

**DANILO S. YAP, PETITIONER, VS. COURT OF APPEALS, ALEJANDRO DY JUANCO, UNIVERSAL MILL SUPPLY CO. INC. AND BEE QUEEN RESTAURANT, INC., RESPONDENTS.**

*G.R. No. 140249. March 06, 2001*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

PETITIONER MARTINEZ LEYBA, INC. (MLI) in G.R. No. 140363 owns a two-storey commercial building in 727-729 Evangelista St., Quiapo, Manila. In 1960 MLI leased the building to private respondent Alejandro Dy Juanco, as owner of Universal Mill Supply, a single proprietorship. Rentals were subsequently paid on a monthly basis but no lease contract between lessor and lessee was reduced to writing. On 11 June 1969 Universal Mill Supply was incorporated and became the now respondent Universal Mill Supply Co. Inc. in both G.R. Nos. 140249 and 140363, with Alejandro Dy Juanco owning the majority of the stocks in the corporation. Payments for rentals on the property were made with checks issued by Universal Mill Supply Co. Inc. (UNIVERSAL MILL).

On 19 August 1978 private respondent Bee Queen Restaurant (BEE QUEEN) was incorporated with Alejandro Dy Juanco also as the majority stockholder. BEE QUEEN then occupied the leased premises and paid the monthly rentals.

On 3 November 1986 petitioner Danilo S. Yap and BEE QUEEN entered into a "Contract of Lease/Sublease" where BEE QUEEN subleased to petitioner Yap the first floor and the mezzanine of the building. The sublease was for five (5) years, from 1 January 1986 to 31 December 1990. The contract provided, "Should LESSOR (Bee Queen)'s agreement be terminated by the owner before the expiration of this lease agreement, the duration of this agreement shall be co-terminus with LESSOR's rights as a lessee." Yap then opened Kouros Restaurant on the property.

On 23 October 1990 MLI sent a letter to Dy Juanco terminating their lease contract effective 5 November 1990 because Dy Juanco and UNIVERSAL MILL were no longer occupying the premises and that they had subleased the same to Yap. Dy Juanco and UNIVERSAL MILL did not act on the letter, insisting that they still occupied the second floor of the building and that there was no prohibition against subleasing. On 16 November 1990 Yap informed Dy Juanco that he had deposited in court the monthly rentals for November and December 1990.

On 13 December 1990 BEE QUEEN sent a letter to Yap reminding him that the sublease contract was to expire on 31 December 1990, and demanding that Yap vacate the premises immediately after the close of business hours on that date, and to pay within five (5) days from receipt thereof all unpaid rentals totalling P29,000.00 and the stipulated additional charges for delay.

On 22 December 1990 Yap then entered into a Lease Contract directly with MLI over the same premises, and from then on paid the monthly rentals directly to MLI.

On 16 May 1991 BEE QUEEN filed with the Regional Trial Court of Manila[1] a Complaint against petitioners

Danilo Yap and MLI praying for the court to fix a period of lease, to declare the lease contract between Yap and MLI null and void, and for damages. According to BEE QUEEN, Yap and MLI conspired to execute the lease contract without the knowledge of BEE QUEEN and to dispossess the latter of the subject property. Furthermore, it alleged that since the 1960 contract between Dy Juanco and MLI was one without a period, it could therefore invoke the power of the court to fix a period for the lease under Art. 1687 of the New Civil Code.

MLI, on the other hand, asserted that it had always as a matter of practice prohibited its lessees from subleasing its properties, and that the act of Dy Juanco in subleasing the property constituted abandonment which justified MLI in terminating their oral contract. It claimed that it did not consent to the sublease and, in fact, did not have any dealings with BEE QUEEN until the case was filed.

At the hearing, Alejandro Dy Juanco, plaintiff in the trial court, testifying in his own behalf, asserted that he entered into a verbal contract of lease over the subject property in 1960 and that it was impossible for MLI not to have known about the sublease since collectors were sent every month to collect rent.

Defendant Danilo S. Yap, testifying for himself, said that he entered into the sublease contract with plaintiff Alejandro Dy Juanco; that upon learning that Dy Juanco's lease contract with MLI had expired, he entered into a lease contract directly with MLI and deposited the rentals with the court and that, to his knowledge, neither BEE QUEEN nor Dy Juanco used the premises when Yap was subleasing it. Nestor Quesada, the Building Administrator of MLI, asserted that he did not know of any agreement with the BEE QUEEN and that, as far as the building management was concerned, the building was leased to UNIVERSAL MILL represented by Dy Juanco who never informed the management about the sublease to Yap.

