

**LA JOLLA, INC., PETITIONER, VS. COURT OF APPEALS AND PELAGIA VIRAY DE AGUILAR, RESPONDENTS.***G.R. No. 115851. June 20, 2001*

Ponente: DE LEON, JR., J.

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Before us is a petition for review on certiorari of the Decision[1] and the Resolution[2] of the Court of Appeals dated February 21, 1994 and June 10, 1994, respectively, which extended the period of lease of private respondent Pelagia Viray de Aguilar over a portion of the building situated at No. 440 Rizal Avenue, Sta. Cruz, Manila to two (2) years from finality of decision.

Petitioner is the owner of the land and building situated at Nos. 434 and 440 Rizal Avenue, Sta. Cruz, Manila having acquired the same through a Deed of Sale with Mortgage on October 13, 1964. Private respondent, as early as then, was an occupant of a portion of the building situated at 440 Rizal Avenue, Sta. Cruz, Manila by way of a verbal contract of sub-lease on a month-to-month basis from a certain Leon Co Santos.

It appears that on November 14, 1964, petitioner notified the private respondent that it was terminating her lease over the premises in question effective December 31, 1964 and demanded that she vacate the premises, since petitioner intended that the building be demolished for the construction of a new building. When private respondent failed to vacate despite demand, and further failed to pay the rentals from November 1, 1964, petitioner instituted an ejectment suit against private respondent. On March 27, 1965, a decision[3] was rendered in favor of petitioner, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment by default is hereby rendered for the plaintiff and against the defendant, ordering the latter and all persons claiming under her to vacate the premises described in the complaint, to pay the sum of P1,200.00 as monthly rental from November 1, 1964 until said premises are actually vacated, to pay also the sum of P300.00 as and for attorney's fees, plus costs.

SO ORDERED.

Private respondent appealed from said decision, but her appeal was dismissed by the then Court of First Instance of Manila, Branch XV, in its Order dated November 26, 1965.[4] Undaunted, private respondent interposed a petition for review with the Court of Appeals; however, the same was dismissed.[5] The said decision became final and executory on October 23, 1966. Nonetheless, private respondent interposed an appeal by certiorari with this Court, which petition was dismissed by the Court, for being moot and academic, after considering private respondent's manifestation that she was still occupying the leased premises based on adjusted monthly rentals.[6]

On August 6, 1976, petitioner instituted the second suit for ejectment against private respondent on the strength of private respondent's refusal to accede to the 50% increase of the monthly rental which was then at P2,400.00 and to vacate the premises in question. On June 8, 1978, a decision[7] was rendered by the City Court of Manila, Branch II, the dispositive portion of which, in part, reads:

Therefore, it is the considered finding of this Court that [La Jolla, Inc.] has proved by more than a preponderance of evidence, the allegations contained in its complaint and hereby orders [Pelagia Viray de Aguilar] to vacate the premises leased, to pay the increase in rentals from November, 1974 to December, 1975 in the total amount of P18,800.00 to pay monthly rental at the rate of P3,600.00 from January, 1976, until [Pelagia Viray de Aguilar] actually vacates the premises, and to pay the costs of suit. All sums deposited in Court by [Pelagia Viray de Aguilar] shall be credited to [her] liabilities and deducted therefrom, the balance payable to [La Jolla, Inc.]. xxx

SO ORDERED.

On appeal, the Court of First Instance of Manila, Branch XXIV, rendered a decision[8] on July 3, 1979, the decretal portion of which reads:

PREMISES CONSIDERED, the judgment appealed from is hereby modified to the end that [Pelagia Viray de Aguilar] is ordered to pay the [La Jolla, Inc.] the amount of P10,456.32 as reasonable increase in rental of the premises in question for the period covering November, 1974 to December, 1975 within thirty (30) days from receipt of this Decision, and, thereafter, to pay the monthly sum of P3,186.88 until [Pelagia Viray de Aguilar] finally vacates the premises. Without pronouncement as to costs.

SO ORDERED.

No appeal from said decision was filed, hence, it became final and executory.

On February 11, 1989, petitioner notified private respondent of the termination of her lease effective February 28, 1989 over the property situated in 440 Rizal Avenue, Sta. Cruz, Manila on the grounds that (a) the lease being on a month-to-month basis, it is terminated at the end of every month; and (b) violation of the terms and conditions of the lease by sub-leasing a portion of the premises without the consent of the owner. Petitioner, therefore, demanded that private respondent vacate the subject premises by February 28, 1989.[9]

Private respondent failed to vacate the leased premises despite demand, hence, petitioner filed the third complaint for ejectment, dated August 31, 1989, raising as an additional cause of action the petitioner's right to receive reasonable compensation from private respondent in the amount of P15,000.00 for the unauthorized use by private respondent of the premises as well as attorney's fees and litigation expenses in the amount of P20,000.00, plus exemplary damages and costs.[10]

