

TEOFILA SALVADOR, PETITIONER, VS. HON. HERMOGENBS CALUAG, ETC., AND THE YEK TONG LIN FIRE & INSURANCE CO., LTD., RESPONDENTS.*G.R. No. L-7458. February 29, 1956*

Ponente: ENDENCIA, J.

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On June 11, 1953, the respondent corporation, Yek Tong Lin Fire & Insurance Co., Ltd., filed in the Municipal Court of Quezon City Civil Case No. 993, for ejectment, against the herein petitioner Teofila Salvador, wherein, after trial, a decision was rendered against her, the dispositive part of which is as follows:

"Procede dietar senteneia en favor de la demandaiite ordenando a la demandada que deje vacante la propiedad deadrita en la demanda y entregue su posesion a la demandante; pague a esta, por el uso y ocupacion de la prbpiedad en cuestion la cantidad de F120 al mes a partir del 26 de Mayo de 1953 hasta la fecha de la entrega de la posesion de dicha propiedad; pague, ademas, las costas del juicio. Se sobresee la reconvencion de la demandada por carecer de merito y falta de substanciacion."

Not satisfied with the question, the petitioner herein, in due time, filed a notice of appeal and the necessary appeal bond together with a supersedeas bond in the sum of P480 for the rentals corresponding to four months from May 26, 1958 to September 26, 1953.

On September 8, 1953, and before the case was docketed in the Court of First Instance of Rizal, the respondent corporation filed an urgent motion for execution of the aforequoted judgment but the same was denied in view of the fact that the herein petitioner was allowed by the Municipal Court to file, and in fact did file, a supersedeas bond to stay the execution of the judgment.

On September 25, 1953, the case was docketed in the Court of First Instance of Rizal as Civil case No. Q- 746. On October 12, 1953, the respondent corporation again filed an urgent motion for execution on the ground that the September, 1953 rental of P120 was not paid or deposited with the Clerk of Court of the Court of First Instance of Rizal on or before October 10, 1953 in accordance with the provisions of section 8, Rule 72 of the Rules of Court. On November 3, 1953, the Court of First Instance of Rizal granted said motion and on November 17, 1953 a writ of execution was issued. Immediately thereafter, or on November 19, 195S, the herein petitioner filed a motion to set aside the order of November 3, 1953 on the ground (1) that the rentals for four months from May 26, 1953 to September 25, 1953 were covered by the supersedeas bond in the amount of P480; (2) that on October 20, 1953, the defendant deposited with the Clerk of Court the sum of P120 for the rental of the premises for the month of from September 26, 1953 to October 25, 1953; (3) that on November 19, 1953, the defendant has made another deposit of P120 for the rental corresponding to October 26, 1953 to November 25, 1953; and (4) that pursuant to section 8 of Rule 72, the rental for the period of September 26, 1953 to October 25, 1953 could be paid or deposited until November 4, 1953 and that for October 26, 1953 to November 25, 1953, on December 4, 1953.

This motion was opposed by the respondent corporation invoking that in the case of Carbungco, et al. vs. Amparo,

et al., * L-2245, promulgated on May 20, 1949, it was ruled that the legal provision about the deposit of rental corresponding to the previous month within the first ten days of the next succeeding month is mandatory and that upon violation thereof a writ of execution should be granted upon petition of the plaintiff.

On January 14, 1954, the Court of First Instance, denying petitioner's motion' of November 19, 1953, entered the following order:

"By virtue of the order issued by this Court on November 3, 1953, a writ of execution of the decision rendered by the inferior court ordering the defendant to vacate the property in question and to deliver possession thereof to the herein plaintiff was issued. On November 19, 1953, a motion was presented by the counsel for the defendant praying that the said order of November 3, 1953 be set aside and that the writ of execution issued be cancelled. An opposition to the said motion to set aside was presented by the counsel for the plaintiff.

"After going over the arguments set forth in both motion to set aside and opposition thereto, the Court has arrived at the conclusion that said order of November 3, 1953 ordering the issuance of a writ of execution of the decision rendered by the inferior court must stand. In the case of *Bagtas vs. Tan, et al.* (L-6050), Our Supreme Court held:

'In a forcible entry or detainer case, a supersedeas bond covers only rentals in arrears, up to the elevation of the case to the court of first instance on appeal, by the perfection of the appeal, and in addition to the supersedeas bond, to stay execution during the appeal, the defendant-appellant should deposit in the court or pay to the plaintiff the current rentals as they become due on or before the tenth' of each calendar month for the preceding month (Rule 72, Sec. 8).'