On 28 November 1995 the trial court rendered a decision dismissing the case for lack of merit holding that -

x x x x The lease contract is not one with an indefinite period, there having been a specific term agreed upon by the parties, hence, the Court cannot legally fix a longer term under Article 1687 of the Civil Code. It expires after the last day and repeats the same cycle every 30th period until either party expresses his prerogative under their agreement to terminate the same. Since the lease is for a definite term, the lessee cannot avail of the benefits under Article 1687 which applies only if there is no definite term. In the instant case, the defendant Martinez Leyba has expressed his (sic) option to terminate the lease by sending a notice and since the same is on a month to month basis which is a lease with a definite period, the same could be terminated and Article 1687 does not apply.[2]

On appeal, the Court of Appeals set aside the lower court's decision and extended the lease contract between Alejandro Dy Juanco and MLI for a period of three (3) years from finality of the decision under such reasonable terms and conditions as might be agreed upon by the parties. Martinez Leyba, Inc., and Danilo S. Yap filed separate petitions for review under Rule 45 of the 1997 Revised Rules of Civil Procedure. The two (2) cases were consolidated since both arose from a common set of facts and raised similar issues.

Petitioner MLI assails the extension of the lease contract despite its assertion that there is no contractual relationship between MLI on one hand and BEE QUEEN and UNIVERSAL MILL on the other. Nestor Quesada denied knowing BEE QUEEN and UNIVERSAL MILL until they filed the complaint. Therefore, "it was error for the Appeals Court to grant extension of the lease contract because there is no such lease contract between petitioner MLI and the respondents to speak of in the first place."

MLI also maintains that it never assented to BEE QUEEN's taking over the lease from UNIVERSAL MILL. The only lessee MLI ever recognized was UNIVERSAL MILL, a single proprietorship and not a corporation, owned by Alejandro Dy Juanco. Therefore, MLI claims, Dy Juanco effectively abandoned the lease contract when it subleased the property to other person, and hence, private respondents have no legal personality to invoke the

expired contract of Dy Juanco or UNIVERSAL MILL. Since the lessee, UNIVERSAL MILL, did not seek any extension of the lease before its termination, there is no lease contract to be extended.

Petitioner Danilo S. Yap, for his part, asserts that the extension of a contract of lease without a fixed period may only be sought before the termination of the lease and not after it had been terminated, following *Prieto v. Santos*,<sup>[3]</sup> and that such extension may only be availed of on equitable considerations, which are not present in the instant case.

On 27 December 2000, MLI manifested that its property has been expropriated by the government through the Light Rail Transit Authority (LRTA) to be utilized as a Terminal Station of LRT Line 2, and that possession thereof has already been transferred to the government as evidenced by a Protocol of Delivery signed by Nestor B. Quesada, vice president of MLI and Eric V. Gutierrez, representative of the LRTA.

Although this controversy has been rendered moot and academic by this manifestation, we nevertheless resolve to rule on the matter, if only to settle similar controversies once and for all and avoid future wasteful litigations, and more importantly, to secure for petitioners the justice, albeit symbolical, which they have been deprived of.

The crux of the controversy is the proper application of Art. 1687 of the Civil Code -

Art. 1687. 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.

Under this provision, if the period of a lease contract has not been specified by the parties therein, it is understood to be from month to month, if the rent agreed upon is monthly, as in the cases at bar. Consequently, the contract expires at the end of such month unless prior thereto, the extension of said term has been sought by appropriate action and judgment is, eventually, rendered therein granting the relief.<sup>[4]</sup>

The Court likewise held in *Prieto*<sup>[5]</sup> that any extension of a lease contract must be sought before the term of the contract expires, and not after. In this case, since payment of rentals is made monthly, the life of the lease contract expires at the end of every month and tacitly renewed (*tacita reconduccion*) every time the lessor accepts the monthly payment. At the end of October 1990, the lessor MLI opted, as is within its rights to do so, not to renew the lease nor accept payment. Thus, the lease was terminated *ipso facto*, and a demand to vacate was not even necessary for judicial action after the expiration of every month. The contract having expired, the lessee could not belatedly file a suit in equity to extend its term.

Private respondents rely on *Ramirez v. Chit*,<sup>[6]</sup> and *F.S. Divinagracia Agro-Commercial, Inc. v. Court of Appeals*,<sup>[7]</sup> in invoking the application of Art. 1687 to their case. Both cases held that the exercise of the power given to the courts in Art. 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.

