

## JOSE QUI, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, TRINIDAD AUSTRIA AND DOMINGO AUSTRIA, RESPONDENTS.

*G.R. No. L-38059. September 04, 1975*

Ponente: ESGUERRA, J.

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### ESGUERRA, J.:

Petition for review on certiorari of the decision of the Court of Appeals in its CA-G.R. No. 41413-R, reversing that of the Court of First Instance of Rizal (Caloocan City Branch) and ordering the ejectment of petitioner from the leased premises involved herein.

The factual background of the case is as follows:

Private respondents filed an action for unlawful detainer against herein petitioner for alleged failure and refusal of the latter to pay his rentals for the leased premises for the year 1965, particularly the period from February 21, 1965, until the filing of the complaint on January 7, 1966, in the sum of P1,200.00, and for his failure to build, erect, construct and maintain a factory building on the leased premises, all in violation of their Contract of Lease (Exh. "A" and Annex "A" of Petition).

Under the Contract of Lease of February 20, 1960. entered into by and between the parties, private respondents leased to petitioner their parcel of land in Caloocan City covered by Transfer Certificate of Title No. 39943 for a period of twenty (20) years at the rate of P1,200.00 a year payable in two (2) equal installments of P600.00 every six (6) months; that upon the signing of the lease contract, petitioner (as lessee) paid to private respondents the sum of P6,000.00 as rentals for the first five (5) years; that petitioner was given the option to renew the lease contract for a like period and under the same terms and conditions as the original contract of lease; that upon the expiration of the stipulated period of twenty (20) years, the building to be constructed thereon by the petitioner shall belong to private respondents, provided that petitioner shall have been in peaceful possession of the leased premises for the full period stipulated; but upon the termination of the lease contract before the expiration of the stipulated period for any cause whatsoever, the acquisition by the private respondents of the building to be constructed shall not take place; that in the event the petitioner (as lessee) shall not exercise the option given him after the expiration of the lease, or should the lease be terminated for any cause whatsoever, the petitioner was given sufficient time to dismantle and remove all his machineries, implements, appliances and materials from the leased premises.

After paying the private respondents the sum of P6,000.00 as advance rentals for the first five years, petitioner also extended a loan to them in the sum of P600.00 payable on or before December 1, 1960.

Immediately after the signing of the lease contract, petitioner erected a factory building on the leased premises which was unfortunately razed to the ground in a fire of undetermined origin sometime in December 1960. In the meantime, while the factory building was not yet rebuilt or reconstructed, petitioner engaged in a small-scale poultry and piggyery business on the leased premises which became vacant.

The first five years of the contract of lease expired on February 20, 1965, and the petitioner would have to start paying the annual rental of P1,200.00 in two equal installments of P600.00 each very six months. On the other hand, private respondents had not yet paid the loan previously extended to them by the petitioner in the amount of P600.00; so petitioner applied the said amount to the payment of the rentals covering the period of from February 21, 1965, to August 20, 1965.

Private respondents, through counsel, sent a letter of demand to the petitioner on November 15, 1965, requiring the return of the leased premises due to alleged violation of the lease contract. Petitioner, thru counsel, replied on December 8, 1965, denying any violation thereof and at the same time remitted to the private respondents the sum of P600.00 in postal money orders in payment of his rentals for the period from August 21, 1965, to February 20, 1966, which amount the private respondents received on January 17, 1966, or ten (10) days after the filing of their complaint for unlawful detainer against the petitioner on January 7, 1966.

In his answer to the complaint for unlawful detainer, petitioner denied having committed any violation of the lease contract since he had paid all rentals due and had constructed a factory building as required in their agreement, but it was burned down through no fault of his own.

The City Court of Caloocan rendered judgment finding that, while petitioner had not defaulted in the payment of rentals, there nevertheless was a breach of contract committed by him for failing to rebuild and reconstruct the factory building that had been destroyed by fire. It declared the lease contract between the parties terminated and required petitioner to surrender the possession thereof to private respondents.

Petitioner moved for the reconsideration of the aforesaid decision. The City Court of Caloocan reconsidered it and ordered the dismissal of the action for lack of jurisdiction on September 25, 1966.

On appeal to the Court of First Instance of Rizal, the case was submitted for decision on the basis of the parties' Stipulation of Facts, which reads as follows:

"COME NOW the parties, assisted by their respective counsel, and to this Honorable Court, most respectfully submit the following:

"1. The defendant (petitioner herein) admits the averments contained in paragraphs 1 and 2 of the complaint.

