

**CHIENG HUNG, DOING BUSINESS UNDER THE NAME AND STYLE
“PANCITERIA MODERNA”, PETITIONER, VS. TAM TEN,
DOING BUSINESS UNDER THE NAME AND STYLE “WA NAM
HOTEL” (SUBSTITUTED BY SILE W...**

G.R. No. L-21209. September 27, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Certiorari to set aside orders of the Court of First Instance of Manila (Civil Case No. 49064) setting aside a previous order of the same Court, for immediate execution of a decision of the Municipal Court ordering respondent to vacate the premises at 512 Raon, corner Florentino Torres, Manila.

The building involved was owned by the Philippine Remnants Co., Inc. and was originally leased to a corporation, Panciteria Wa Nam, Inc., which in 1959 subleased the second floor (that was used to carry on the business known as Wa Nam Hotel) to the herein respondent Tam Ten for two (2) years renewable for another two at the option of the sublessee. The original lease terminated at the end of May, 1961, and thereafter, the premises were leased to petitioner Chieng Hung for two (2) years, begin-ning June 1, 1961. Sometime in April 1961, Tam Ten gave notice to the sublessor that he opted to extend his sublease, but Chieng Hung, as the new lessee refused to renew the sublease except at a higher rental and demanded surrender of the premises. As respondent Tam Ten refused to vacate or pay higher rent, a case for illegal detainer was filed against him in the Municipal Court of Manila. In due course, the latter Court rendered judgment order-ing her in respondent to vacate the premises, pay P850.00 a month until restoration of possession, plus P200.00 attorneys' fees and the costs of the suit.

Respondent herein (defendant below) appealed to the Court of First Instance. There, the petitioner-plaintiff asked for imme-diate execution because respondent-defendant had not filed a supersedeas bond and had deposited the rentals for January and February 1962, only on February 21, 1962. On March 15, 1962, the Court of First Instance, then presided by Judge Felix Antonio, granted the plaintiff's motion.

Unable to secure reconsideration, defendant Tam Ten resorted to this Court on certiorari (G. R. No. L-19715), but his application for the writ was dismissed. Thereupon, plaintiff then (petitioner herein) renewed his petition for execution in the Court below and Judge Antonio granted it on July 16, 1962. This order, upon motion of defendant Tam Ten, was reconsidered and set aside on October 24, 1962 by respondent Judge Arca, who had taken over the cog-nizance of the case; and despite efforts on the part of the plaintiff Chieng Hung, said Judge refused to reconsider or alter his resolu-tion. Hence, this application for certiorari, charging respondent Judge Arca with abuse of discretion, amounting to lack of jurisdiction.

Significantly, private respondent Tam Ten (since deceased, and now substituted in this Court[1] by his surviving widow, Mrs. Sile Wong, and by his children, Francisco, Fernandez, Paulino, Sampaguita and Lily, all surnamed Tam Fong) did not deny his failure to make timely deposit of the rental for January 1962; but his defense is that plaintiff had conspired with the former lessee sublessor, Panciteria Wa Nam, to fraudulently cut short Tam Ten's

sublease. In his view, the circumstances do not bring his case within the scope of Revised Rule 70 of the Rules of Court, on forcible entry and detainer.

It is thus readily seen that the main issue between the parties is whether or not the sublessee's option to renew his sublease for two more years is operative and enforceable against the new lessee (petitioner Chieng Hung), who refuses to recognize the undertaking of the former lessee sublessor to prolong the sublease. But whatever the merits of private respondent's position, that is to be ultimately decided in the appeal, the fact remains that said party was sued for illegal detainer and the Municipal Court found him to be a deforciant, illegally withholding possession from petitioner. Until this judgment is reversed, on appeal, such is the character that the respondent assumes in law. Hence, the proceedings, the judgment of the Court of origin and the appeal therefrom must be governed by the provisions of the Rules of Court on Forcible Entry and Detainer. We see no reason to hold otherwise.

It is expressly provided by Revised Rule 70, section 8 (and by old Rule 72, sec. 8) that where judgment is rendered against a de-fendant in a case for forcible entry or illegal detainer, "execution shall issue immediately, unless an appeal has been perfected, and the defendant, to stay execution, files a sufficient bond" and "in the absence of contract, he (defendant) shall deposit with the Court the reasonable value of the use and occupation of the premises for the preceding month or period, at the rate determined by the judgment, on or before the tenth day of each succeeding month or period. In the case at bar, this means that the adjudged P850.00 for the month of January 1962, should have been deposited by appellant (herein respondent Tam Ten) not later than February 10, 1962.

The rule further provides (sec. 8, par. 2) that "should the de-fendant fail to make the payments above prescribed from time to time during the appeal, the appellate court, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits."

Since it is confessed that the deposit was made in this case only on February 21, said deposit was made eleven days late, and entitled the petitioner, as winning party, to immediate restoration of possession. That is the settled rule,[2] and it has always been strictly applied as mandatory. And the appellate Court has been held to have no power to extend the time for making the monthly deposits or to excuse defaults therein.[3]

Considering this uniform and persistent jurisprudence, it is plain that in refusing to enforce the previous order for execution issued by Judge Antonio, the respondent Judge Arca is guilty of an evasion of positive duty, and his orders were, as petitioner contended, in grave abuse of discretion, amounting to lack of jurisdiction.

WHEREFORE, the writ of certiorari is granted. The respondent Judge's orders of October 24, 1962 and December 1, 1962, here complained of are annulled and set aside, and said respondent is directed to issue execution order for the restoration of possession of the premises to petitioner Chieng Hung, without prejudice to the appeal taking its course. Costs against private respondents.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur. Bengzon, J., on leave, did not take part.

[1] By resolution of August 8, 1967.

[2] Vda. de Posadas vs. Nievera, 94 Phil. 729; Centeno vs. Gallardo, 93 Phil. 63; Hernandez vs. Peña, 86 Phil. 411; Meneses vs. Dinglasan, 81 Phil. 470; Arcega vs. Dizon, 76 Phil. 164; Lee Tian vs. Rodas, 81 Phil. 395; Perez

vs. Fernandez, 99 Phil. 183.

[3] Zamora vs. Dinglasan, 77 Phil. 46; Cunanan vs. Rodas, 78 Phil. 800; Israel vs. Court of Appeals, 78 Phil. 327; Meneses vs. Dinglasan, 81 Phil. 470; Lee Ko vs. De Leon, 46 O.G. No. 11 (Supp. 81); Hernandez vs. Peña, 86 Phil. 411; Lopez, Inc. vs. Eastern Trading, 52 O.G. 1452.

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