

JIMENO DYSIONG, PETITIONER, VS. EWELL SQUARE, INC., RESPONDENT.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

This is a Petition for Review,[1] filed under Rule 42 of the 1997 Rules of Civil Procedure, asking this Court to take another look at the Decision,[2] dated December 28, 2011, rendered by the Regional Trial Court of Quezon City, Branch 88 in Civil Case No. Q-10-568418 entitled “Ewell Square, Inc. vs. Jimeno Dysiong,” the dispositive portion of which reads:

“WHEREFORE, premises considered, the decision of the court a quo dated October 6, 2010 is hereby affirmed en toto. However, in view of the supervening event of abandonment of the subject premises, the motion to restore possession of the leased premises as well as the urgent motion for ocular inspection filed by the defendant-appellee are rendered moot and academic.

SO ORDERED.”[3]

The instant case stemmed from a Complaint,[4] dated January 11, 2010, filed by herein respondent Ewell Square, Inc. (Ewell, for brevity) for ejectment, collection of unpaid rentals and damages against petitioner Jimeno Dysiong.

Respondent alleged that it was the owner of an apartment located at 161-A Biak na Bato St. cor. Del Monte Ave., Quezon City which was leased by petitioner on a monthly basis at the rate of P8,400.00. According to respondent, starting July 2009, petitioner failed to pay rentals and as of January 5, 2010, the amount due was P58,800.00.

Despite a demand letter, dated December 9, 2009, sent by respondent requiring petitioner to vacate and pay rentals, the latter still refused to surrender the premises, leading to the filing of the complaint.

In his Answer,[5] petitioner admitted to being a lessee of the subject premises since 1984 at the alleged monthly rate of P8,400.00 but denied its nature as a monthly contract. Petitioner further alleged that the lease contract was initially with the previous owner of the property, Restituto Ingal. It was further contended that the property was not owned by respondent but rather, by Douglas Tan, as shown by the demand sent to the petitioner. The non-payment of rentals was also denied by petitioner as he further averred that the eviction was part of respondent's scheme to harass tenants and effectively turn over its possession to Ewell.

Petitioner also questioned the absence of a Board Resolution sufficiently showing the authority of Douglas Tan to institute the complaint and sought to dismiss the complaint for lack of jurisdiction.

After weighing the arguments and evidence presented before it, the Metropolitan Trial Court (MeTC) of Quezon City, Branch 41 rendered its Decision,[6] dated October 6, 2010, dismissing the complaint for lack of cause of action and lack of jurisdiction, ruling in this wise:

“A perusal of the record and the pieces of evidence submitted by both parties show that the emphasized underscored ground for judicial ejectment-failure to pay rental arrearages for a total of three (3) months – was

not established by plaintiff. The original copy of O.R. No. 1625 dated 5 January 2007 issued by the former owner, Mr. Restituto Ingal to defendant states: PAYMENT OF JANUARY up to DECEMBER 2009 ADVANCE RENT in the AMOUNT OF P302,400.00. The said receipt clearly shows that when plaintiff gave a written demand letter dated 9 December 2009 to defendant to pay his back rentals from July 2009, it was barely twelve (12) days only after the last payment of defendant. As such, plaintiff did not comply with the 3-month arrearages requirement to justify a lessor to eject a lessee.

Subject matter of this case is the rental starting July 2009 to December 2009. The subsequent payment of defendant of his monthly rental after December 2009 by way of consignment to the bank is not a litigated issue herein. The court therefore opts not to resolve the same.

It appears that it was only on 9 December 2009 when defendant was officially informed that plaintiff is the new owner of the property in question. No proof was ever presented by plaintiff to show that defendant was informed about the sale of the property from its previous order (sic).

There is nothing under the law to prevent a Vendee who steps into the shoes of the original owner from objecting said lessee on the grounds provided by law. In the case at bar, the court finds that when the former owner-lessor sold the property to herein plaintiff the leased period has not yet expired.

On this score, Section 10 of R.A. No. 9653 provides that no lessor or his successor-in-interest shall be entitled to eject the lessee upon the ground that the leased premises have been sold or mortgaged to a third person regardless of whether the lease or mortgage is registered or not.

As soon as plaintiff purchased the property subject of this case he stepped into the shoes of the previous owner (previous lessor of herein defendant) and he assumed all rights and obligations of the previous owner including the obligation to recognize and respect the existing lease of the previous lessor and defendant. In *Garcia v. Court of Appeals* the Supreme Court held that the owner's successor-in-interest must respect an existing contract of lease. Any attempt to eject the lessee within the period of lease constitutes a breach of contract. In other words, the owners' successor-in-interest must respect an existing contract of lease where the lease period is still running.

