

TIMES BROADCASTING NETWORK, REPRESENTED BY ALEX SY, PETITIONER, VS. COURT OF APPEALS AND FILOMENO AROCHA, RESPONDENTS.

G.R. No. 122806. June 19, 1997

Ponente: PUNO, J.

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PUNO, J.:

This petition for review on certiorari was filed by Times Broadcasting Network, represented by its owner, Alex V. Sy, to reverse and set aside the Decision of the Court of Appeals dated August 24, 1995 in CA-G.R. SP No. 35450[1] and its Resolution dated November 15, 1995 denying petitioner's motion for reconsideration.

The records show that petitioner Times Broadcasting Network leased a portion of Hotel Arocha in Ozamis City owned by private respondent Filomeno Arocha. The subject of the lease consisted of two rooms with a total area of 7 meters by 11 meters, a terrace with an area of 25 square meters, and the rooftop of the four-storey building. The premises were to be used by petitioner to operate a radio station.[2]

In June 1993, petitioner began installing its equipment and apparatus in the leased premises. Petitioner, however, installed its radio antenna on the third floor rooftop of the hotel, instead of the fourth floor rooftop as stipulated in the contract.

On October 18, 1993, private respondent, through its counsel, Ferdinand S. Reyes, sent a letter to petitioner demanding payment of P2,500.00 as monthly rental for the use of the third floor rooftop, since the third floor rooftop is not covered by the lease.[3] Petitioner refused to pay. It claimed that the installation of its radio antenna on the third floor rooftop was with the permission of private respondent. It also averred that it is impossible for it to mount its antenna on the fourth floor rooftop because it is already occupied by the hotel's TV antenna.[4]

On January 10, 1994, private respondent Arocha filed before the Municipal Trial Court in Cities (MTCC) of Dipolog, Branch 1 a verified complaint for ejectment with payment of back rentals and damages against petitioner. The complaint prayed:

WHEREFORE, premised on the foregoing consideration, it is most respectfully prayed to this Honorable Court that, after hearing, judgment be rendered in favor of the plaintiff and against the defendant as follows:

- a. Ordering the defendant to vacate the 3rd storey rooftop and remove his FM and VHF antennas and other equipment, wirings and other peripherals, without causing further damage, and transfer it to the premises or area covered by the existing lease contract;
- b. Ordering the defendant to pay a monthly rental of P 2,500 a month from the time he/it occupied the 3rd storey roof top until such time that it shall be actually vacated.
- c. Ordering the defendant to pay to the plaintiff the amount of:

Moral damages P 5,000 Exemplary damages P 5,000 Docket, Sheriff Fees and other Litigation expenses P 1,000

Actual expenses/ P 10,000 Damage and P 1,500 Attorney's Fee P 10,000 plus an appearance fee of P 500 everytime this case will be called to (sic) a hearing.[5]

Petitioner moved to dismiss the complaint. It argued that the MTCC has no jurisdiction over the case because private respondent's cause of action is actually not for ejectment but for specific performance. Petitioner contended that private respondent's action was not simply for recovery of possession of the premises but was for compliance with the terms of the lease contract. Hence, petitioner asserted that it was the Regional Trial Court (RTC), not the MTCC, which had jurisdiction over the case.[6]

The MTCC denied the motion.[7] On May 23, 1994, it rendered a Decision[8] in favor of private respondent. It ordered petitioner to vacate the third floor rooftop and to pay a monthly rental of P 1,500.00 from May 1993 up to the time it vacates the third floor rooftop plus P 5,000.00 attorney's fees, thus:

ACCORDINGLY, judgment is hereby rendered ordering Defendant (Times)

1 - To vacate the 3rd storey rooftop and remove its FM and VHF antennas and other equipment, wirings and other peripherals, without causing further damage, and transfer it to the premises or area covered by the existing lease contract;

2 - To pay Plaintiff (Arocha) a monthly rental of One Thousand Five Hundred Pesos (P 1,500.00) from May, 1993 (Annex 4, supra-Times) when it installed its antennas aforesaid up to such time that it shall have vacated said 3rd storey of Plaintiff's (Arocha's) Hotel; and

3 - To pay Plaintiff (Arocha) the sum of Five Thousand Pesos (P 5,000.00) as attorney's fees.

Costs against Defendant. (Times.)

SO ORDERED.[9]

On appeal, the RTC reversed the Decision of the MTCC. It held that the issues raised in the parties' pleadings are not the proper subject of a summary action of forcible entry.[10] The dispositive portion of the Decision reads:

Wherefore and for all of the foregoing observations, the decision of the court a quo dated May 23, 1994, is reversed and another judgment hereby rendered dismissing the plaintiff's complaint dated January 7, 1994, with costs against the plaintiff.