From the foregoing doctrine, it is clear that the mere filing of the supersedeas bond to cover rentals in arrears up to the perfection of the appeal will not relieve the defendant-appellant in the present case from depositing in court or paying to the plaintiff the current rentals as they became due 'on or before the tenth of each calendar month for the preceding month'. As shown by the record of this case, the defendant herein failed to make the necessary deposit or to pay the plaintiff the rental due as required by Sec. 8, Rule 72 of the Rules of Court; she only made the first deposit on October 20, 1953, date is far beyond the period when she should have done so as provided by said Rule. Likewise, in the case of *Guzman vs. Lichauco* (42. Phil. 291) it was held that the term 'calendar month' does not mean every period of thirty days beginning from the date of the appeal, but it has reference to the month in the calendar.

"In view of the foregoing, the motion to set aside the order of this Court dated November 3, 1953 is hereto denied, and let the writ of execution issued be given due course."

Hence, the present petition for certiorari, injunction, and prohibition.

It is contended by the respondent corporation that the rental of the premises corresponding to the period September 26, 1953 to October 25, 1953 should be paid or deposited on or before October 10, 1953 and the rental for October 26, 1958 to November 25, 1953 should be paid on or before November 10, 1953. Petitioner, in turn, contends that the first rental in question can be paid until November 4, 1953 and the second, on December 4, 1953.

In the aforequoted decision of the Municipal Court of Quezon City, the herein petitioner was ordered to pay P120 monthly from May 26, 1953, and not from May 1 to May 30, 1953. Therefore, the first rental that the herein petitioner should pay or deposit in this case should mature on June 25, 1953 and the second and succeeding rentals would mature every 25th day of the succeeding month. The record discloses that the rentals from May 26, 1953 up to September 25, 1953 in the sum of ₱ 480 was covered by the supersedeas bond approved by the Municipal Court and transmitted to the Court of First Instance of Quezon City; the rent for the month of from September 26, to October 25, 1953 was deposited on October 20, 1953, as per Official Receipt No. B-4265175;

the rent for the month of from October 26, 1953 to November 25, 1953 was deposited on November 19, 1953, as per Official Receipt No. B-4265206; and the rent for one month corresponding to the period from November 26, 1953 to December 25, 1953 was deposited on December 10, 1953, as per Official Receipt No. B-4265238. Yet, on January 14, 1954, the respondent judge gave due course to the writ of execution. Certainly,' this is an evident error, for in the present case there has been payment in due time, for the first rent could be paid up to October 25th, the second up to November 25th, and the third up to December 25th, yet said rents were not incurred in the delinquency of payment of the rents in question. So, there is no legal basis for executing the decision of the Municipal Court of, Quezon City which according to the aforecited section 8 of Rule 72 of the Rules of Court should be executed if the defendant fails to deposit in court within ten days of the succeeding month the rental corresponding to the previous month. In reaching the foregoing conclusion, we are not unmindful of the ruling laid down in the case of De Guzman vs. Liehaucó (42 Phil., 291) which the lower court took into consideration in issuing the disputed writ of execution, but the question raised in that case, was whether the starting point for the computation of one month is the date of the appeal and not the calendar month composed of thirty days as denned by Section 18 of the Revised Administrative Code. Thai case therefore has no parity with the present case ^wherein the point in issue is whether the decision of the Municipal Court of Quezon City should be executed only because the rent corresponding to September 26, 1958 to October 25, 1953 has been paid on October 20 and not on or before October 10, 1953 and the rent for October 26, 1953 to November 25, 1953 was paid on November 19, 1953 and not on or before November 10, 1953. It is our considered opinion that in cases of monthly rents which could be paid from a given day of a month up to a given day of the following month, the calendar month within which the rent could be deposited or paid should be that following the month in which the rent matured, i. e., if the rent matures on any day for the month of October, the calendar month referred to in section 8 of Rule 72 within which the rent should be paid to avoid execution of the decision shall be the month of November, and so on. Wherefore, the petition is hereby granted and the preliminary injunction issued in this case made permanent enjoining the respondent judge to execute his Order dated January 14, 1953, without costs.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

* 83 Phil., 639.

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