In her Answer, private respondent interposed as an affirmative defense, among others, that petitioner had no cause of action, that petitioner's claim was barred by prior judgment in the second ejectment suit, Civil Case No. 121890, and that petitioner could not demand an increase in rental since the amount fixed at P3,186.88 a month in said prior decision had become *res judicata*. [11]

On May 6, 1992, a decision[12] was rendered by the Metropolitan Trial Court of Manila, Branch V, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant PELAGIA VIRAY DE AGUILAR ordering the latter and all the persons claiming rights under her to vacate the premises located at No. 440 Rizal Avenue, Sta. Cruz, Manila and deliver the peaceful possession thereof to the plaintiff; to pay the plaintiff the amount of P15,000.00 a month as reasonable compensation for the use and occupation of said premises from March 1989 until such time as defendant shall have actually vacated the same; ordering the defendant to pay the sum of P10,000.00 as and for attorney's fees and expenses of litigation plus the costs of suit.

SO ORDERED.

On appeal, the above decision was affirmed by the Regional Trial Court of Manila, Branch 4.[13] Thereafter, private respondent interposed a petition for review before the Court of Appeals. Acting on the petition, the appellate court issued on February 21, 1994 its decision,[14] the decretal portion of which reads:

"WHEREFORE, the MTC decision in Civil Case No. 129779 CV, and that of the RTC in Civil Case no. 92-61720 subject of this petition for review are hereby MODIFIED to read as follows:

The lease of defendant-petitioner Pelagia Viray de Aguilar over the premises at No. 440 Rizal Avenue, Sta. Cruz, Manila is hereby extended and fixed for a period of two (2) years from the date of finality of this decision at a prospective monthly rental of P15,000.00; and, for the use and occupation of the subject premises from March 1989 until the date of finality of this decision, defendant-petitioner is ordered to pay plaintiff-respondent La Jolla, Inc. a reasonable compensation for the use and occupation of the subject premises at the rate of P9,000.00 monthly, provided that whatever monthly amounts defendant-petitioner has paid, by way of rental or for use of said premises during the period, shall be deducted from or offset against such compensation; and, furthermore, defendant-petitioner shall pay P10,000.00 attorney's fees and expenses of litigation plus the costs of suit. No pronouncement as to costs in this petition." [15]

SO ORDERED.

To support its decision to extend the period of lease to two (2) years from the finality of decision, the appellate court declared:

It is undisputed that defendant has been leasing the premises for more than 45 years as of 1992. The record does not show that she has ever defaulted in the payment of rentals. Because of the length of time she has leased the subject premises, it is our sense that in the broader interest of justice and equity the lease in question should be extended and fixed for a period of two (2) years under the authority of Art. 1687 of the Civil Code. This article provides that "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. x x x ." The reason for this provision, according to Mr. Justice Paras, in his Civil Code of the Philippines Annotated (Vol. V, Twelfth Edition [1990], pp. 382-383), is obviously to reward the long-staying lessee.

That the courts have authority to fix the period of lease under Art. 1687 was enunciated in *F.S. Divinagracia Agro Commercial, Inc. v. Court of Appeals* (No. L-47350, 104 SCRA, 180, 186 [1981]). There the Supreme Court ruled that if Art. 1686 and Art. 1197 of the Civil Code are jointly considered, it will at once be evident that "the court is accorded the power to fix a longer term for the lease, which power is potestative or discretionary in nature. This prerogative is addressed to the court's sound judgment and is controlled by equitable considerations. x x x ."

Furthermore, that this Court can here effect the extension of the lease in question and fix its term by this decision is also authorized by *F.S. Divinagracia Agro Commercial* in these words:

"x x x The exercise of the power given to the Court in Article 1687 to extend the period of the lease when the defendant has been in occupancy of the premises for more than a year, does not contemplate a separate action for that purpose. That power may be exercised as an incident in the action for ejectment itself and by the court having jurisdiction over it (*Ramirez vs. Sy Chit*, 21 SCRA 1364). Moreover, We cannot lose sight of the fact that it would be an idle and costly procedure to require the lessee to file another action to have the term of the lease fixed, with all the possible delays and inconveniences attendant upon a lawsuit." [16]

Partial Reconsideration of the above decision was sought by petitioner La Jolla, Inc. contending, among others, that the extension was not within the issues raised in the case and granting such a relief violated petitioner's constitutional right to due process. However, the appellate court, in a Resolution dated June 10, 1994, denied reconsideration of its decision.[17]

Hence, the instant petition anchored on a lone error, to wit:

Respondent Court gravely abused its discretion in *motu proprio*, extending the period of private respondent's lease notwithstanding the same being for a definite period.

The instant petition is meritorious.

Article 1687 of the Civil Code, which the respondent Court of Appeals cited to support the extension of the lease, 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 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 court may likewise determine a longer period after the lessee has been in possession of over six months. In the case of daily rent, the court may also fix a longer period after the lessee has stayed in the place for over one month.

