

JOSE L. CHUA AND CO SIO ENG, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND RAMON IBARRA, RESPONDENTS.

G.R. No. 109840. January 21, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision,[1] dated October 8, 1992, of the Court of Appeals affirming the decision of the Regional Trial Court, Branch 59 of Makati, Metro Manila, ordering the ejectment of petitioners from the premises owned by private respondent.

Petitioners were lessees of a commercial unit at No. 3086 Redemptorist Street in Baclaran, Parañaque, Metro Manila. The lease was for a period of five (5) years, from January 1, 1985 to December 31, 1989. The contract expressly provided for the renewal of the lease at the option of the lessees “in accordance with the terms of agreement and conditions set by the lessor.” Prior to the expiration of the lease, the parties discussed the possibility of renewing it. They exchanged proposal and counterproposal, but they failed to reach agreement. The dispute was referred to the barangay captain for conciliation but still no settlement was reached by the parties.

On July 24, 1990, private respondent filed a complaint for unlawful detainer against petitioners in the Metropolitan Trial Court of Parañaque, Metro Manila, which on February 4, 1992 rendered a decision, the dispositive portion of which reads:[2]

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1.

The defendants (herein petitioners) are hereby given a period of two (2) years extension of occupancy of the subject premises starting the date of the filing of the instant complaint;

2.

The defendants are hereby ordered to pay the plaintiff (herein private respondent) the sum of P188,806.00 representing back rentals as of the year 1991 and a monthly rental of P10,000.00 thereafter until the expiration of the aforesaid extension of their occupancy or until the subject premises is actually vacated.

3.

Defendants are hereby ordered to pay the plaintiff the amount of P15,000.00 as attorney’s fees; and

4.

Defendants are hereby ordered to pay the cost of suit.

SO ORDERED

On appeal by both parties, the Regional Trial Court, Branch 59 of Makati ruled that the lease was for a fixed period of five (5) years and that, upon its expiration on January 1, 1990, petitioners' continued stay in the premises became illegal. As provided in Art. 1687 of the Civil Code, the power of the courts to fix the period of lease is limited only to cases where the period has not been fixed by the parties themselves. The dispositive portion of the decision[3] states:

Premises considered, judgment is hereby rendered modifying the appealed decision, as follows:

1. Ordering the defendants (herein petitioners) and all persons claiming and/or acting for and in their behalf to vacate the premises known as door No. 3086 Redemptorist, corner G.C. Cruz Streets, Baclaran, Parañaque, Metro Manila and turn over possession thereof to the plaintiff (herein private respondent);
2. Ordering the defendants to pay the plaintiff the following:
 - a)
the amount of P42,306.00 representing accrued or back rentals from January 1, 1987 to December 31, 1989;
 - b) a monthly rental of P7,320.50 for the use or occupancy of the premises starting January 1, 1990 until July 24, 1990 and at Ten Thousand (P10,000.00) Pesos from July 24, 1990 until the defendants shall have vacated the same;
 - c) the amount of P10,000.00 representing reasonable attorney's fees;
3. Dismissing defendants' counterclaim for lack of merit; and
4. With costs against the defendants.

Petitioners appealed to the Court of Appeals which affirmed the decision. In its decision, dated October 8, 1992, the Court of Appeals ordered:

WHEREFORE, except for the modification that the monthly rental that petitioners should pay private respondent from July 24, 1990 until the latter finally vacate the premises in question is reduced to P7,320.00, the decision of the respondent court in this case is AFFIRMED in all other respects, with costs against petitioners Jose L. Chua and Ko Sio Eng.[4]

Petitioners' motion for reconsideration was likewise denied. Hence, this petition for review on certiorari. Petitioners assign several errors as having been allegedly committed by the Court of Appeals.

