

## **NEREO J. PACULDO, PETITIONER, VS. BONIFACIO C. REGALADO, RESPONDENT.**

*G.R. No. 123855. November 20, 2000*

Ponente: PARDO, J.

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### **PARDO, J.:**

The case before the Court is an appeal via certiorari seeking to set aside the decision of the Court of Appeals[1] which affirmed that of the Regional Trial Court, Quezon City, and the Metropolitan Trial Court, Quezon City ordering the ejectment of petitioner from the property subject of the controversy.

The facts are as follows:

On December 27, 1990, petitioner Nereo J. Paculdo (hereafter Nereo) and respondent Bonifacio C. Regalado (hereafter Bonifacio) entered into a contract of lease over a 16,478 square meter parcel of land with a wet market building, located along Don Mariano Marcos Avenue, Fairview Park, Quezon City. The contract was for twenty five (25) years, commencing on January 1, 1991 and ending on December 31, 2015. For the first five (5) years of the contract beginning December 27, 1990, Nereo would pay a monthly rental of P450,000.00, payable within the first five (5) days of each month at Bonifacio's office, with a 2% penalty for every month of late payment.

Aside from the above lease, petitioner leased eleven (11) other property from respondent, ten (10) of which were located within the Fairview compound, while the eleventh was located along Quirino Highway, Quezon City. Petitioner also purchased from respondent eight (8) units of heavy equipment and vehicles in the aggregate amount of P1,020,000.00.

On account of petitioner's failure to pay P361,895.55[2] in rental for the month of May, 1992, and the monthly rental of P450,000.00 for the months of June and July 1992, on July 6, 1992, respondent sent a demand letter to petitioner demanding payment of the back rentals, and if no payment was made within fifteen (15) days from receipt of the letter, it would cause the cancellation of the lease contract.[3] Another demand letter followed this on July 17, 1992, reiterating the demand for payment and for petitioner to vacate the subject premises. [4]

Without the knowledge of petitioner, on August 3, 1992, respondent mortgaged the land subject of the lease contract, including the improvements which petitioner introduced into the land amounting to P35,000,000.00, to Monte de Piedad Savings Bank, as security for a loan in the amount of P20,000,000.00.[5]

On August 12, 1992, and on subsequent dates thereafter, respondent refused to accept petitioner's daily rental payments.[6]

On August 20, 1992, petitioner filed with the Regional Trial Court, Quezon City an action for injunction and damages seeking to enjoin respondent from disturbing his possession of the property subject of the lease contract.[7] On the same day, respondent filed with the Metropolitan Trial Court, Quezon City a complaint for ejectment against petitioner. Attached to the complaint were the two (2) demand letters dated July 6 and July 17, 1992.[8]

On August 25, 1992, five (5) days after the filing of the ejectment complaint, respondent moved to withdraw the complaint on the ground that certain details had been omitted in the complaint and must be re-computed.

On April 22, 1993, respondent re-filed the ejectment complaint with the Metropolitan Trial Court, Quezon City. Computed from August 1992 until March 31, 1993, the monthly reasonable compensation that petitioner was liable for was in the total sum of P3,924,000.00.[9]

On January 31, 1994, the Metropolitan Trial Court, Quezon City rendered a decision in favor of respondent, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, as follows:

"1. Ordering the defendant and all persons claiming right under him to vacate the leased premises located at Don Mariano Marcos Avenue, Fairview Park, Quezon City, Metro-Manila covered by Transfer Certificate of Title RT-6883 of the Registry of Deeds of Quezon City;

"2. Ordering the defendant to pay the sum of P527,119.27 representing the unpaid monthly rentals as of June 30, 1992 plus 2% interest thereon;

"3. Ordering the defendant to pay the sum of P450,000.00 a month plus 2% interest thereon starting July 1992 and every month thereafter until the defendant and all persons claiming right under him shall have actually vacated the premises and surrender possession thereof to the plaintiff;

"4. Ordering the defendant to pay the sum of P5,000,000.00 as and for attorney's fees; and

"5. Ordering the defendant to pay the costs of suit.

"SO ORDERED." [10]

In time, petitioner appealed to the Regional Trial Court, Quezon City, Branch 220.[11]

On February 19, 1994, respondent, with the support of fifty (50) armed security guards forcibly entered the property and took possession of the wet market building.[12]

On July 6, 1994, the Regional Trial Court, Quezon City, Branch 220 rendered a decision affirming in toto the decision of the Metropolitan Trial Court, to wit:

"WHEREFORE, the appealed decision dated January 31, 1994, for being in accordance with the evidence presented and the law on the matter, is hereby affirmed in toto.