"2. The plaintiffs (private respondents herein) admit the exhibits of the defendant in the lower court and the adoption of similar markings of said exhibits before this Honorable Court; the defendant, on the other hand, admits the exhibits of the plaintiffs in the lower court and the adoption of similar markings of said exhibits before this Honorable Court.

"3. The parties admit that after the execution of the contract Exh. 'A', the defendant constructed a factory building on the lot in question; however, in December, 1960, the said factory building was razed to the ground and the insurance for the burned factory building has not up to now been collected. They further stipulate that up to now the factory building has not been reconstructed and the lot in question is now used as a poultry and piggery yard.

"4. The parties stipulate that upon the signing of the contract of lease Exh. 'A' in February, 1960, the rental for five (5) years in the sum of P6,000.00 was paid; at the same time a loan in the sum of P600.00 was given to the plaintiffs by the defendant, payable on or before December 1960 (Exh. '1') and the said loan has not been paid.

"5. The parties stipulate that the defendant sent by registered mail P600.00 in postal money order (Hxhs. T, M -A') and received by the plaintiffs on January 17, 1966 (Exh. '1-B';E).

"6. The defendants contest the appellate jurisdiction of the Honorable Court.

"7. The parties stipulate to adopt their respective memoranda the lower court in support of their respective cases.

"WHEREFORE, on the basis of the foregoing stipulation of facts, the parties respectfully submit this case for decision by this Honorable Court. (Pp. 15-17, ROA; P. 5&,Rollo).

On January 3, 1968, the Court of First Instance of Rizal, Caloocan City Branch, rendered judgment in favor of petition, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the defendant and DISMISSES the complaint for ejectment."

In dismissing the complaint, the court of First Instance of Rizal found that petitioner had faithfully paid the stipulated amount of rentals and hence there was no default or violation of the contract. Further, the trial court ruled that there was no such violation despite the failure of petitioner to erect another factory building to replace the one burned, for as said by the Court.

"It is noted that the parties did not stipulate that in case the factory building was lost through fortuitous event, such as what occurred in this case, the defendant would replace it within a definite period. (Italics supplied)

"It is well settled that in the absence of any terms or conditions, the defendant should be given and afforded a reasonable period of time within which to reconstruct the factory building. The purpose of the lessee was to derive profits from the operations of the factory building which he constructed thereon and that the lessor in turn was not merely to obtain the stipulated monthly rental but more especially to acquire the ownership of the building constructed by the lessee upon the termination of the lease contract. The plaintiff has a mere inchoate right to the building upon the expiration of the twenty (20) years period. The defendant has religiously paid the monthly rentals for five (5) years and one time, even extended loan to the plaintiff to be applied as rentals in case of failure to pay. Considering that the lease contract is for twenty (20) years, defendant has still fourteen (14) years to comply with his obligation to reconstruct the factory building. (Italics supplied)

"With respect to the conversion of the lot in question into a poultry and piggery yard, it being temporary in nature, this Court finds that it does not amount to a substantial breach of the contract nor does it cause deterioration of the land.

"In view of the foregoing, it is the opinion of the Court that the plaintiff has no legal right to eject the defendant from the possession of the lot in question." (Pp. 22-23, ROA; P. 58, Rollo).

Private respondents' motion for reconsideration having been denied, they appealed to the Court of Appeals. On September 3, 1973, the Court of Appeals rendered judgment reversing that of the lower court and ordering the ejectment of petitioner from the leased premises.

After denial of petitioner's motion for reconsideration of the aforesaid decision, this petition for review by certiorari was filed.

Petitioner maintains that nowhere in the records of the two lower courts did private respondents ever raise the alleged failure of petitioner to devote the leased premises to the use stipulated by the parties as basis for his ejectment. What were only raised and threshed out as grounds for ejectment were (1) his alleged failure and refusal to pay rentals covering the period from February 21, 1965, up to the filing of the complaint, in the total sum of P1,200.00; and (2) his alleged failure to comply with the construction and maintenance of a factory building on the leased premises. Petitioner maintains that for a question or an issue to be properly taken up on appeal, the same must have been raised and debated by the parties either in the complaint and answer or at any stage during the trial of the case.

