

ANTONIO CHUA, PETITIONER, VS. COURT OF APPEALS, AND STAR GROUP RESOURCES AND DEVELOPMENT, INC., RESPONDENTS.

G.R. No. 106573. March 27, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse and set aside the decision of the Court of Appeals in CA-G.R. SP No. 27979, which dismissed petitioner's appeal from the decision of the Regional Trial Court, Branch 34, Iloilo City in Civil Case No. 20086. The decision of the trial court affirmed the decision of the Municipal Trial Court of Iloilo City in Civil Case No. 228(89), ordering the ejectment of petitioner.

We deny the petition.

I

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

"Petitioner is one of the lessees of Lot No. 180-I located at corner Iznart and Ledesma Streets, Iloilo City and formerly owned by and registered in the names of Lourdes Locsin, Manuel Locsin, Ester Locsin Jarandilla, Maria Locsin Vda. de Araneta and Jose Locsin under TCT No. T-46841 (later, TCT No. T-83230). It appears that petitioner had been leasing said property since 1938 by virtue of a written lease contract which had been continuously renewed for a two-year term per renewal. The latest written contract of lease covered the period from September 1, 1987 to August 30, 1989.

"Meanwhile, the Locsins executed a Deed of Absolute Sale dated September 18, 1989 conveying the subject premises to the herein private respondent Star Group Resources and Development, Inc. Subsequently, petitioner admittedly received private respondent's Notice to Vacate dated November 10, 1989. However, petitioner refused to vacate the subject premises prompting private respondent to file a complaint for Unlawful Detainer on the ground of expiration or termination of the lease, before the Municipal Trial Court of Iloilo City, Branch I in Civil Case No. 228(89). Petitioner filed his Answer with Counterclaim.

"The case was tried under the regular procedure since the amount demanded exceeded P20,000.00. Trial ensued. After the parties presented their evidence in support of their respective claims, the MTC-Iloilo City, Branch I rendered a Decision dated October 10, 1991, the dispositive portion of which reads, as follows:

'WHEREFORE, judgment is hereby rendered in favor of the plaintiff, STAR GROUP RESOURCES AND DEVELOPMENT, INC. and against the defendant ANTONIO CHUA, ordering the latter or any person or persons acting in his behalf, to wit:

1. To vacate the premises of Lot No. 180-I, as well as, the portion of the building standing thereon covered by Transfer Certificate of Title No. T-83230, situated at the corner of Ledesma and Iznart Sts., Iloilo City and deliver possession to the plaintiff;

2. To pay plaintiff the amount of P9,500.00 per month from September 1, 1989 with an increase of 20% every September of each year, as reasonable compensation for the use and occupation of the premises, until the same are completely delivered to the plaintiff; and,

3. To pay costs of suit.'

"Defendant's counterclaim is ordered dismissed for lack of merit" (Rollo, pp. 43-45).

II

The pivotal issue is whether the lease contract has been renewed in accordance with the terms thereof.

The lease contract provides:

xxx xxx xxx

"Term - the term of this contract shall be for a period of Two (2) Years, beginning September 1, 1987 to August 30, 1989"

xxx xxx xxx

(Rollo, p. 54).

The lease contract contains provisions on renewal and termination, thus:

xxx xxx xxx

"Renewal - LESSEE agrees to give LESSOR thirty (30) days prior written notice, in advance, of its intention to terminate or renew this contract. If no written notice is received from LESSEE of its intention to renew the contract, LESSOR shall consider the Contract to be terminated on the date the lease period ends. During the 30 days period notice, unless LESSEE has given LESSOR its intention to renew the lease, LESSOR may bring in the leased premises prospective tenants provided the same be done during reasonable hours."

"Termination - LESSEE may terminate this Contract at any time giving LESSOR thirty (30) days written notice in advance of its intention."

xxx xxx xxx

"Upon termination of the period of lease unless LESSEE has indicated its intentions to renew the contract, LESSEE shall return and surrender the leased premises in as good a condition as reasonable wear and tear may permit without any delay whatsoever, x x x"

xxx xxx xxx

(Rollo, p. 56).