SO ORDERED.[11]

Private respondent elevated the case to respondent Court of Appeals on a Petition for Review. In its Decision dated August 24, 1995, respondent court reversed the Decision of the RTC and reinstated the Decision of the MTCC.[12] Petitioner filed a Motion for Reconsideration but it was denied by respondent court in its Resolution dated November 15, 1995.[13]

Petitioner filed the instant petition on the following grounds:

1. The court a quo gravely abused its discretion and seriously erred in not dismissing the case for want of jurisdiction by the original court (MTCC) over the nature and subject of the case and has thus rendered a decision not in accord with law or with the applicable decisions of this Honorable Supreme Court.
2. The court a quo seriously erred and disregarded the law and prevailing jurisprudence when it found that there has been sufficient compliance with the requirements for an action of forcible entry to prosper.[14]

The issue to be resolved is whether the complaint filed by private respondent is one for ejectment or specific performance.

A reading of the allegations in the complaint shows that the action filed by private respondent was for ejectment and not for specific performance as asserted by petitioner. The complaint states:

1. Plaintiff is of legal age, Filipino, married, owner/proprietor of Hotel Arocha and a resident of Magsaysay Street, Miputak, Dipolog City where he may be served with court notices.
2. Defendant Alex Sy is likewise of legal age, Filipino, married and a (sic) the vice-president of the Times Broadcasting Network who is operating the radio station DXAQ-FM whose office, studio and transmitter are located at the 3rd floor of Hotel Arocha along Malvar corner Quezon Avenue, Dipolog City where it/he can be served with summons, notices and court processes.
3. The Plaintiff is the absolute owner of Hotel Arocha, a four-storey hotel in Dipolog City made of concrete materials.
4. The defendant, by virtue of a lease contract it entered into with the plaintiff, leased two rooms of the fourth storey of the plaintiff's hotel. The terms, conditions and stipulations of the lease contract dated April 22, 1993 are as follow:

x x x

5. That sometime in June or July 1993, the defendant began installing its equipment and apparatus in the leased premises of Arocha Hotel.
6. That without the knowledge, information and consent of the plaintiff, thru stealth and strategy, defendant mounted, installed, utilized, planted and positioned its FM antenna and a VHF antenna on the 3rd floor rooftop of Hotel Arocha; not on the 4th storey rooftop as stipulated in the Contract of Lease.
7. That when the plaintiff came to know about the mounting and installation of the FM and VHF antenna in the 3rd storey rooftop, the antennas were already erected and used by the defendant in their broadcast operation.
8. That the plaintiff did not ask permission from the defendant when it/he used, occupy (sic) and utilized the rooftop of the hotel's 3rd storey.
9. That the rooftop of the 3rd storey of plaintiff's Hotel Arocha is not included among the leased premises to the defendant as evidenced by the lease contract itself.
10. That the installation, mounting, planting and positioning of the defendant's FM antenna on the rooftop of the hotel's 3rd storey is without a valid permit from the city engineering.
11. That on October 18, 1993, the plaintiff, thru his counsel, wrote the defendant a letter which says:

x x x

Dear Mr. Sy,

Our client, Hotel Arocha, thru our law office, wish to inform you that for utilizing their third storey rooftop as the mounting pad of your FM antenna and other radio equipment - they are charging you with a monthly rental of P 2,500.00 beginning the time you installed and mounted these antennas.

May we formally inform you also that the rooftop of the third floor of Hotel Arocha is not leased to you as of this moment. We would appreciate it very much if you can come to Dipolog City within this month so we can formulate the lease contract covering your FM antennas.

Hotel Arocha is expecting to receive your full payment for the use of the third floor rooftop within ten days from receipt of this notice and subsequently a contract of lease has to be entered into between Hotel Arocha and your company.

Failure on your part to pay the full rental for the use of the rooftop of the third floor of the hotel will compel us to resort to actions which we deem fit, proper and necessary.

May you give this matter your preferential attention.

Truly yours,

(Sgd.) Ferdinand S. Reyes

x x x

12. That a copy of this letter quoted above was sent to Mr. Alex Sy by registered mail on October 18, 1993. Another similar copy was sent to Ms. Melody Bernardo, station manager of the defendant in Dipolog City, thru the security guard, on the same date.

13. Evidencing receipt of the plaintiff's 18 October 1993 letter, the defendant answered, thru counsel, by stating that:

x x x

Dear Compañero,

Your letter of October 18, 1993 addressed to Mr. Alex V. Sy, Vice-president of TIMES BROADCASTING NETWORK, was referred to us for appropriate reply.

Pending verification of the facts obtaining in the instant case, as well as the pertinent documents on hand, may we request that you defer whatever action you are contemplating to take in this what appears to be a mere misappreciation of the provisions of the Contract of Lease between our clients. For this purpose, we will be needing at least ten (10) days from your receipt hereof for us to be able to intelligently reply to you.