First. Petitioners allege that the Court of Appeals erred in affirming the lower court's finding that they owe private respondent the amount of P42,306.00 as unpaid rentals from January 1, 1987 to December 31, 1989 because neither the letter of demand nor the complaint for unlawful detainer alleged a claim for unpaid rentals. As the Court of Appeals pointed out, however, the issue of arrearages was raised at the pre-trial by private respondent and evidence on this question was presented without objection from petitioners:[5]

First of all, while it is true that there was no express demand in private respondent's complaint for unlawful detainer against petitioners for the latter's payment of rental arrearages, private respondent in a pleading dated December 17, 1990 filed with the MTC (by way of comment to petitioners' motion to admit amended answer) stated:

That moreover the unpaid rentals from January 1987 to December 31, 1989 amounts to FORTY TWO THOUSAND THREE HUNDRED SIX PESOS (P42,306.00), exclusive of rentals from January 1 to December 31, 1990 which would be one hundred eighty thousand pesos (P180,000.00) or a total of TWO

HUNDRED TWENTY TWO THOUSAND THREE HUNDRED SIX PESOS (222,306.00)

(p. 75, Orig. Rec).

Then, at the pre-trial of December 17, 1990, among the issues proposed by counsel for plaintiff (now private respondent) was whether:

3. defendants are in arrears for the rentals from Dec. 31, 1987 to January 1989, in accordance with the contract;

(p. 8, tsn Dec. 17, 1990;

p. 87, id.)

Counsel for defendants (herein petitioners) did not object to the statement of issues made by plaintiff's counsel and instead simply stated as their own main issue whether plaintiff had a valid cause of action for ejectment against them as he is not the sole owner of the leased premises, and then averred that "based on this premise, the other issues raised by plaintiff could be dependent on the resolution of the stated issues" (id., p. 88, Orig. Rec.). Later, at the hearing of February 12, 1990, plaintiff Ramon Ibarra testified that although his lease contract (Exh. "A") with petitioners stipulated an annual ten percent (10%) additional rental starting in 1986 (i.e., the monthly rental in 1986 was P5,500, in 1987, it was P6,050; in 1988, it was P6,655.00; and in 1989, it was P7,320.50), petitioners continued to pay only the original monthly rental of P5,000 stipulated in their contract (Exh. "A"), so that petitioners had incurred total rental arrearages at the end of 1989 of P42,306.00 (pp. 6-8, tsn, op. cit.; pp. 113-115, Orig. Rec.). . . .

Obviously, then, petitioners' rental arrearages from 1986 to 1989 was an issue raised at the pre-trial and on which issue private respondent presented evidence without any objection from petitioners. And considering that the petitioners incurred said rental arrearages because they did not pay private respondent the automatic 10% increase in their monthly rental every year for the years 1986 to 1989 as agreed upon and stipulated in their lease contract (Exh. "A"), which contract is the law between the parties, justice and good faith demand that petitioners should pay said rental arrearages. As correctly ruled by the respondent court, "to absolve the defendants from paying rentals in arrears while they continue occupying and enjoying the premises would be allowing the defendants to enrich themselves at the expense of the plaintiff. (p. 55, Rollo)

Indeed, any objection to the admissibility of evidence should be made at the time such evidence is offered or as soon thereafter as the objection to its admissibility becomes apparent,[6] otherwise the objection will be considered waived and such evidence will form part of the records of the case as competent and admissible evidence.[7] Rule 10, §5[8] of the Rules of Civil Procedure allows the amendment of the pleadings in order to make them conform to the evidence in the record.

Second. Petitioners claim that they are entitled to an extension of time to occupy the premises in question. This, too, is without merit. After the lease terminated on January 1, 1990 and without the parties thereafter reaching any agreement for its renewal, petitioners became deforciants subject to ejectment from the premises.[9]

Neither did the Court of Appeals err in ruling that petitioners are not entitled to a reasonable extension of time to occupy the premises on account of the fact that the lease contract between the parties has already expired. As there was no longer any lease to speak of which could be extended, the Metropolitan Trial Court was in effect making a contract for the parties which it obviously did not have the power to do.[10] The potestative authority of the courts to fix a longer term for a lease under Art. 1687 of the Civil Code[11] applies only to cases where there is no period fixed by the parties. To the contrary, in this case, the contract of lease provided for a fixed period of five (5) years from January 1, 1985 to December 31, 1989. As the Court held in *Bacolod-Murcia Milling Co., Inc. v. Banco Nacional Filipino*:[12]

It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into contract words which it does not contain.

Indeed, Art. 1675 of the Civil Code excludes cases falling under Art. 1673 (which provides among others, that the lessor may judicially eject the lessee when the period agreed upon or that which is fixed has expired) from the cases wherein, pursuant to Art. 1687, courts may fix a longer period of lease. For these reasons, we hold that the Court of Appeals did not err in ruling that petitioners were not entitled to an extension of the lease upon its expiration.