"Let a writ of execution issue against defendant and his surety, to answer for the decision of the lower court." [13]

On the same day, the Regional Trial Court issued a writ of execution[14] whereupon, petitioner vacated the subject premises voluntarily. By July 12, 1994, petitioner had completely turned over possession of subject property to respondent.

Meanwhile, on July 21, 1994, petitioner filed a petition for review with the Court of Appeals.[15] He alleged that he had paid the amount of P11,478,121.85 for security deposit and rentals on the wet market building, but respondent, without his consent, applied portions of the payment to his other obligations. The vouchers and receipts indicated that the payments made were for rentals. Thus, at the time of payment petitioner had declared as to which obligation the payment must be applied.

On February 10, 1995, the Court of Appeals promulgated its decision finding that petitioner impliedly consented to respondent's application of payment to his other obligations and, thus, dismissed the petition for lack of

merit.[16]

On March 3, 1995, petitioner filed a motion for reconsideration;[17] however, on February 9, 1996 the Court of Appeals denied the motion.[18]

Hence, this appeal.[19]

At issue is whether petitioner was truly in arrears in the payment of rentals on the subject property at the time of the filing of the complaint for ejectment.

As found by the Metropolitan Trial Court and Regional Trial Court, petitioner made a total payment of P10,949,447.18, to respondent as of July 2, 1992.

If the payment made by respondent applied to petitioner's other obligations is set aside, and the amount petitioner paid be applied purely to the rentals on the Fairview wet market building, there would be an excess payment of P1,049,447.18 as of July 2, 1992. The computation in such case would be as follows:

Amount paid as of July 2, 1992

P10,949,447.18

Less:

Monthly rent from January 1991-July 1992

P450,000.00 x 19 months

P 8,550,000.00

Less:

Security deposit

P 1,350,000.00

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Excess amount paid

P 1,049,447.18

In the letter dated November 19, 1991, respondent proposed that petitioner's security deposit for the Quirino lot, in the amount of P643,276.48, be applied as partial payment for his account under the subject lot as well as to real estate taxes on the Quirino lot.[20] Petitioner interposed no objection, as evidenced by his signature signifying his conformity thereto.

In an earlier letter, dated July 15, 1991,[21] respondent informed petitioner that the payment was to be applied not only to petitioner's accounts under both the subject land and the Quirino lot but also to heavy equipment bought by the latter from respondent. Petitioner claimed that the amount applied as payment for the heavy equipment was critical because it was equivalent to more than two (2) months rental of the subject property, which was the basis for the ejectment case in the Metropolitan Trial Court.

The controversy stemmed from the fact that unlike the November 19, 1991 letter, which bore a conformity portion with petitioner's signature, the July 15, 1991 letter did not contain the signature of petitioner.

In nevertheless concluding that petitioner gave his consent thereto, the Court of Appeals upheld both the lower

court's and trial court's findings that petitioner received the second letter and its attachment and he raised no objection thereto.

In other words, would petitioner's failure to object to the letter of July 15, 1991 and its proposed application of payments amount to consent to such application?

Petitioner submits that his silence is not consent but is in fact a rejection.

The right to specify which among his various obligations to the same creditor is to be satisfied first rests with the debtor,[22] as provided by law, to wit:

"Article 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract."[23]

At the time petitioner made the payments, he made it clear to respondent that they were to be applied to his rental obligations on the Fairview wet market property. Though he entered into various contracts and obligations with respondent, including a lease contract over eleven (11) property in Quezon City and sale of eight (8) heavy equipment, all the payments made, about P11, 000,000.00, were to be applied to rental and security deposit on the Fairview wet market property.

Respondent Regalado argues that assuming that petitioner expressed at the time of payment which among his obligations were to be satisfied first, petitioner is estopped by his assent to the application made by the respondent. This assent is inferred from the silence of petitioner on the July 15, 1991 letter[24] containing a statement of the application of payments, which was different from the application made by petitioner. A big chunk of the amount paid by petitioner went into the satisfaction of an obligation which was not yet due and demandable--the payment of the eight (8) heavy equipment amounting to about P1,020,000.00.

The statement of account prepared by respondent was not the receipt contemplated under the law. The receipt is the evidence of payment executed at the time of payment, and not the statement of account executed several days thereafter.

There was no clear assent by petitioner to the change in the manner of application of payment. The petitioner's silence as regards the application of payment by respondent cannot mean that he consented thereto. There was no meeting of the minds. Though an offer may be made, the acceptance of such offer must be unconditional and unbounded in order that concurrence can give rise to a perfected contract.[25] Hence, petitioner could not be in estoppel.