The contract is emphatic that if "no written notice is received from LESSEE of its intention to renew the contract," the contract terminates at the end of the lease period. It is also stipulated therein that upon termination of the period of lease and "unless LESSEE has indicated its intention to renew the contract," the lessee has to surrender the leased premises to the lessor.

The notice must be given 30 days before the expiration of the lease period, which was on August 30, 1989. The notice to renew dated August 18, 1989 sent by petitioner and received by the lessor on August 22, 1989 cannot be treated as the required notice as contemplated in the lease contract.

Petitioner, citing *Dioquino v. Intermediate Appellate Court*, 179 SCRA 163 (1989), insists that it is sufficient that

the notice to renew be served before the expiration of the lease (Rollo, pp. 25-26).

Dioquino is not supportive of petitioner's conclusion. In said case, we held:

"In the absence of a stipulation in the lease requiring notice of the exercise of an option or an election to renew to be given within a certain time before the expiration of the lease, which, of course, the lessee must comply with, the general rule is that a lessee must exercise an option or election to renew his lease and notify the lessee thereof before, or at least at the time of, the expiration of his original term, unless there is a waiver or special circumstances warranting equitable relief (50 Am Jur. 2d. 1182, pp. 68-69; underlining supplied)."

In the case at bench, there is an express stipulation in the lease contract requiring a notice of the exercise of the option or election to renew, which must be given within a fixed period before the expiration of the lease.

Petitioner contends that assuming arguendo that the renewal notice had to be sent at least 30 days before the expiration of the lease, the lessor had waived such requirement.

The giving of a notice of renewal within a specified period is a condition precedent to the promisor's duty of rendering his promised performance (cf. 3A Corbin On Contracts 513-514 [1960]).

The act of the lessor in renewing a lease even without the prior notice to renew on the part of the lessee, is not a waiver as to a notice for renewal as required by a subsequent lease contract. For such a result, there must be such conduct on the part of the lessor as to make the lessee reasonably believe that said requirement of notice for renewal prior to the termination of the lease will not be insisted on in the future. Some other acts or representations were needed to show that the lessor had waived the notice requirement stipulated in each of the series of lease contracts. The circumstances attendant to the instant case are not enough, standing alone, to induce such a belief (cf. 3A Corbin, Ibid., 493-494).

An essential element of estoppel is that the party sought to be concluded by it should have intended that his words or conduct would be relied upon by others and influence their action, or that he should have known or had reason to believe that said words or conduct would have such an effect (28 Am. Jur. 2d. 647-648).

There is a difference between a waiver of the right to enforce a condition stipulated in the contract and a waiver of the stipulation itself. As found by the Court of Appeals, the renewals of the lease contract, inspite of the lack of or tardiness in giving the written notices, were mere acts of tolerance on the part of the lessor. The renewals were mere exercises of the right of ownership of the lessor which he could do regardless of the provision in the lease contract requiring a notice of renewal within a prescribed period.

What petitioner glossed over but which is telling to his case is the fact that every time the lease contract was renewed, the provision on the notice requirement was always incorporated therein. Petitioner could have and should have insisted on the deletion of the provision on the ground that it was not intended to serve any useful purpose.

Petitioner next contends that if he was required to give a written notice of renewal 30 days before the date of expiration of the lease, he should also be given a notice to vacate within 15 days from the expiration of the lease; otherwise, an implied renewal was deemed to have taken effect under Article 1670 of the Civil Code of the Philippines.

Petitioner cannot invoke the provision of Article 1670 on implied renewal of lease or tacita reconduccion because under Article 1669 of the Civil Code of the Philippines, his lease contract is for a determinate time which ceased upon the day fixed without the need of a demand (Vda. de San Juan v. Tan, 116 SCRA 447 [1982]; De Laureano v. Adil, 72 SCRA 148 [1976]).

Under the Revised Rules of Court, demand to vacate is not required when the action is to terminate the lease because of the expiration of its term. Upon the expiration of the term, the tenant becomes a deforciant unlawfully withholding the property (*V Tolentino*, Civil Code of the Philippines 241 [1992]; *Co Tiamco v. Diaz*, 75 Phil. 672 [1946]).

