

HENRY L. SIA, PETITIONER, VS. THE HON. COURT OF APPEALS, AND TORRE DE ORO DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 108222. May 05, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us is a petition for review of the decision[1] of the Court of Appeals[2] in an ejectment case.[3] Respondent appellate court affirmed the decision on appeal[4] rendered by the Regional Trial Court of Misamis Oriental[5] which ordered the ejectment of petitioner on the ground of expiration of lease contract. The Court of Appeals and the Regional Trial Court in effect reversed the Municipal Trial Court[6] which decided in favor of petitioner and dismissed private respondent's complaint for ejectment.[7]

Petitioner, in setting forth his summary statement of facts, quoted the narration thereof rendered by the Court of Appeals in the herein assailed decision. Said narration runs in this wise:

"The facts are as follows: Atty. Rodolfo N. Pelaez was the owner of a parcel of land at the corner of Tiano Bros. Street and Cruz Taal Street, Cagayan de Oro City. He leased the land to Henry L. Sia's parents, the spouses Lim Siok Oan and Sia Bon Suan, who in 1970, constructed a building with the consent of lessor. When Rodolfo Pelaez died, the land was inherited by his son, Atty. Pacifico Pelaez, who sold it to the private respondent Torre de Oro Development Corp. On the other hand, petitioner succeeded to the rights of his parents as lessees of property, upon the latter's death.

On March 22, 1988, private respondent Torre de Oro Development Corp., represented by Atty. Pacifico Pelaez, and petitioner Henry L. Sia entered into a lease contract (Exh. H) of the land in question under the following terms and conditions:

'That the LESSOR hereby leases unto the LESSEE, his property located at Corner Tiano Bros. St., and Cruz Taal St., known as Cad. Lot No. 401 (bigger portion) for a period of One (1) year counting from this date, particularly bounded as follows:

A parcel of commercial land, without the improvements, bounded on the North by Cruz Taal St., on the East by Matilda Menciano; on the South by Rodolfo N. Pelaez and on the West by Tiano Bros. St., having an approximate area of 391.62 sq. meters, per Tax Decla. No. 0907 assessed at P153,440.00 covered by TCT No. 36954 in the name of TORRE DE ORO DEVELOPMENT CORPORATION subject to the following conditions, to wit:

1. That the LESSEE agrees to pay the sum of TWO THOUSAND PESOS (P2,000.00) as monthly rental effective January 1987;
2. That the LESSEE cannot sublease the property without the written consent of the LESSOR during the life of this contract;
3. That the LESSOR shall pay all the taxes of the property, except the improvements;
4. That the LESSEE shall pay all the bills for the electric light and telephone bills including (telephone)

installations;

5. That all installations of any appliances such as air-conditioning unit, TV sets or other electrical appliances shall be for the account of the LESSEE;

6. That the period of this lease is for One (1) year counted from January 1988 and renewable for another year [after] every expiration of the contract upon agreement of both parties;

7. That a sketch of the property occupied is herein attached marked as Annex "A" and made an integral part of this contract;

8. That the LESSEE agrees to pay increase of the rental for 1987-1988 should there be an increase in the assessed value (Taxable) value of real property subject matter of this contract resulting from the general revision of property assessment conducted by our National Government pursuant to the provision of existing law.'

On December 22, 1988, private respondent sent a letter (Exh. I) to petitioner, informing him that it was not renewing their lease contract after its expiration, on the ground that petitioner had subleased the property without the written consent of private respondent, in violation of condition par. 2 of the lease contract. In letters dated December 26, 1988 (Annexes B-1 to B-5) the sublessees were similarly notified of the expiration of petitioner's lease and were advised that in case they wished to continue with their lease, arrangements should be made directly with private respondent.

Petitioner, through counsel, wrote a letter to private respondent dated January 20, 1989 (Exh. J), stating that the increase in rent from P2,000.00 to P8,500.00, which private respondent demanded, was excessive. He intimated that he was willing to pay an increase of P500.00 only.

