocan. In private respondents' opposition dated September 18, 1979 [5] to the aforesaid motion, it was alleged that they deposited with the Clerk of Court of the Court of First Instance of Rizal the rentals from January, 1977 to June, 1979 in the amount of P5,400 as shown by the therein attached xerox copy of official receipt no. 1606599 dated June 28, 1979 [6] and certification [7] of said deposit by the Clerk of Court of said Court. Petitioners filed a brief reply dated October 9, 1979 [8] stating that private respondents have not deposited the rentals from November, 1975 to December, 1976 and from July, 1979 to October, 1979. Hence, a manifest-a-tion dated October 15, 1979 [9] was filed by petitioners praying that the dispositive portion of the decision of the Court of Appeals be affirmed and enforced, and that a writ of execution be likewise issued.

In the opposition dated October 20, 1979, [10] private respondents denied not having paid the rentals from November, 1975 to December, 1976; that the rentals for said months in the amount of P2,280.00 have been deposited on January 17, 1977 with the Clerk of Court of the Court of First Instance of Rizal under official receipt no. 3002990. [11]

Upon examination of the records, it appears that on October 23, 1976, Marfil Excavation Service excavated one truck load of sludge from the septic tank of the premises in question as shown by the job certification [12] issued by said contractor. An affidavit dated June 21, 1977 [13] of Damon Sy, one of the tenants in the property involved in this case attesting to the fact of said excavation, was likewise submitted by petitioners.

Private respondents did not deny that they have not deposited the rentals from July, 1979 to October, 1979. Moreover, the amount of P2,280.00 corresponding to the rentals from November, 1975 to December, 1976 or a period of fourteen (14) months is short of P240.00. The payment should have been P2,520.00. It should be noted that private respondents are presently occupying the questioned premises and therefore they should make a

deposit of rentals as they become due to compensate the petitioners for having been deprived of possession of the premises. Failure of private respondents to deposit on time the monthly rentals for the use and occupation of the property gives the petitioners the right to execution of the decision of the Court of Appeals, affirmance of which was prayed for by petitioner as above stated.

Private respondents must forthwith be evicted from the premises because they failed to pay the rentals as ordered by the Court of Appeals notwithstanding their actual knowledge of the repair and clearing of the septic tank since as early as October, 1976. As held by the appellate court, their proper remedy was not to suspend the rental payments under Article 1658 of the Civil Code wrongly invoked by them but to make the urgent repair themselves and clear the septic tank and charge the cost thereof to petitioner, as provided in Article 1663 of the Civil Code. But said respondents paid only part of the back rentals only when this Court ordered them in its June 15, 1979 resolution and still failed notwithstanding the Court's order to pay the same in full nor the rentals that accrued thereafter, without any explanation nor justification.

WHEREFORE, judgment is hereby rendered affirming the decision appealed from but modified by dispensing with the requirement of an order of the Court of First Instance certifying to the completion of the repair of the septic tank, it appearing that private respondents have not paid the amount of rentals from November, 1975 to the time they had actual knowledge of the repair of the septic tank within fifteen (15) days from said knowledge dating as early as October, 1976.

The private respondents are hereby ordered to vacate the premises in question, to return the possession of the same to petitioner Consuelo Banzon and to pay all the rentals in arrears at P180.00 monthly from November, 1975 until they shall have vacated the premises, and to pay costs of suit in all instances. Said petitioner is hereby authorized to withdraw the rentals deposited with the Court of First Instance of Rizal at Caloocan City in the amount of P2,280.00 under official receipt no. 3002990 (corresponding allegedly to the rentals from November, 1975 to December, 1976, but with a shortage of P240.00) and P5,400.00 under official receipt no. 1606599 (corresponding to the rentals from January, 1977 to June, 1979).

This decision shall be immediately executory upon its promulgation. To obviate any further delay in its enforcement, the Division Clerk of Court is directed to issue the corresponding writ of execution of the Court's judgment, directly returnable to this Court.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

* The name of Judge Ubay as presiding judge of the trial court should be excluded as co-petitioner, since he is not a party in interest. The Court has time and again ordered the striking out of the names of such judges.

[1] Page 29, Rollo.

[2] Pages 90-96, Rollo.

[3] Page 99, Rollo.

[4] Pages 102-108, Rollo.

[5] Pages 110-112, Rollo.

[6] Page 111, Rollo.

[7] Page 112, Rollo.

[8] Pages 114-115, Rollo.

[9] Pages 117-119, Rollo.

[10] Pages 120-123, Rollo.

[11] Page 122, Rollo.

[12] Page 94, Rollo.

[13] Page 95, Rollo.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.