He likewise maintains that his failure to rebuild, reconstruct and replace the destroyed factory building was due to his financial difficulties caused by the non-payment of the proceeds of the insurance policy for the building, and that it was only during the early part of 1973 that he was able to reconstruct a new building of strong materials (Annex C of Petition, pp. 47-50, Rollo; p. 1, Memorandum For Petitioner). Petitioner argues that a cursory perusal of the contract of lease shows that there is no fixed period within which he is obliged to build, erect, construct and maintain a factory building, and this holds true also as regards his obligation to rebuild or reconstruct the building in case of loss or destruction thereof. But it is clear that a period was intended by them and, therefore, the governing law on the matter is Article 1197 of the New Civil Code, which provides:

"ART. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

"The courts shall also fix the duration of the period when it depends upon the will of the debtor.

"In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed of the courts, the period cannot be changed by them.(1128a)."

Petitioner insists that under the circumstances, the private respondents should have first brought an action to fix the period within which said petitioner shall comply with his obligation to rebuild and reconstruct the factory building that was razed to the ground, instead of an unlawful detainer suit. Petitioner also claims that only after such a period shall have been fixed by the courts and there is failure to observe the same that private respondents may bring an action for the violation thereof, especially considering the fact that their twenty-year lease contract will expire on February 20, 1980. Furthermore, asserts the petitioner, under the contract he has the option to renew the lease for another twenty (20) years under the same terms and conditions as the original contract and there is no doubt that he will opt for renewal in view of its favorable terms and conditions.

On the other hand, private respondents counter that the applicable law to the case is Article 1673 of the New Civil Code, in relation to Article 1657 thereof, which covers the causes for which a lessor may judicially eject a lessee in case of non-fulfillment of the obligations of the latter.

Private respondents maintain that petitioner's argument that there is still enough time to rebuild the factory building as the period of lease has not yet expired is incorrect as the petitioner is obliged under the contract to devote the leased premises to the use stipulated which is "to build, erect, construct and maintain a building for factory purposes," failing in which petitioner violated their agreement. As the obligation of the petitioner is not only to build, erect and construct, but also to maintain a factory building, private respondents reason out that after the destruction of the factory building by fire there was no more factory building to be maintained, and so the petitioner is under obligation to immediately rebuild, reconstruct and replace the factory building in order that there may be a building to be maintained in accordance with their lease contract. Private respondents claim that the Court of Appeals committed no error in finding petitioner to have violated the lease contract because of his failure to reconstruct and replace the burned factory building after the lapse of more than 12 years, and for his failure to devote the leased premises to the purpose stipulated.

Lastly, private respondents contend that the replacement of the burned building anytime within the twenty-year lease period merits no consideration for this defense was interposed only for the first time in petitioner's motion for reconsideration of the decision of the respondent Court of Appeals.

The decisive issue in this case is whether or not the failure of a lessee to rebuild, reconstruct or replace a factory building he had previously constructed on the leased premises, but razed to the ground through no fault of his, constitutes a violation or breach of contract when there is no fixed period therein for replacing the building and the courts have not fixed such period.

We have minutely scrutinized the lease contract and found therein no stipulation fixing for a period within which a factory building is to be constructed by the petitioner-lessee, or replaced in case of its loss or destruction. But by the nature and circumstances of their agreement it can be inferred that petitioner-lessee and respondents-lessors intended and contemplated a period within which a building for factory purposes is to be built, erected, constructed and maintained, as well as the reconstruction and replacement of the building in case of loss or destruction. This being the case, We cannot but agree with the petitioner that the only recourse left to the private respondents was to institute a judicial action to fix the period for the reconstruction and replacement of the burned factory building, in accordance with the provision of Article 1197 of the New Civil Code. Only after the courts shall have fixed that period can there be a breach or violation of the obligation to do so. The use of the leased premises for poultry and piggery yard in the meantime that the building is not yet reconstructed does not alter this conclusion (*Gregorio Araneta, Inc. vs. The Philippine Sugar Estates Development Co., Ltd.*, L-22558, May 31, 1967, 20 SCRA 330). It is, therefore, our opinion that in the instant case there is no breach or violation of the lease contract entered into by and between the parties thereto, since the duration of the period of performance of the obligation stipulated therein has not as yet been fixed by a competent court in a proper action pursuant to the provisions of Article 1197 of the New Civil Code.

WHEREFORE, the decision of the Court of Appeals, dated "September 3, 1973, in CA-G.R.No. 41413-R, is set aside, and ^ the decision of the Court of First Instance of Rizal, Caloocan City Branch, in Civil Case No. C-880, dismissing the complaint for ejectment, is hereby affirmed.

Costs against the private respondents.

**SO ORDERED.**

Makalintal, C.J., Castro, Teehankee, and Makasiar, JJ., concur.

Muñoz Palma and Martin, JJ., did not take part.

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