

NIMFA TUBIANO, PETITIONER, VS. LEONARDO C. RAZO, RESPONDENT.

G.R. No. 132598. July 13, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is an appeal from the Decision of the Court of Appeals[1] dated November 25, 1997, in CA-G.R. SP No. 42047, affirming in toto the judgment[2] of the Regional Trial Court of Kalookan, Branch 130, in Civil Case No. C-17056 which, in turn, affirmed in its entirety the Decision[3] of Branch 52, Metropolitan Trial Court of Kalookan City in Civil Case No. 21569.

Synthesized by the Court of Appeals, the facts of the case are as follows:

"It appears that private respondent is the owner of the subject premises located at No. 124-C Kampupot Street, 10[th] Avenue, Kalookan City. The same had been leased to the petitioner on a month-to-month basis. Their month-to-month contract was terminated when the lessor notified the lessee of his intention not to renew such contract sometime in August 1994. The same was reiterated in the final letter of September 7, 1994 which was sent to the lessee (defendant-petitioner) and duly received by the latter. On October 25, 1994, a complaint for ejectment was filed by the private respondent as plaintiff before the Metropolitan Trial Court of Kalookan City. The case was treated as a summary case falling under the Revised Rules on Summary Procedure.

Summons was issued to and duly served upon the defendant (petitioner) on November 16, 1994. Instead of filing an answer within the ten-day reglementary period, the defendant (petitioner) filed a Motion for Extension of Time to File an Answer which was granted by Judge Armando de Asa, Presiding Judge of Branch 51 of the Metropolitan Trial Court of Kalookan City, to whom the case was originally assigned. (The case was later transferred to branch 52 for consolidation with a case for consignment earlier filed by the defendant petitioner). Upon Learning of the grant of such motion, the private respondent plaintiff filed a Motion To Strike Out Answer and Submit the case for Decision Based on the Complaint. The same, however, was denied. Instead the answer was admitted and the case was transferred to Branch 52 for consolidation.

The case was set for preliminary conference on February 17, 1995 but the same was cancelled and deferred upon request therein of the defendant-petitioner to enable her to get a counsel. At the next setting of the preliminary conference on April 20, 1995, it was the plaintiff-private respondent, who filed a motion for postponement, and the same was reset to May 25, 1995. On the latter date, the defendant-petitioner again filed a motion for postponement on the ground that she suffered from hypertension on May 24, 1995, as attested by a medical certificate attached thereto. The trial court, however, now acting through Delfina Hernandez Santiago of Branch 52, denied the motion in view of the objections of the plaintiff's counsel, for the reason that the medical certificate indicates the defendant's treatment for hypertension on May 24, 1995 without any showing that she was ordered by the doctor to take a rest until the following day; and the further fact that there was no mention that the plaintiff was furnished a copy thereof. Hence, through its order of May 25, 1995, the trial court considered the case submitted for decision on the basis of the allegations of the Complaint.

On June 26, 1995, Judge Santiago rendered judgment in favor of the plaintiff. A notice of appeal was

seasonably filed by the defendant on August 7, 1995. However, the case was returned to the trial court by the Regional Trial Court on the ground that the decision did not contain a statement of facts and the law pursuant to constitutional requirements. Hence, on May 2, 1996, Judge Santiago promulgated an amended decision with findings of facts and conclusions of law. The same was again appealed to the Regional Trial Court.

On July 30, 1996, Judge Jaime T. Hamoy of the respondent court, issued an order directing the parties to submit their respective memoranda within fifteen (15) days from receipt thereof, copy furnished both parties and their respective counsel. However, only the plaintiff-private respondent complied. Hence, on September 6, 1996, the respondent court rendered judgment affirming the decision of the Metropolitan Trial Court. Four days after the release of said judgment, Atty. Antonio E. Seludo, the erstwhile counsel of record of the defendant-petitioner, filed a withdrawal of appearance. On the same day, a notice of appearance was filed by a new counsel for the defendant, Atty. Emmanuel M. Basa. The respondent court, however, instead of acting thereon immediately, directed Atty. Seludo (sic) to forward his copy of the decision to the new counsel. Upon receipt of Atty. Seludo's compliance therewith, the respondent court acted on the notice of withdrawal and entry of appearance of a new counsel for the defendant-appellant."[4]

On November 25, 1997, the Court of Appeals handed down the decision under attack.

With the denial of her motion for reconsideration, petitioner found her way to this Court via the present Petition, theorizing that:

FIRST

THE COURT OF APPEALS ERRED IN FINDING THAT THE RTC AND MTC WERE CORRECT IN DECLARING THE EJECTMENT CASE AS SUBMITTED FOR DECISION BASED SOLELY ON THE FACTS ALLEGED IN THE COMPLAINT UPON FAILURE OF PETITIONER TO APPEAR IN THE PRELIMINARY CONFERENCE ON MAY 25, 1995, THEREBY DEPRIVING PETITIONER OF HER RIGHT TO DUE PROCESS.

SECOND

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER'S LEASE CONTRACT WAS VALIDLY TERMINATED.

THIRD

THE COURT OF APPEALS ERRED IN FINDING THAT THE RTC WAS CORRECT IN DECIDING THE CASE ON APPEAL, WITHOUT GIVING A CHANCE TO PETITIONER TO FILE HER MEMORANDUM.[5]

The Petition is devoid of merit.

Pertinent provisions of the Rules on Summary Procedure, provide:

"Sec. 6. Effect of failure to answer. - Should the defendant fail to answer the complaint within the period above provided, the court, motu proprio, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein xxx"

"SEC. 7 Preliminary conference; appearance of parties. - Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counter-claim in accordance with Section 6 hereof, all cross-claims shall be dismissed.