All told, the filing of this ejectment case was premature. In view of the premature filing of this case, this court did not thereby acquire jurisdiction over the ejectment [case] filed by herein plaintiff. The defendant, therefore, cannot be held liable for the payment of damages and attorney's fees.

WHEREFORE, judgment is hereby rendered DISMISSING the instant case for lack of cause of action and lack of jurisdiction.

SO ORDERED.”[7]

Aggrieved, respondent elevated the case to the RTC and pending such appeal, petitioner filed a Motion to Restore Possession of the Leased Premises,[8] dated July 11, 2011, alleging that the former started renovations on the building housing the unit leased by the latter, resulting to the blockage of his entrance to the said unit.

On August 25, 2011, petitioner also filed an incident report with the Station Intelligence and Investigation Branch of the La Loma Police Station, the pertinent portion of which reads:

“At this time and date one, JIMENO DYSIONG y UY, 68 years old, married, businessman, Native of Bicol and residing at No. 128 Biak na Bato St., corner Del Monte Avenue, Barangay Siena, Quezon City, personally appeared to this Station and requested an incident to be placed on record. That on or about 3:00 p.m., 18 August 2011, at reportee's given address. His lawyer ATTY. CEPRIANO P. MARIANO, counsel of herein reportee together with barangay Captain Aple Castor of Barangay Siena, Quezon City, discovered on 23 August, 2011, that reportee's rented apartment allegedly forcibly open (sic) the door and the key is under the custody of herein reportee. That upon discovery of reportee's lawyer together with the Barangay Chairman, a

certain security guard BORJA, detailed thereat, showed allegedly entered in his logbook that certain JERRY MONTERO, pulled out all items in the apartment at about 1420H same date (August 18, 2011). Reportee further claimed that during the process his lawyer asked the guard BORJA, to show any authorization from herein reportee authorizing MR. MONTERO to pulled (sic) out the items but he could not show one. Reportee further avverred (sic) that according to security guard BORJA, that it was SG. ORLANDO BULAWAN, who allowed the pulling out of items to (sic) MR. JERRY MONTERO.”[9]

Petitioner further asked the RTC to cite respondent and/or Douglas Tan for contempt.[10] According to petitioner, despite the MeTC ruling in his favor, on March 31, 2011, respondent proceeded to fence the entrance to the premises leased by petitioner thus, blocking the same. Resultantly, petitioner filed a complaint with the barangay. Petitioner alleged that the barangay chairperson informed him that Douglas Tan claimed that the ejectment case against petitioner had already been terminated leading to the issuance of the permit for the construction of the premises. Petitioner argued that respondent misrepresented the true status of the case to the barangay authorities as the same was still pending appeal, warranting contempt of court.

On the other hand, respondent had also filed a Motion to Force Open Padlocked Premises, claiming that petitioner had abandoned the leased premises. This was countered by petitioner by stating that he had no reason to abandon the premises as he had won the ejectment case and that he was merely attending business in the province.

The RTC thus rendered the Decision,[11] dated December 28, 2011, affirming the MeTC's findings but ruled that in light of the supervening events, the issue of possession has been rendered moot and academic, to wit:

“Thus, as borne by the records, at the time of the filing of the instant ejectment suit on January 12, 2010, defendant-appellee was not in arrears for three months in the payment of rent as he had paid the same up to December 2009. Be that as it may, the Court cannot be unmindful of the supervening event which may render the ejectment of the defendant from the subject premises moot. Records show that as of August 23, 2011, the subject apartment unit previously occupied by the defendant is open, empty of household effects and abandoned per Report dated August 25, 2011 submitted by the Punong Barangay of Barangay Sienna, Quezon City having jurisdiction over the subject area, upon ocular inspection ordered by the Court.

Although the defendant denies having abandoned the subject premises in his Report on Ocular Inspection dated August 26, 2011, the Court finds particular significance in the Report of the Punong Barangay as confirmed by the defendant's counsel that the subject apartment unit is already empty of household effects and abandoned. In point of fact therefore, the issue of possession in the instant ejectment suit is rendered moot and academic.

Anent the second assigned error, this Court likewise finds no error in the ruling of the court a quo that the defendant cannot be held liable for damages and attorney's fees as there is no legal nor factual bases for the grant of the same.

WHEREFORE, premises considered, the decision of the court a quo dated October 6, 2010 is hereby affirmed en toto. However, in view of the supervening event of abandonment of the subject premises, the motion to restore possession of the leased premises as well as the urgent motion for ocular inspection filed by the defendant-appellee are rendered moot and academic.

SO ORDERED.”[12]

Petitioner sought reconsideration of the said ruling but the same was denied in an Order,[13] dated June 8, 2012.