Private respondent ignored the offer, but petitioner insisted on remaining in the premises. Private respondent Torre de Oro Development Corp., therefore, brought this suit in the court below for his ejectment.

On June 26, 1990, the Municipal Trial Court rendered judgment in favor of petitioner. However, on appeal, the Regional Trial Court reversed its decision."^[8]

The Regional Trial Court, on appeal, ascribed error to the Municipal Trial Court for having dismissed private respondent's complaint for ejectment on the ground of prematurity, for at the time said complaint was filed on February 8, 1989, the lease contract had in fact already expired. The Regional Trial Court pointed out:

"xxx Exhibit H, the lease contract appears to be a common evidence of the parties. Exhibit H was signed by the parties on March 22, 1988 and notarized on April 5, 1988. These different dates are normal occurrences in notarial practice due to the peculiar circumstances of the parties and the notary. xxx [B]ecause the contract must have an end or "cut off" date to govern the relationship of the signatories thereto the parties agree to fix the start and the end of the contract by declaring a date clearly expressed in the contract. In this particular contract, the parties signed and agreed to the expressed terms, to wit:

'That the LESSOR hereby leases unto the LESSEE, his property located at Corner Tiano Bros. St. and Cruz Taal St. known as Cad. Lot No. 401 (bigger portion) for a period of One (1) year counting from this date.' xxx

'1. That the Lessee agrees to pay the sum of Two Thousand Pesos (P2,000.00) as monthly rental effective January 1987.'

'That the period of this lease is for one (1) year counted from January, 1988 and renewable for another year [after] every expiration of the contract upon agreement of both parties.' xxx

The foregoing terms were voluntarily agreed by the parties as there was no allegation of force, undue influence or intimidation that attended the signing thereof. All the three paragraphs must perforce be read and understood

in its [sic] entire context as we are not allowed to emasculate any part thereof or add anything which is not found in the agreement. In short, the parties agreed that the Lessee shall pay a monthly rent to plaintiff in the sum of P2,000.00 xxx; that the lifetime of the contract is for one year; and that the one year period of the lease shall start or be 'counted from January, 1988 and renewable [sic] for another year [after] every expiration of the contract upon agreement of both the parties.'

It is the strong conviction of this court that in the interpretation of contracts the entire document must be fully read, evaluated and considered, taking into consideration the intention of the parties and giving effect and force to all its provisions. xxx Every paragraph leads to one intention if taken as a whole and that is, that the rental every month is P2,000.00; that the contract is on a yearly basis renewable only if agreed by both parties, that the one year period shall be counted from January, 1988. To give the said provisions and covenants another interpretation would result in an absurd situation as the one year period was never meant to start on March 22, 1988 or April 5, 1988; otherwise the parties should have included or expressed the same within the enumeration of the terms, conditions or lifetime of the lease contract. Besides, the date of signing is not material or decisive to the present discussion because the parties had already agreed in writing as to a specific date, which is January 1988 and to end December, 1988. In view of the foregoing observation, this court finds that the contract started in January, 1988 and ended one year after, ergo, the complaint has stated a sufficient cause of action and must perforce be reinstated and given legal effect."^[9]

Consequently, the Regional Trial Court upheld the right of private respondent as lessor to terminate the contract of lease upon expiration thereof, regardless of the tenability of petitioner's violation of the prohibition against the sub-leasing of the leased premises which was private respondent's original ground for ejecting petitioner.

"At the time of the filing of this case and during the execution of the Lease Contract, Exhibit H, the parties cannot deny that there was already a commercial building standing on the land in dispute since the early part of 1971 because there was a big fire in 1969 that razed down the Divisoria area including the building that used to stand on the land. After the construction of the building it cannot be denied that the purpose of the building which cost the defendant's predecessors the sum of P35,000.00 was to have it subleased to several tenants subject to the terms of their contract which expressly prohibited any sub-lease. This court finds the situation incongruous but cannot fault the defendant on this because the violation or non-violation of this prohibition is not very relevant to this resolution. Whether there was a violation or not on the sublease, the fact remains that it is the legal and contractual right of plaintiff to terminate the contract as he pleases after the expiration of the same. It is therefore the submission of this court that this issue simply has by its own nature and weight paled into insignificance and limbo."^[10]