Thank you for your attention and kind consideration.

Very truly yours,

Jose Ramon R. Remollo

14. Granting the request of the defendant thru its/his counsel, plaintiff waited for ten days. After almost a month had lapsed and even up to now, defendant did not submit its reply as promised; nor did the defendant come (sic) to Dipolog City and met (sic) the plaintiff.

15. On December 6, 1993, plaintiff thru counsel, wrote the defendant another letter and delivered by personal service on same date.

Dear Mr. Sy,

Your company has failed to pay the monthly rental for using and utilizing the 3rd storey rooftop of Hotel Arocha as mounting pad of your FM and VHF antennas. This is despite the lapse of more than a month from the time you received the written demand of Hotel Arocha dated 18 October 1993.

From June 1993 to November 1993, your unpaid rental for the use of the hotel's 3rd storey rooftop already amounted to P 15,000 at P 2,500 a month.

Aside from your failure and refusal to pay the monthly rental, you also refused to heed our request that you come to Dipolog to execute a lease contract for utilizing the hotel's 3rd storey rooftop. We have already advised you in your previous letter that the 3rd storey rooftop of the hotel is not covered nor included in your present lease contract to occupy the fourth floor.

Please take notice that ten days from this date, our client expects to receive your monthly rental of P15,000 in full and within the same period of time, you are expected to come to Dipolog to execute the lease contract. Otherwise, the management of Hotel Arocha will be forced to institute the necessary court action and remove your FM and VHF antenna.

This time, we fervently hope that you will do your share to maintain a good business relationship with our client.

Very truly yours,

FERDINAND S. REYES

16. In answer to the 6 December 1993 letter of the plaintiff, defendant answered thru its legal counsel:

Dear Compañero,

The management of DX-AQ FM of the Times Broadcasting Network brought to the attention of the undersigned your letter of demand addressed to Mr. Alex V. Sy, stating among others the request to be paid the amount of P2,500.00 as monthly rental of the third floor rooftop occupied by the FM antenna of said lessee.

Much is the desire of my client to fulfill all his obligations arising from their contract, but it is sad to note that said term, subject-matter of your demand, is without the ambit of the latter (sic) and intent of the instrument. None of the terms, conditions, and stipulations thereof, express or implied, would warrant my client's acquiescence.

The installation of the antenna at bar at the 3rd floor roof top was with the consent and permission of your client beforehand. While it is correctly observed that the said area is not within the contemplation of the contract, but the same antenna cannot be relocated to the 4th floor roof top premises due to the existence of a TV antenna installed thereat presumably with your client's consent.

In the interest of goodwill, my client is willing to meet Mr. Felomino Arocha at any time and place at his convenience upon enough period of invitation to iron out gaps.

(sgd.) CRESENCIO PALPAGAN JR.

17. By way of reply, plaintiff answered the defendant's 6 December 1993 letter the following day:

Dear Mr. Sy and Atty. Palpagan,

In our letter dated December 6, 1993 addressed to Mr. Sy thru Ms. Melody Bernardo, we said: "that ten days from this date, our client expects to receive your monthly rental of P15,000 in full and within the same period of time, you are expected to come to Dipolog to execute the lease contract. Otherwise, the management of Hotel Arocha will be forced to institute the necessary court action and remove your FM and VHF antenna."

If the Times Broadcasting network is not willing to pay the monthly rental of P2,500 for the use of the hotel's 3rd storey rooftop and for Mr. Alex Sy to personally come to Dipolog within the period we have specified for the execution of the lease contract, we advise you to immediately remove your antenna so you will not be obliged to continue paying for its monthly rental which we are demanding.

Despite the long period of time we have given the management of Times Broadcasting to pay the rental and come to Dipolog to meet the management of Hotel Arocha about this matter, our client is quite displeased that the former has not exerted positive efforts to address their demand.

Please be informed also that the TV antenna was installed and mounted by your client in the absence of and without the consent and permission of Mr. Filomeno Arocha.

(sgd.) FERDINAND S. REYES

18. Until now, the defendant has not met with the plaintiff despite the pronouncement of its/his legal counsel that he is willing to meet the latter "at any time and place at his convenience".

19. Nor has the defendant paid the back rentals demanded by the plaintiffs.

20. That the defendant - in promising to answer the plaintiff's letter and asking that he be given more time to prepare his "intelligent" answer which promise he did not fulfill, in failing to meet the plaintiff despite his assurance that he is willing to do so, and in doing the actionable wrong as alleged in the preceding paragraphs - did not act with justice nor did he observe honesty and good faith.