However, we hold that *Ramirez* and *F.S. Divinagracia Agro-Commercial, Inc.*, do not apply in the instant case. As petitioners correctly pointed out, both cases involved lessees who were in actual possession of the property leased when the lease contract was terminated. In the two (2) cases, the discretionary power of the courts to fix the period was invoked as a defense to ejectment cases filed against the lessees. In the instant case, it was the lessee Dy Juanco who filed the action in court to extend the period of the lease. But even assuming for the sake of

argument that BEE QUEEN or Dy Juanco did file the suit seasonably, we find no equitable considerations that would merit the extension.

In *Acasio v. Corp. de los PP. Dominicos de Filipinas*[8] this Court ruled that the power of the courts to "fix a longer term for the lease" is potestative or discretionary, 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 appears, always with due deference to the parties' freedom to contract.

In *Yek Seng Co.*[9] we held: "The circumstance that the lessee has paid its rentals religiously during the past twenty (20) years is also not sufficient to justify the extension that it demands. Neither are the substantial improvements it allegedly made on the leased premises nor the difficulty of finding another place of business, on which it has not submitted any evidence at all." While private respondents are correct in saying that Art. 1687 rewards a lessee for its loyalty, the law is not so lopsided as to disregard altogether the lessor's right not to be deprived of possession for so many years. Basic common law principle of fairness and equity shuns property entailment that borders on perpetuity to the exclusion of the owner.[10]

The most glaring fact that militates against the extension of the term of the lease is that BEE QUEEN, Dy Juanco and UNIVERSAL MILL did not actually physically occupy or make use of the property, but in fact subleased the same to a third person. Private respondents admitted that at the time MLI terminated the contract, they were paying a monthly rental fee of P4,626.50. BEE QUEEN's sublease contract with petitioner Danilo Yap stipulated a monthly rent of P14,500.00 for the year 1990. BEE QUEEN accepted rent from a sublessee while paying a lower price to its lessor, in effect, making a profit with the slightest of efforts. This Court finds itself uncomfortable that private respondents, which did not even have the common decency to inform their lessor that they were subleasing the latter's property, now have the temerity to come to the courts and invoke equity. He who seeks equity must do equity.[11]

At any rate, we note with disapproval that private respondents have already enjoyed a de facto extension of more than ten (10) years from the time the first demand to vacate was made. Their continued occupancy of the subject property is repugnant to the basic ideas of equity and fair play, and should no longer be countenanced by the courts. Indeed, the appellate court was made to play a key role in perpetuating this inequity by extending the lease contract for another three (3) years when, clearly, such extension had no basis in law and equity. The simple question raised in the case at bar could have been definitively resolved in the lower court and did not have to reach the highest tribunal,[12] wasting time and effort in the process. If private respondents did not take the necessary precaution against their possible displacement because of the termination of their month-to-month unwritten lease, then they only have themselves to blame.

WHEREFORE, the petitions in G.R. Nos. 140249 and 140363 are GRANTED. The assailed Decision of the Court of Appeals dated 5 March 1998 and its Resolution dated 22 September 1999 in CA-G.R. 51765 are REVERSED and SET ASIDE and the Decision of the Regional Trial Court dated 28 November 1995 in Civil Case No. 91-57176 dismissing the Complaint of Alejandro Dy Juanco, Universal Mill Supply Co., Inc., and Bee Queen Restaurant, Inc., against petitioner Danilo S. Yap in G.R. No. 140249 and petitioner Martinez Leyba, Inc., in G.R. No. 140363 is AFFIRMED and REINSTATED, with costs against private respondents.

### **SO ORDERED.**

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Civil Case No. 91-57176, Br. 51, Judge Rustico Panganiban, presiding.

[2] Rollo, G.R. No. 140363, p. 32.

[3] 98 Phil 509 (1956).

[4] Ibid.

[5] See also *Alegre v. Laperal*, G.R. No. 24664, 29 May 1968, 23 SCRA 934; *Yek Seng v. Court of Appeals*, G.R. No. 87415, 23 January 1992, 205 SCRA 305.

[6] No. L-22022, 26 December 1967, 21 SCRA 1365.

[7] No. L-47350, 21 April 1981, 104 SCRA 180.

[8] 100 Phil 523 (1956).

[9] See Note 5.

[10] *Heirs of Manuel Suico v. Court of Appeals*, G.R. No. 120615, 21 January 1997, 266 SCRA 444.

[11] Joseph Story, *Equity Jurisprudence*, 1896.

[12] *Yek Seng v. Court of Appeals*, see Note 5.

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