The Municipal Trial Court, in the course of dismissing private respondent's complaint for ejectment, also ruled that petitioner is a builder in good faith in contemplation of Article 448 in relation to Article 546 of the New Civil Code and that as such, he cannot be ejected without being paid the fair market value of the commercial building erected on the leased premises by his parents. Again, the Regional Trial Court found this ruling by the court a quo to be erroneous. The Regional Trial Court ratiocinated, thus:

"It must always be remembered that Art. 448 of the New Civil Code comes in only when the possessor builds on the land of another believing that he is the owner of the land of another. The facts in this proceeding are very much different. Defendant Henry Sia is a tenant of plaintiff and no amount of denial or legal forensic can add or alter that status of the defendant. This being so, it must perforce be safe to uphold that the provisions of Article 1678 of the New Civil Code shall govern the respective rights of the parties herein. The Supreme Court said a mouthful in the following cases affirming the applicability of Art. 1678, as it ruled as follows:

'In connection with the petitioner's contention that she be considered a builder in good faith and, therefore, entitled to reimbursement in addition to reasonable expenses that may be incurred in transferring the house to another place, the same cannot stand legal scrutiny. The rule is well-settled that lessees, like petitioner, are not possessors

in good faith, the premises continues only during the life of the lease, and they cannot as a matter of right, recover the value of their improvements from the lessor, much less retain the premises until they are reimbursed. Their rights are governed by Article 1678 of the Civil Code which allows reimbursement of lessees up to one-half of the value of their improvements if the lessor so elects.' (p. 250, underlining supplied) (Bocaling vs. Laguna, et al. 54 SCRA 243).'

'Moreover, as correctly found by the trial court, the plaintiffs-appellants, as lessees, are neither builders in good faith nor in bad faith. Their rights are governed not by Article 448 but by Art. 1678 of the New Civil Code. xxx As lessees, they may remove the improvements should the lessor refuse to reimburse them, but the lessee does not have the right to buy the land.' (pp. 368-369, citing *Southwestern University vs. Salvador*, 90 SCRA 318, 329-330)

xxx xxx xxx

In this connection, this court finds that the court a quo erred in applying the provisions of Arts. 448 and 527 of the New Civil Code to the case at bar because said ruling is against the principles set by the New Civil Code and of our established jurisprudence."[11]

The Regional Trial Court therefore rendered its decision on appeal setting aside the judgment of the court a quo and ordering petitioner to vacate the leased premises and to pay private respondent a monthly rental of P5,000.00 from December, 1988 until he actually vacates said premises. Petitioner was also adjudged liable for P5,000.00 as litigation expenses and P10,000.00 as attorney's fees.

Aggrieved by the foregoing decision, petitioner appealed to the Court of Appeals. Respondent appellate court, however, also found the court a quo's decision in favor of petitioner, to be starkly lacking factual and legal basis, if not contrary to prevailing legal jurisprudence. In agreeing with the Regional Trial Court's critique of the court a quo's decision, the Court of Appeals made its ruling in the following manner:

"First. The contract of lease between private respondent Torre de Oro Development Corp., as lessor, and petitioner, as lessee, was for one year. This period was to be counted from January 1988, so that the lease expired on December 31, 1988. Private respondent gave notice in December 1988 of its intent not to renew the contract, by sending letters to petitioner and his sub-lessees. Private respondent, therefore, had the right to eject the lessee, in accordance with art. 1673(1) of the Civil Code, after the expiration of the contract.

Petitioner contends, however, that under art. 448, in relation to art. 546 of the Civil Code, he is entitled to remain in the building until he is paid its value because he is a builder in good faith, and that art. 1678 does not apply because this provision refers to a case where the lessor is the owner of both the land and the building and the lessee makes improvements on the building. Petitioner contends that in that case, the lessee cannot be considered to be a builder in good faith because he knows he is not the owner of either the land or the building.