Assuming that the provision of Article 1670 is applicable to petitioner's case, still that law does not require that the notice to vacate be given before the lease expires. The notice required under said provision is the one given after the expiration of the lease period for the purpose of aborting an implied renewal of the lease (*Gamboa's Incorporated v. Court of Appeals*, 72 SCRA 131 [1976]). The predecessor-in-interest of private respondent sent petitioner a Notice to Vacate on August 23, 1989 and private respondent sent another notice to petitioner to vacate in November, 1989 (*Rollo*, pp. 44-50).

Assuming further that an implied lease arose, the lease would only be month-to-month since the rentals were paid monthly and not for the period of the original contract (Civil Code of the Philippines, Art. 1670 in relation to Art. 1687). A month-to-month lease under Article 1687 is a lease with a definite period and is terminable at the end of each month upon demand to vacate by the lessor (*Palanca v. Intermediate Appellate Court*, 180 SCRA 119 [1989]; *Bondoc v. Court of Appeals*, 177 SCRA 588 [1989]).

Petitioner claims that the provision of the lease contract on renewal is ambiguous because it does not state the "reference point as to when the 30-day notice to renew should be reckoned from" unlike the provision on termination of the lease, which specifically requires the sending of the notice to terminate 30 days in advance of the expiry date (*Rollo*, pp. 22-24).

We do not find any ambiguity in the wording of the provision on termination of the lease. The reference point sought by petitioner is the "date the lease period ends." The notice to renew must be given 30 days before that date and if no such notice is given, the "LESSOR shall consider the Contract to be terminated on the date the lease period ends."

There being no ambiguity in the applicable provision of the lease contract, there is no basis to allow oral testimony whether under the Statute of Frauds (Civil Code of the Philippines, Art. 1403, par. 2 [e]) or the Parol Evidence Rule (Rules on Evidence, Rule 130, Sec. 9; *Syquia v. Court of Appeals*, 151 SCRA 505 [1987]), to prove that petitioner was given verbal assurance of a renewal of the lease and "first priority to buy in case of sale of the leased premises" (*Rollo*, pp. 31-34).

The lease contract expressly reserves to the lessor the right to sell or mortgage the property. The only obligation of the lessor was to inform the lessee of the plan to sell the property and to require the purchaser or mortgagee to respect the terms of the lease contract.

Finally, the different considerations which petitioner claims entitle him to stay in the leased premises either involve questions of fact (e.g. the fraud and deceit perpetrated by the lessor) or matters of equity (e.g. the length of stay of petitioner in the premises, the improvements introduced therein, the willingness of petitioner's children to buy the premises) (*Rollo*, p. 36).

The findings of the Court of Appeals on the factual matters shall not be disturbed, there being no basis to do so (*CMS Logging, Inc. v. Court of Appeals*, 211 SCRA 374 [1992]).

The equitable considerations can not serve to justify petitioner's continued occupancy of the premises. Equity is not a replacement of law and is available only in the absence thereof. "Equity is described as justice outside legality, which simply means that it can not supplant, although it may, as often happens, supplement the law" (*Aguila v. Court of First Instance of Batangas, Branch I*, 160 SCRA 352, 360 [1988]).

There are pertinent laws governing the relation of the parties, particularly the provision on the termination of a lease made for a determinate time upon the day fixed (Civil Code of the Philippines, Art. 1669), the substantive grounds for the ejectment of the lessee (Civil Code of the Philippines, Art. 1673), the obligation of the lessee to return the thing leased to the lessor upon the termination of the lease (Civil Code of the Philippines, Art. 1665), and the procedure for the ejectment of the lessee who unlawfully withholds the possession of any land after the expiration of the right of possession (Revised Rules of Court, Rule 70, Sec. 1).

As to the valuable improvements which petitioner claims to have introduced on the premises, he can invoke Article 1678 of the Civil Code of the Philippines, which allows a lessee to remove the improvements made in good faith, should the lessor not elect to retain them by paying the amounts fixed by law for their value at the time the lease is terminated (*Syquia v. Court of Appeals*, *supra*).

WHEREFORE, the petition is DENIED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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