Third. The appellate court found petitioners guilty of bad faith in refusing to leave the premises. But petitioners contend that they acted in good faith under the belief that they were entitled to an extension of the lease because they had made repairs and improvements on the premises.

This contention is devoid of merit. The fact that petitioners allegedly made repairs on the premises in question is not a reason for them to retain the possession of the premises. There is no provision of law which grants the lessee a right of retention over the leased premises on that ground. Art. 448 of the Civil Code, in relation to Art. 546, which provides for full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, i.e., one who builds on a land in the belief that he is the owner thereof. In a number of cases, the Court has held that this right does not apply to a mere lessee, like the petitioners, otherwise, it would always be in his power to “improve” his landlord out of the latter’s property.[13] Art. 1678 merely grants to such a lessee making in good faith useful improvements the right to be reimbursed one-half of the value of the improvements upon the termination of the lease, or, in the alternative, to remove the improvements if the lessor refuses to make reimbursement.

Petitioners were thus correctly ordered to pay attorney’s fees considering that private respondent had to go to court to protect his interest.[14] The award of P10,000.00 is reasonable in view of the time it has taken this rather simple case for ejectment to be decided.

Fourth. Petitioners contend that the Court of Appeals erred in affirming the denial of their counterclaim for damages for their failure to enjoy the peaceful possession of the premises because private respondent allowed vendors to ply their trade at the front portion of the leased premises. Petitioners claim that, as a result, they suffered business losses and moral injuries. As both the Metropolitan Trial Court and Regional Trial Court held, however, there is no evidence to support this claim. As the Court of Appeals said, petitioners never complained before about the sidewalk vendors occupying a portion of the leased property. It was only after negotiations for renewal of the lease had failed and private respondent had filed a complaint for unlawful detainer against them did they complain about the vendors.

WHEREFORE, the decision of the Court of Appeals, dated October 8, 1992, is **AFFIRMED**.

Costs against petitioners.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Justice Alicia V. Sempio-Diy and concurred in by Justices Ricardo J. Francisco and Ricardo P. Galvez.

[2] Petition, Annex E; Rollo, p. 83.

[3]Id., Annex I; id., pp. 111-112.

[4] Id., Annex A; id., p. 39.

[5] Decision, dated Oct. 8, 1992, pp. 9-11.

[6] Revised Rules of Evidence, Rule 132, §36.

[7] *Abrenica v. Gonda*, 34 Phil. 739 (1916); *Catuir v. Court of Appeals*, 236 SCRA 398 (1994); *Son v. Son*, 251 SCRA 556 (1995); *Quebral v. Court of Appeals*, 252 SCRA 353 (1996).

[8] Rule 10, §5 of the 1997 Rules of Civil Procedure provides:

SEC. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[9] Civil Code, Arts. 1669 and 1673(1); *Heirs of Dimaculangan v. Intermediate Appellate Court*, 170 SCRA 393 (1989); *Uy Hoo and Sons Dev. Corp. v. Court of Appeals*, 174 SCRA 100 (1989); *Palanca v. Intermediate Appellate Court*, 180 SCRA 119 (1989).

[10] *Alcuaz v. PSBA*, 161 SCRA 7 (1988) *Henson v. IAC*, 148 SCRA 11 (1987); *Roxas v. Alcantara*, 113 SCRA 21 (1982); *Escaño v. CA*, 100 SCRA 197 (1980); *Gindoy v. Tapucar*, 75 SCRA 31 (1977).

[11] This article provides:

If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[12] 74 Phil. 675, 680 (1944).

[13] *Racaza v. Susana Realty, Inc.*, 18 SCRA 1172 (1966); *Bulacanag v. Francisco*, 122 SCRA 498 (1983); *Gabrito v. Court of Appeals*, 167 SCRA 771 (1988); *Cabangis v. Court of Appeals*, 200 SCRA 414 (1991); *Heirs of the late Jaime Binuya v. Court of Appeals*, 211 SCRA 761 (1992); *Germiniano v. Court of Appeals*, 259 SCRA 344 (1996).

[14] Art. 2208 (2) of the Civil Code provides:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

....

(2) when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur

expenses to protect his interest;

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