This contention is without merit. Art. 546 applies only to a case where a party builds or sows or plants in a land in which he believes himself to have a title and not to lands wherein his interest is merely that of tenant under a lease contract. [5 *Tolentino*, Civil Code of the Philippines 222 (1959); *Salonga v. Farrales*, 105 SCRA 359 (1981); *Balacunag v. Francisco*, 122 SCRA 498 (1983); *Gabrito v. Court of Appeals*, 167 SCRA 771 (1988); *Maceda v. Court of Appeals*, 176 SCRA 440 (1989)]

Petitioner, then, as a lessee, is not a builder (whether in good faith or in bad faith). His rights are governed entirely by art. 1678 of the Civil Code, which provides:

If the lessee makes on good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse

said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

Thus, his only right is to reimbursement for his useful improvements but he has no right of retention. [Mantruste System, Inc. v. Court of Appeals, 179 SCRA 137 (1989); Vda. de Bacaling v. Laguna, 54 SCRA 243 (1973); Racaza v. Susana Realty, Inc. 18 SCRA 1172 [1966]; Lopez, Inc. vs. Phil. & Eastern Trading Co., 98 Phil. 348 [1956]]"[12]

The respondent appellate court, however, modified the decision of the Regional Trial Court; it computed the monthly rental of P5,000.00 from January, 1989 and not from December, 1988, and deleted the award of attorney's fees. The Court of Appeals explained the modification in this wise:

"Petitioner also contends that the RTC had no power to fix the monthly rental at P5,000.00 since the original monthly rental of P2,000.00 as stated in the lease contract was the law between the parties.

The monthly rental of P2,000.00 was fixed in the contract of lease, which expired on December 31, 1988. After that, there was no longer any agreement concerning the monthly rental. As petitioner remained in the premises over private respondent's objection, he is liable to private respondent for such reasonable compensation for the use and enjoyment of the land as may [be] fixed by the courts. [Shoemart, Inc. v. Court of Appeals, 190 SCRA 189 (1990); Felisilda v. Villanueva, 139 431 (1985)]

In this case the amount of P5,000.00 was fixed by the RTC taking into account the following factors, to wit: the realty assessment of the land, which the commissioner found to be a prime lot, the increase in realty taxes; and the prevailing rate of rentals in the vicinity. We find the amount fixed to be fair and reasonable. However, the rentals should be computed from January 1989, after the expiration of the lease contract, and not from December 1988, since it has been established that petitioner had already paid the rental for the month of December, on December 27, 1988. (Exh. J)

The award of attorney's fees should also be deleted since the RTC in its decision did not justify such award. As an award of attorney's fees is the exception rather than the rule, it should be justified in the decision of the trial court; otherwise it must be deleted on appeal. [Abrograr v. IAC, 157 SCRA 57 (1988); Buan v. Camaganacan, 16 SCRA 321 (1966)]."[13]

Despite the categorical pronouncement of respondent Court of Appeals and of the Regional Trial Court as to private respondent's right to terminate its lease contract with petitioner upon the undisputed expiration and non-renewal thereof as well as private respondent's right under Article 1678 of the Civil Code to choose between (1) paying petitioner 50% of his building's fair market value at the time of the termination of the lease contract and (2) refusing to so pay, in which case petitioner may remove his building from private respondent's land, petitioner has persisted to draw from Article 448 in relation to Article 546 of the New Civil Code, the right to retain possession of the leased premises until petitioner has been reimbursed an amount equivalent to 100% of his building's fair market value. This is mainly his ground for seeking from us the reversal of the herein assailed decision of the Court of Appeals, although he also decries what he perceives as the lack of jurisdiction on the part of the court a quo to adjudicate the issues of (1) the applicability in the instant case of Article 448 of the New Civil Code and (2) the determination of the reasonable value of the improvements built on the leased premises.[14]

Petitioner's contentions are utterly bereft of merit.

First. Petitioner, after obtaining a favorable decision from the court a quo, now renounces the jurisdiction of that same court simply because its decision has been struck down twice on appeal and appears doomed to a final reversal by this court. To buttress its contentions, petitioner asserts that the jurisdiction of the court a quo in any

ejectment case is only limited to the issue of possession de facto and may not be expanded as to make it legally permissible for the court a quo to determine the retention right of a lessee-builder and to fix the reasonable value of the improvements that the lessor is to reimburse and pay the lessee-builder.