Assuming arguendo that, as alleged by respondent, petitioner did not, at the time the payments were made, choose the obligation to be satisfied first, respondent may exercise the right to apply the payments to the other obligations of petitioner. But this is subject to the condition that the petitioner must give his consent. Petitioner's silence is not tantamount to consent. The consent must be clear and definite.

Under the law, if the debtor did not declare at the time he made the payment to which of his debts with the creditor the payment is to be applied, the law provided the guideline--no payment is to be made to a debt that is not yet due[26] and the payment has to be applied first to the debt most onerous to the debtor.[27]

In the instant case, the purchase price of the eight (8) heavy equipment was not yet due at the time the payment

was made, for there was no date set for such payment. Neither was there a demand by the creditor to make the obligation to pay the purchase price due and demandable.[28] Hence, the application made by respondent is contrary to the provisions of the law.

The lease over the Fairview wet market property is the most onerous among all the obligations of petitioner to respondent. It was established that the wet market is a going-concern and that petitioner has invested about P35,000,000.00, in the form of improvements, on the property. Hence, petitioner would stand to lose more if the lease would be rescinded, than if the contract of sale of heavy equipment would not proceed.

The decision of the Court of Appeals was based on a misapprehension of the facts and the law on the application of payment. Hence, the ejectment case subject of the instant petition must be dismissed, without prejudice to the determination and settlement of the money claims of the parties inter se.

WHEREFORE, the Court GRANTS the petition. The Court REVERSES and SETS ASIDE the decision of the Court of Appeals in CA-G. R. SP No. 34634.

ACCORDINGLY, the Court REVERSES the decision of the Regional Trial Court, Quezon City, Branch 220 in Civil Case No. 94-20813, and dismisses the complaint filed with the Metropolitan Trial Court, Quezon City, Branch 36 in Civil Case No. MTC XXXVI-7089.

No costs.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In CA-G. R. SP No. 34634, promulgated on February 10, 1995, Reyes, R. T., J., ponente, Herrera, O. M. and Gutierrez, A. S., JJ., concurring, Rollo, pp. 138-148.

[2] This represents the balance of the rental payment due from petitioner, computed as follows: Partial payment of P255,104.45 made on July 24, 1992; P90,000.00 on July 28, 1992; and P3,674.67 or a sum total of P188,779.12 from where the 2% stipulated penalty interest must first be satisfied, leaving an amount of P88,104.45 to be applied and deducted from the P450,000.00 rental due for the month of May, 1992.

[3] Complaint, Annex "C", RTC Record, Vol. I, p. 13.

[4] Complaint, Annex "D", RTC Record, Vol. I, p. 14.

[5] Petition for Review, CA Rollo, pp. 2-24, at p. 5.

[6] Answer, RTC Record, Vol. I, pp. 35-45.

[7] Ibid., p. 40.

[8] Originally raffled to Branch 33 (later transferred to Branch 36) and docketed as Civil Case No. 7089, Answer, RTC Record, Vol. I, p. 41.

[9] Complaint, RTC Record, Vol. I, pp. 1-7, at p. 5.

[10] Decision, Civil Case No. MTC XXXVI-7089, Petition, Annex "D", Rollo, pp. 98-102.

[11] Docketed as Civil Case No. Q-94-20813.

[12] Petition for Review, CA Rollo, pp. 2-24, at p. 7.

[13] Ibid., pp. 25-33.

[14] Ibid., pp. 34-35.

[15] Docketed as CA-G.R. SP No. 34634, CA Rollo, pp. 2-24.

[16] Petition, Annex "D", Rollo, pp. 138-148.

[17] Petition, Annex "E", Rollo, pp. 149-182.

[18] Resolution, Rollo, pp. 193-194.

[19] Petition filed on March 19, 1996, Rollo, pp. 8-62. On June 18, 1997, we gave due course to the petition, Rollo, p. 281.

[20] Rollo, p. 185.

[21] Rollo, p. 183.

[22] People's Surety and Insurance Co, Inc. v. Gabriel and Sons Traders Co. Inc., 118 Phil. 1418 [1963].

[23] Civil Code.

[24] Supra, Note 21.

[25] Maria Cristina Fertilizer Corp. v. Court of Appeals, 339 Phil. 349 [1997].

[26] Article 1252, Civil Code.

[27] Article 1254, Civil Code; Espina v. Court of Appeals, G. R. No. 116805, June 22, 2000.

[28] Rose Packing Co., Inc. v. Court of Appeals, 167 SCRA 309, 318 [1988].

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