21. That as a result of what the plaintiff did in illegally occupying and covertly utilizing the 3rd storey rooftop of Hotel Arocha, the galvanized roofing was damaged causing water to drip and seep into the hotel rooms situated beneath.

22. That the dripping and seeping of water inside the hotel rooms in the third floor from the rooftop where the defendant mounted and installed his FM antennas has caused embarrassment and humiliation to the plaintiff and his business establishment. As a result, a lot of the plaintiff's guests who have occupied the rooms in the 3rd floor have complained and criticized the hotel management.

23. That because of the disastrous and ugly water marks that dripped and seeped into the hotel rooms in the hotel's 3rd floor, the plaintiff was forced to make the necessary and immediate repairs and renovations to the damaged rooms so as not to destroy the prestige, goodwill and reputation of Hotel Arocha.

24. That aside from the damage done to the galvanized roofings caused by the defendant's illegal occupation and covert utilization of the 3rd storey rooftop as the mounting pad of his/its FM antenna, high voltage wires were sprawled in the galvanized roofing posing great danger that an electrocution or electrical grounding will occur.

25. That because of the failure and refusal of the defendant to pay the rentals as demanded by the plaintiff and to come to Dipolog to discuss the terms and conditions relative to the subsequent execution of a lease contract, plaintiff is compelled to file this case to protect his proprietary right, the safety of the hotel occupants and the goodwill and reputation of Hotel Arocha.

26. For filing this action, plaintiff was compelled to engage the services of a lawyer for P10,000 not including yet the appearance fee of P500 everytime this case will be called to hearing or trial.

27. As a result of the damage caused by the defendant's illegal occupation and covert utilization of the 3rd storey roof top of the hotel, the plaintiff incurred damages amounting to more or less P10,000 which amount were used to repair and renovate the damaged portion of the hotel rooms.

28. For the preparation of demand letters and notices to the defendant and previous consultation with the lawyer, plaintiff has already spent P1,500.00 as actual expenses.

29. For the inconvenience, tarnished business image, mental anguish and anxiety the plaintiff suffered, he is claiming moral damages in the reasonable amount of P5,000 and another P5,000 as exemplary damages to prevent other people from doing what the defendant did.

30. That the plaintiff has not filed or instituted any similar action in any court, tribunal or agency other than this.[15]

The nature of the action and the jurisdiction of courts are determined by the allegations in the complaint.[16] The aforequoted complaint shows that the plaintiff (herein private respondent) is the owner of the Hotel Arocha building in Ozamis City and that the defendant (herein petitioner), through stealth and strategy, and without any

authority from the owner, used the third floor rooftop of the building as mounting pad of its radio antenna.

Rule 70 of the Revised Rules of Court provides:

SECTION 1. Who may institute proceedings, and when. -- Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such landlord, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper inferior court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. The complaint must be verified.

The rule provides two kinds of action: forcible entry and unlawful detainer. In forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. In unlawful detainer, one lawfully withholds possession of thereof after the expiration or termination of his right to hold possession under any contract, express or implied.[17] The only issue in this case is physical possession, that is, who between the plaintiff and the defendant has a better right to possess the property in question.[18]

In the case at bar, private respondent was unlawfully deprived of the possession of the third floor rooftop of Hotel Arocha when petitioner used it as mounting pad for its antenna. Private respondent sought to recover physical possession thereof through an action for ejectment filed before the MTCC. Hence, the case properly falls within the jurisdiction of the MTCC.

IN VIEW WHEREOF, the petition is DISMISSED. The assailed Decision and Resolution of the Court of Appeals are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Regalado, (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Penned by Associate Justice Jorge S. Imperial, with Associate Justices Pacita Canizares-Nye and Bernardo Ll. Salas concurring.

[2] Contract of Lease executed by Filomeno Arocha and Times Broadcasting Network, Original Records, pp. 120-121.

[3] Original Records, p. 96.

[4] Original Records, p. 99.

[5] Original Records, p. 9.

[6] Original Records, pp. 13-15; 21-26.

[7] Original Records, pp. 35-37; 40-45.

[8] Penned by Judge Felipe M. Abalos (Annex "D" of the Petition, Rollo, pp. 76-120).

[9] Rollo, p. 120.

[10] The Decision was penned by Judge Pacifico M. Garcia (Annex "E" of the Petition, Rollo, pp. 122-139).

[11] Rollo, p. 139.

[12] Rollo, pp. 52-63.

[13] Rollo, p. 75.

[14] Petition, Rollo, p. 18.

[15] Original Records, pp. 1-9.

[16] De Leon v. Court of Appeals, 245 SCRA 166 (1995).

[17] Sarmiento v. Court of Appeals, 250 SCRA 108 (1995).

[18] Del Rosario v. Court of Appeals, 241 SCRA 519 (1995).

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