Petitioner asserts this obviously in utter desperation if only to salvage his case. He cannot renounce the jurisdiction of the court a quo considering that he had earlier submitted to such jurisdiction and, in fact took advantage of it, in order to obtain a declaration of his rights, as builder in good faith, to retain the leased premises until he is paid the full amount of the fair market value of the building constructed by his parents on private respondent's land. Now that not only one but two appellate courts have more than amply exposed the substantial errors in the decision of the court a quo, petitioner vents his attack against the court a quo itself which if allowed by this court could result in the nullification of the decision of the court a quo and the remand thereto of the case for further proceedings, thereby buying petitioner some more time to hold on to the possession of both his building and private respondent's land where his building stands. Not only will we not allow this, but more importantly, we may not and should not, allow petitioner's measure of desperation.

Petitioner during the pre-trial, agreed with private respondent as to what issues shall be passed upon by the court a quo. Stated said court in its decision:

"As embodied in the order of this court dated March 21, 1989 and January 18, 1990, the issues to be resolved are: 1. Whether the contract of lease has not yet expired when the instant complaint was filed; 2. Whether defendant subleased the area or not; 3. Whether plaintiff owns the building upon the expiration of the contract; and 4. Whether plaintiff can legally eject defendant from the leased premises." [15]

In resolving issues 3 and 4, the court a quo found it necessary to determine the good faith or bad faith of petitioner's parents in constructing the building on private respondent's land. Having agreed to the foregoing stipulation of issues and their determination having in fact been favorable to petitioner, petitioner is now estopped to assail the act of the court a quo of resolving such issues. Petitioner is bound thereby, and we cannot sanction petitioner's belated jurisdictional attack which we perceive to be motivated not by a genuine belief in the correctness of his legal posturings but by his mounting fear that the decision on appeal adverse to him, will be ultimately affirmed by this court and attain finality. As we have held in the case of *Cloma v. Court of Appeals*: [16]

"xxx [I]t is too late in the day for petitioners to question the jurisdiction of the trial court. xxx Voluntarily submitting to the jurisdiction of the trial court, petitioners freely participated in all the hearings of the case and adduced their own evidence. It was only after an adverse judgment that petitioners raised the trial court's alleged lack of jurisdiction. Our law and policy do not sanction such a somersault. The polestar of *Tijam v. Sibonghanoy* (23 SCRA 29, 35-36) still provides good guidance on the issue, viz:

'It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean v. Dean*, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated — obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (*Pease v. Rathbun-Jones* etc., 243 U.S. 273, 61 L. Ed. 715, 37 S. Ct. 283; *St. Louis etc. v. McBride*, 141 U.S. 127, 35 L. Ed. 659). And in *Littleton v. Burgess* 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the

jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

Upon this same principle is what We said in the three cases mentioned in the resolution of the Court of Appeals of May 20, 1963 (supra) — to the effect that we frown upon the 'undesirable practice' of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse — as well as *Pindañgan etc. v. Dans, et al.*, G.R. L-14591, September 26, 1962; *Montelibano, et al. v. Bacolod-Murcia Milling Co., Inc.*, G.R. L-15092; *Young Men Labor Union, etc. v. The Court of Industrial Relations, et al.* G.R. L-20307, Feb. 26, 1965, and *Mejia v. Lucas*, 100 Phil. p. 277."^[17] (Italics Supplied)

Second. Petitioner stubbornly insists that he may not be ejected from private respondent's land because he has the right, under Articles 448 and 546 of the New Civil Code, to retain possession of the leased premises until he is paid the full fair market value of the building constructed thereon by his parents. Petitioner is wrong, of course. The Regional Trial Court and the Court of Appeals correctly held that it is Article 1678 of the New Civil Code that governs petitioner's right vis-a-vis the improvements built by his parents on private respondent's land.