If the sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference." (emphasis supplied)

Applying the foregoing applicable provisions in point, the Court is of the opinion, and so holds, that the Court of Appeals erred not in holding that both the RTC and MTC were correct in declaring the ejectment case submitted for decision based solely on the complaint of private respondent, upon failure of petitioner to appear at the preliminary conference on May 25, 1995. It must be stressed that forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to possession of the property involved. It does not admit of delay in the determination thereof. It is a "time procedure" designed to remedy the situation.[6]

Under Administrative Circular No. 28,[7] submission of memoranda is not a mandatory requirement. Thus, the failure of petitioner to submit her memorandum after having been required to submit the same does not preclude the Regional Trial Court from rendering judgment on the basis of the entire records of the proceedings in the court of origin.

Moreover, despite the receipt by petitioner's counsel on August 7, 1996 of the July 30, 1996 Order of the RTC directing them to submit memorandum within fifteen (15) days from receipt thereof, no memorandum was ever filed by petitioner. The fact that the court also sent a copy of said Order to petitioner, does not mean that the reglementary period shall be reckoned from the date of receipt of said order by petitioner on August 28, 1996. The rule is that, it is the date of receipt by the counsel from which the reglementary period must be counted, it being the counsel's responsibility, not the client's, to file the required memorandum in due time.[8] Hence, petitioner's counsel had fifteen (15) days from August 7, 1996 or until August 22, 1996 to file a memorandum. Failing to so file, petitioner cannot now complain of denial of due process. As long as a party was given the opportunity to defend her interests in due course, she cannot be said to have been denied due process of law, for the opportunity to be heard is the very essence of due process.[9]

Finally, petitioner contends that private respondent prematurely filed the complaint for ejectment on August 25, 1994. According to petitioner, since the registry return card of the September 7, 1994 notice to vacate, giving her thirty (30) days from receipt thereof to leave the leased premises, does not bear the date of receipt of the same by his (petitioner's) agent, it cannot therefore be ascertained when the thirty day period ended. Hence, petitioner asseverated that the lease contract must be presumed to have expired at the end of October 1994, because a lease on a month-to-month basis, as in the case at bar, is deemed to have expired at the end of the month upon the lessee's receipt of the notice to vacate. Consequently, when respondent filed his complaint on October 25, 1994, the lease contract has not yet expired, rendering the complaint premature and lacking in cause of action, petitioner argued.[10]

That petitioner received the September 7, 1994 notice to vacate of private respondent is not denied. Indeed, she was apprised that private respondent will no longer extend their lease contract. In *Racaza vs. Susana Realty, Inc.*,[11] reiterated in *Labastida vs. Court of Appeals*,[12] the court held that:

"xxx The averment that the lease was on a month-to-month basis is equivalent to an allegation that the lease expired at the end of every month. It is therefore immaterial that rents had not been paid since July, 1955, since what made petitioner liable for ejectment was the expiration of the lease. This being the case, demand to vacate was unnecessary. As this Court explained in *Co Tiamco v. Diaz*, 78 Phil. 672 (1946), Rule 70, section 2 requires previous demand only when the action is 'for failure to pay rent due or to comply with the conditions for his lease.' Where the action is to terminate the lease because of the expiration of its term, no such demand is necessary. In the latter case upon the expiration of the term of the lease, the landlord may go into the proeprty

and occupy it, and if the lessee refuses to vacate the premises, an action for unlawful detainer may immediately be brought against him even before the expiration of the fifteen or five days provided in Rule 70, section 2.

Accordingly, upon the expiration of the lease in this case, petitioner became a deforciant unlawfully withholding possession of the property. There was no need for a demand to be served on him, except to negate any inference that respondent, as lessor, had agreed to an extension of the term of the lease under article 1687 of the Civil Code." [13]

Verily, demand to vacate is not a jurisdictional requirement when the ground for ejectment is expiration of term of the lease contract. Notice/demand to vacate serves no other purpose than to make known the lessor's intention to terminate the lease contract. Accordingly, even if petitioner did not receive the September 7, 1994 notice of private respondent, the ejectment case filed against petitioner cannot be deemed to be premature considering that even as early as August 1994, petitioner was already informed that private respondent will no longer renew the subject lease contract.

Premises studiously considered and viewed in proper perspective, the Court is of the ineluctable conclusion, and so holds, that the respondent court erred not in upholding the decision of the lower courts.

WHEREFORE, the Petition is DENIED; and the decision of the Court of Appeals dated November 25, 1997, in CA-G.R. SP No. 42047, AFFIRMED. No pronouncement as to Costs.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Vitug, J., in the result.

[1] Composed of Associate Justices: Delilah Vidallon-Magtolis (Ponente); Rodrigo V. Cosico; and Salome A. Montoya (Chairman)

[2] Penned by Judge Jaime T. Hamoy.

[3] Penned by Judge Delfina Hernandez-Santiago.

[4] Decision, Rollo, pp. 57-58.

[5] Petition, Rollo, p. 24.

[6] Don Tino Realty and Development Corporation vs. Julian Florentino G.R. No. 134222, September 10, 1999; citing: Republic vs. Guarin, 81 SCRA 269 and De la Cruz vs. Court of Appeals, 133 SCRA 520.

[7] Dated July 3, 1989.

[8] Aguilar vs. Blanco, 165 SCRA 180, 185.

[9] Legarda vs. Court of Appeals, 280 SCRA 642, 657.

[10] Petition, Rollo, pp. 26-28.

[11] 18 SCRA 1172, 1177.

[12] 287 SCRA 663, p. 671.

[13] Racaza vs. Susana Realty, Inc., supra, 1176-1177.

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