This Court has settled that the power of the court to "fix a longer term for lease is potestative or discretionary - 'may' is the word - to be exercised or not in accordance with the particular circumstances of the case; a longer term to be granted where equities come into play, demanding extension, to be denied where none appear, always with due deference to the parties freedom to contract." [18]

In the case at bar, it is undisputed that the lease was verbal, that the rentals were paid monthly, and that proper demand and notice by the lessor to vacate was given. Under existing jurisprudence, a verbal contract of lease between owner and lessee on a month-to-month basis is a lease with definite period and such expires after the last day of any given thirty-day period, upon proper demand and notice by the lessor to vacate. [19] Thus, the appellate court should not have extended the period of lease considering that the potestative authority of the courts to fix a longer term for a lease under Article 1687 of the Civil Code applies only to cases where there is no period fixed by the parties. [20]

Furthermore, Article 1675 of the Civil Code excludes cases falling under Article 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 Article 1687, courts may fix a longer period of lease. All these considered, this Court holds that the Court of Appeals erred in granting an extension period of two (2) years for the lease when the underlying facts and circumstance of the case did not warrant the same.

Where petitioner have been deprived of its possession over the leased premises for so long a time, and it is shown that, indeed, the private respondent was the recipient of substantial benefits while petitioner was unable to have the full use and enjoyment of a considerable portion of its valuable property, such militates against further deprivation by fixing a period of extension. Basic common law principle of fairness and equity shuns property entailment that borders on perpetuity to the exclusion of the owner. Be that as it may, since this case has been pending from the time it was filed in 1994 until now, private respondent has effectively obtained an extension of nearly seven (7) years which is long enough for her to find another place. [21]

WHEREFORE, the subject petition is hereby GRANTED. The Decision and the Resolution of the Court of Appeals dated February 21, 1994 and June 10, 1994, respectively, in CA-G.R. SP No. 29608 are hereby MODIFIED by deleting the extension of the lease for a period of two (2) years.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Jesus M. Elbinias and concurred in by Associate Justices Vicente V. Mendoza (now Associate Justice of the Supreme Court) and Lourdes K. Tayao-Jaguros, Second Division, in CA-G.R. SP No. 29608, Rollo, pp. 27-35.

[2] Penned by Associate Justice Jesus M. Elbinias and concurred in by Associate Justices Nathanael P. De Pano, Jr. and Lourdes K. Tayao-Jaguros, Former Second Division, Rollo, pp. 37-42.

[3] Penned by Judge Ambrosio M. Geraldez, in Civil Case No. 130778, City Court of Manila, Branch VII, Rollo, pp. 43-44.

[4] Penned by Judge E. Soriano, in Civil Case No. 60950, Rollo, pp. 45-46.

[5] In CA G.R. No. 36807-R, Decision dated October 5, 1966, Rollo, p. 47.

[6] In G.R. No. L-26675, Promulgated on May 25, 1979, Rollo, pp. 48-49.

[7] Penned by Judge Jose B. Herrera, in Civil Case No. 014253, Rollo, pp. 50-54.

[8] Penned by Judge Augusto M. Amores, in Civil Case No. 121890, Rollo, pp. 55-63.

[9] Rollo, pp. 64-65.

[10] Rollo, pp. 64-68.

[11] Rollo, pp. 69-73.

[12] Penned by Judge Benjamin C. Tiongson, in Civil Case No. 129779 CV, Rollo, pp. 74-79.

[13] Penned by Judge Benedicto B. Ulep, in Civil Case No. 92-61720, Decision dated November 11, 1992, Rollo, pp. 80-82.

[14] See Note No. 1, *supra*.

[15] Underscoring supplied.

[16] Rollo, pp. 33-34.

[17] See Note No. 2, *supra*.

[18] *Ferrer v. Court of Appeals*, 274 SCRA 219, 224 [1997]; *Roman Catholic Archbishop of Manila v. Court of Appeals*, 269 SCRA 145, 155 [1997]; *Divino v. Marcos*, 4 SCRA 186, 190 [1962]; *Acasio v. Corporacion de los P.P. Dominicos de Filipinas*, 100 Phil. 523 [1956].

[19] *Arquelada v. Philippine Veterans Bank*, G.R. No. 139137, March 31, 2000; *Labastida v. Court of Appeals*, 287 SCRA 662, 668 [1998]; *Legar Management Realty v. Court of Appeals*, 252 SCRA 335, 338 [1996]; *Inductivo v. Court of Appeals*, 229 SCRA 380, 384 [1994]; *Palanca v. Intermediate Appellate Court*, 180 SCRA 119, 128 [1989]; *Caudal v. Court of Appeals*, 175 SCRA 798, 807 [1989].

[20] *Chua v. Court of Appeals*, 301 SCRA 356, 363 [1999]; *Jueco v. Court of Appeals*, 224 SCRA 390, 397 [1993].

[21] Paterno v.. Court of Appeals, 272 SCRA 770, 780-781 1997]; Heirs of Manuel T. Suico v. Court of Appeals, 266 SCRA 444, 459 [1997]; De Vera v.. Court of Appeals, 260 SCRA 396, 402 [1996].

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