In the 1991 case of *Cabangis v. Court of Appeals*^[18] where the subject of the lease contract was also a parcel of land and the lessee's father constructed a family residential house thereon, and the lessee subsequently demanded indemnity for the improvements built on the lessor's land based on Articles 448 and 546 of the New Civil Code, we pointed out that reliance on said legal provisions was misplaced.

"The reliance by the respondent Court of Appeals on Articles 448 and 546 of the Civil Code of the Philippines is misplaced. These provisions have no application to a contract of lease which is the subject matter of this controversy. Instead, Article 1678 of the Civil Code applies. We quote:

'Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.'

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On the other hand, Article 448 governs the right of accession while Article 546 pertains to effects of possession. The very language of these two provisions clearly manifest their inapplicability to lease contracts. They provide:

'ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to obligate the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

xxx xxx xxx

ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person

who has defeated him the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.'

The petitioners do not dispute the contention of the private respondent that her father Gaspar Devis, filled the leased parcel of land with truck loads of big stones or rocks (*escumbro*), and enclosed or walled the same with hollow blocks before constructing a residential house thereon. All these, being in the nature of expenses which augmented the value of the land, (*Manresa*, 270 cited in 2, A. Tolentino Civil Code 110 [2nd ed., 1972]) or increased the income from it, or improved its productivity, are useful improvements within the purview of the law (*Alburo v. Villanueva*, 7 Phil. 277 [1907]; *Valencia V. Roxas*, 13 Phil. 45 (1909)).

But, it must be remembered, as in fact it is not controverted, that Gaspar Devis was a lessee by virtue of a lease contract between him and the City of Manila. As a mere lessee, he knew that the parcel of land in question was not his but belonged to the latter. Even the respondent court conceded this fact when it stated that the private respondent was 'not claiming prior possession much less ownership of the land as heir of her father.' (*Rollo*, p. 16).

Thus, the improvements that the private respondent's father had introduced in the leased premises were done at his own risk as lessee. The right to indemnity equivalent to one-half of the value of the said improvements — the house, the filling materials, and the hollow block fence or wall — is governed, as earlier adverted to, by the provisions of Art. 1678, first paragraph of the Civil Code above quoted. But this right to indemnity exists only if the lessor opts to appropriate the improvements (*Alburo v. Villanueva*, *supra*, note 10 at 279-280; *Valencia v. Ayala de Roxas*, *supra*, note 10 at 46). The refusal of the lessor to pay the lessee one-half of the value of the useful improvements gives rise to the right of removal. On this score, the commentary of Justice Paras is enlightening.

'Note that under the 1st paragraph of Art. 1678, the law on the right of REMOVAL says that 'should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer thereby.' While the phrase 'even though' implies that Art. 1678 always applies regardless of whether or not the improvements can be removed without injury to the leased premises, it is believed that application of the Article cannot always be done. The rule is evidently intended for cases where a true accession takes place as when part of the land leased is, say, converted into a fishpond; and certainly not where as easily removable thing (such as a wooden fence) has been introduced. There is no doubt that in a case involving such a detachable fence, the lessee can take the same away with him when the lease expires (5 E. Paras, *Civil Code of the Philippines Annotated* 345 [11th ed., 1986]).'

Now then, indeed the private respondent would have a cause of action against the petitioners for indemnity under Article 1678 of the Civil Code if the latter had chosen to appropriate the said improvements. However, there is nothing in the records to indicate that such choice was made. On the other hand, there is no showing either that the private respondent manifested her desire to remove these improvements absent any payment of the required indemnity. She, or her deceased father, should have removed the improvements at the time when the lease expired on July 26, 1968 xxx or at the time of the filing of the unlawful detainer case which was on October 19, 1968." [19]