Hence, this petition, based on the following ground:

THE LOWER COURT ERRED IN DECREEEING THAT AN ALLEGED “SUPERVENING EVENT OF ABANDONMENT OF THE SUBJECT PREMISES” HAD TAKEN PLACE, THEREBY RENDERING

MOOT AND ACADEMIC PETITIONER'S PLEA TO RESTORE POSSESSION OF THE SUBJECT PREMISES TO HIM.[14]

Petitioner argues that while the subject premises gave the impression that the same was abandoned, the truth was it was due to the fact that petitioner and members of his family were prevented from entering the unit as there were galvanized iron sheets and a fence blocking ingress thereto. Petitioner explains the lack of household effects by pointing to this Court's attention the incident report he had filed with the La Loma Police alleging that his personal property was pulled out by a certain Jerry Montero.

Respondent, on the other hand, maintains that there was no error on the part of the RTC in dismissing petitioner's motion to restore possession as the issue was rendered moot and academic.

As to the alleged prevention of petitioner from entering the property, respondent contends that "[t]he supposed blockage of the premises, at most, tends to prove only that he was prevented from reentering the subject property, but does not explain why he vacated it in the first place." [15] Respondent also contends that the lease contract had already expired, as it was on a monthly basis, thus, the issue of possession has become irrelevant.

We now resolve.

In *Gunsi, Sr. vs. The Commissioners, Commission on Elections*, [61] the Supreme Court explained that a moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value.

The present case is one for ejectment, the main issue of which is to determine who is the proper party entitled to the possession of the subject premises. According to the RTC, the supervening event which rendered the issue of possession moot and academic was the purported abandonment of the premises. Thus, this Court must analyze the surrounding circumstances in order to determine whether or not there was abandonment by the petitioner.

Dela Cruz vs. Quiazon [17] laid down the requirements for an act to constitute abandonment, as follows: (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.

Here, it becomes necessary to review the events which transpired in the order that the same had happened. The Complaint was filed on January 11, 2010. Sometime in June or July 2010, petitioner claimed that respondent cut off the water and electric services in the unit, a claim which was never denied and supported by several complaints filed by petitioner before the barangay authorities. [18] This forced petitioner and his family to stay somewhere else for hygienic and sanitary purposes. The MeTC rendered its Decision on the ejectment complaint on October 6, 2010, which respondent appealed to the RTC.

Pending appeal, petitioner also averred that he went out of town on business and when he got back to Manila, sometime in March 2011, he discovered that he could not enter the leased premises due to the construction undertaken by respondent. Again, respondent never refuted undertaking the renovation of the building which resulted in the blockage of petitioner's ingress.

The Incident Report filed by petitioner before the La Loma police authorities alleging that his personal effects inside the leased premises were taken under the orders of respondent and the subsequent application for and subsequent issuance of a Cease and Desist Order [19] filed before the Quezon City Department of Building Official negate any intent to abandon on the part of the petitioner. Again, they were ousted from the premises against their will which is contrary to the concept of abandonment which implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned. [20]

While the motion to recover possession and motion for ocular inspection have not been rendered moot and academic by reason of abandonment, there is a different circumstance which resulted in the absence of a justiciable controversy. It is settled that absent a written contract of lease entered into between the parties, the legal presumption is that it was effected on a month to month basis, which in turn permits the lessor to terminate the lease at the end of the month in question.[21] Having failed to show such a written contract, the conclusion is that the lease was on a monthly basis and the same was not renewed upon demand to vacate given by respondent. Thus, the argument regarding the mootness of the case on the basis of expiration of the lease must be given merit.

WHEREFORE, in view of the foregoing, the Petition for Review is DENIED. The Decision,[22] dated December 28, 2011, rendered by the Regional Trial Court of Quezon City, Branch 88 in Civil Case No. Q-10-568418, is AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Tijam, N.G., Chairperson, and Baltazar-Padilla, P.J., JJ., concur.

[1] Rollo, pp. 6-15

[2] Rollo, pp. 16-21

[3] Rollo, p. 21

[4] Rollo, pp. 66-68

[5] Rollo, pp. 70-90

[6] Rollo, pp. 23-29

[7] Rollo, pp. 27-29

[8] Rollo, pp. 35-39

[9] Rollo, p. 40

[10] See Motion to Cite Plaintiff and/or Mr. Douglas Tan for Contempt, Rollo, pp. 42-48

[11] Rollo, pp. 16-21

[12] Rollo, pp. 20-21

[13] Rollo, p. 22

[14] See Petition for Review, Rollo, p. 8

[15] Rollo, p. 122

[16] G.R. No. 168792, February 23, 2009

[17] G.R. No. 171961, November 28, 2008

[18] See rollo, p. 45

[19] Rollo, p. 41

[20] See Dela Cruz vs. Quiazon, G.R. No. 171961, November 28, 2008

[21] See Lopez vs. Spouses Pozon, G.R. No. 152745, March 17, 2004

[22] Rollo, pp. 16-21

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