Petitioner grumbles that Article 1678 does not apply when what is leased is only the land and not also the building standing thereon. The reason for this, petitioner submits, is that Article 1678 speaks of "improvements" and that a building is not an "improvement" that is within contemplation of Article 1678. But we categorically ruled in the *aforecited* case of *Cabangis* that a building, such as a family residential house, is deemed an "improvement" for purposes of Article 1678 of the Civil Code. Moreover, petitioner's postulations are disjoined from the well-settled interrelated principles that (1) Articles 448 and 546 of the New Civil Code vest the right of retention and the right to reimbursement in a possessor of a parcel of land who believed himself to be the owner of said land and as such,

built thereon and incurred expenses in so doing; (2) a lessee, being conclusively presumed to know that he is not the owner of the land that he is leasing, is not such a possessor-builder contemplated of by Articles 448 and 546 of the New Civil Code; and (3) a lessee who constructs a house or building or any other improvement or structure on the leased land, only has the right granted to him by Article 1678 of the New Civil Code to remove the same in case the lessor elects not to appropriate the building and pay 50% of its value. All these are already settled doctrines and uniformly applied in such recent cases as *Guzman v. Court of Appeals*,^[20] *Guiang v. Samano*,^[21] *Heirs of the late Jaime Binuya v. Court of Appeals*,^[22] and *Chua v. Court of Appeals*.^[23]

Finally, petitioner submits that the award of monthly rental of P5,000.00 as fixed by the Regional Trial Court and affirmed by respondent Court of Appeals, is excessive, exorbitant and unreasonable. We disagree. On the contrary, the records bear out that the P5,000.00 monthly rental is a reasonable amount, considering that the subject lot is prime commercial real property whose value has significantly increased and that P5,000.00 is within the range of prevailing rental rates in that vicinity. Moreover, petitioner has not proffered controverting evidence to support what he believes to be the fair rental value of the leased building since the burden of proof to show that the rental demanded is unconscionable or exorbitant rests upon the lessee. Thus, here and now we rule, as we did in the case of *Manila Bay Club v. Court of Appeals*,^[24] that petitioner having failed to prove its claim of excessive rentals, the valuation made by the Regional Trial Court, as affirmed by the respondent Court of Appeals, stands.

"It is worth stressing at this juncture that the trial court had the authority to fix the reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract, and that it was not bound by the stipulated rental in the contract of lease since it is equally settled that upon termination or expiration of the contract of lease, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result or by reason of the change or rise in values. Moreover, the trial court can take judicial notice of the general increase in rentals of real estate specially of business establishments xxx."^[25]

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit.

Costs against petitioner.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] In CA-G.R. SP No. 26800, promulgated on June 19, 1992, penned by Associate Justice Vicente V. Mendoza and concurred in by Associate Justice Jaime M. Lantin and Serafin V.C. Guingona; Rollo, pp. 33-42.

[2] Fourth Division.

[3] Civil Case No. 11987.

[4] Dated October 31, 1991 and penned by Judge Alejandro M. Velez.

[5] Branch 20, Cagayan de Oro City.

[6] Branch 5, Cagayan de Oro City.

[7] Decision of the MTC dated June 26, 1990 penned by Judge Downey C. Valdevilla.

[8] Decision of the Court of Appeals dated June 19, 1992, pp. 1-4; Rollo, pp. 33-36.

[9] Decision of the RTC dated October 31, 1991, pp. 5-6; Rollo, pp. 56-57.

[10] Id., p. 6; Rollo, p. 57.

[11] Decision of the RTC dated October 31, 1991, pp. 7-8; Rollo, pp. 58-59.

[12] Decision of the Court of Appeals, pp. 6-9; Rollo, pp. 38-41.

[13] Id., pp. 9-10; Rollo, pp. 41-42.

[14] Memorandum of Petitioner dated February 7, 1994, p. 3; Rollo, p. 74.

[15] Rollo, p. 45.

[16] 324 SCRA 665 [1994].

[17] Id., pp. 673-674.

[18] 200 SCRA 414 [1991].

[19] Cabangis v. Court of Appeals, 200 SCRA 414, 419-422 [1991].

[20] 177 SCRA 604 [1989].

[21] 196 SCRA 114 [1991].

[22] 211 SCRA 761 [1992].

[23] 242 SCRA 744 [1995].

[24] 245 SCRA 715 [1995].

[25] Id., pp. 731-732.

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