

HABAGAT GRILL THROUGH LOUIE BIRAOGO, PROPRIETOR/MANAGER, PETITIONER, VS. DMC-URBAN PROPERTY DEVELOPER, INC., RESPONDENT.

G.R. NO. 155110. March 31, 2005

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-155110/>

PANGANIBAN, J.:

Entitlement to physical or material possession of the premises is the issue in an ejectment suit. The two forms of ejectment suits -- forcible entry and unlawful detainer -- may be distinguished from each other mainly by the fact that in forcible entry, the plaintiffs must prove that they were in prior possession of the premises until they were deprived thereof by the defendants; in unlawful detainer, the plaintiffs need not have been in prior physical possession.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the April 12, 2002 Decision[2] and the August 19, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 53524. The assailed Decision disposed as follows:

“WHEREFORE, finding merit in the petition, the Court REVERSES the appealed Decision and renders judgment:

1. Commanding [Petitioner] Louie Biraogo and all persons acting for and in his behalf or by his authority to remove the Habagat Grill and all improvements he has introduced into the lot in question and to vacate said lot; and
2. Ordering said [petitioner] to pay the [respondent] P10,000.00 monthly compensation for the occupation of the land in question until the possession from December 1, 1993 of said property shall have been completely restored to the [respondent]; and
3. Ordering [petitioner] to pay [respondent] P10,000.00 as attorney’s fees.”[4]

The assailed Resolution denied petitioner’s Motion for Reconsideration.

The Facts

The antecedents were ably summarized by the CA as follows:

“On June 11, 1981, David M. Consunji, Inc. acquired and became the owner of a residential lot situated in Matina, Davao City and covered by TCT No. T-82338. This lot shall henceforth be called the lot in question. On June 13, 1981, David M. Consunji, Inc. transferred said lot to its sister company, the DMC Urban Property Developers, Inc. (DMC) in whose favor TCT No. T-279042 was issued. Alleging that Louie Biraogo forcibly entered said lot and built thereon the Habagat Grill in December, 1993, DMC filed on March 28, 1994 a Complaint for Forcible Entry against Habagat Grill and/or Louie Biraogo. The Complaint was docketed as Civil Case No. 1233-D-94 in the Municipal Trial Court in Cities, Branch 4, in Davao City. The Complaint

alleged that as owner DMC possessed the lot in question from June 11, 1981 until December 1, 1993; that on that day, December 1, 1993, Louie Biraogo, by means of strategy and stealth, unlawfully entered into the lot in question and constructed the Habagat Grill thereon, thus illegally depriving DMC of the possession of said lot since then up to the present; that the reasonable rental value of said lot is P10,000.00 a month.

“Louie Biraogo in his Answer denied illegally entering the lot in question. He averred that Habagat Grill was built in 1992 inside Municipal Reservation No. 1050 (Presidential Proclamation No. 20) and so DMC has no cause of action against him. Since one of the vital issues in the case was the location of Habagat Grill, the Municipal Trial Court in Cities constituted a team composed of three members, one a Geodetic Engineer representing the DMC, another Geodetic Engineer representing Biraogo and the third from the DENR which was tasked with the duty of determining where precisely was Habagat Grill located, on the lot in question or on Municipal Reservation No. 1050. Biraogo was directed by the court to furnish the team with a copy of Municipal Reservation No. 20. Biraogo never complied. Worse, his designated Geodetic Engineer Panfilo Jayme never took oath as such and did not participate in the Relocation survey. The ones who conducted the survey were Engr. Edmindo Dida of the DENR and Engr. Jose Cordero, DMC’s representative. After conducting the relocation survey on March 30, 1998, engineers Dida and Cordero submitted their report to the Court specifically stating that the Habagat Grill Restaurant was occupying 934 square meters of the lot in question.

“After necessary proceedings, the Municipal Trial Court in Cities rendered a Decision on August 6, 1998 dismissing the case on the ground of lack of jurisdiction and lack of cause of action. DMC appealed from said Decision to the Regional Trial Court and the same was docketed in Branch 12, in Davao City as Civil Case No. x x x 26,860.98. On February 16, 1999, said court rendered judgment affirming the appealed Decision. A Motion for Reconsideration was filed but was denied in the court’s Order dated April 21, 1999.”[5]

Consequently, respondent interposed an appeal to the CA.

Ruling of the Court of Appeal

Granting respondent’s appeal, the Court of Appeals ruled that the court of origin had jurisdiction over the Complaint for Forcible Entry.[6] The CA gave greater weight to the testimony of respondent’s real property manager, Bienamer Garcia, that Habagat Grill had been built on December 1, 1993.[7] The appellate court opined that his testimony was credible, because he had personal knowledge of the facts he had testified to -- it was his task to know such matters. On the other hand, it was not clear in what capacity petitioner’s witness, Samuel Ruiz, came to know of the facts he had testified to.[8] The CA further held that the minutes of the Urban Planning and Economic Development hearings -- submitted by petitioner to prove the construction of Habagat Grill in 1992 -- were immaterial, as these referred to another establishment.[9]

The CA faulted petitioner for not presenting any other documentary evidence to establish the date of Habagat Grill’s construction.[10] It added that the court of origin had improperly adjudged the subject property as part of the public domain. The appellate court explained that the lower court could take cognizance of Presidential Proclamation No. 20, but not of the situational relation between the property covered by the Proclamation and the land in question. The CA further criticized petitioner for not presenting any evidence to show the basis of the latter’s alleged authority to build Habagat Grill on the property.[11]

Hence, this Petition.[12]

The Issues

In its Memorandum, petitioner raises the following issues for our consideration:

“1. That, with due respect, the Honorable Court of Appeals erred in not finding that the Honorable Court of First Level has no jurisdiction over this case as petitioner’s possession and occupation of the lot where Habagat Grill was constructed on the subject premises was yet in 1992 or for more than one (1) year prior to

the filing of this case on April 7, 1994 and that respondent's predecessor (David M. Consunji, Inc.) had not been in prior and physical possession of the subject premises, as a matter of fact, it failed to allege the same in its Complaint in this case; and

"2. That, with due respect, the Honorable Court of Appeals erred in not finding that the Complaint of respondent's predecessor (David M. Consunji, Inc.) in this case failed to state a valid cause of action as the lot referred to therein is not particularly described and is different from the lot on which the Habagat Grill was constructed." [13]

Simplified, the issues are (1) whether the MTC had jurisdiction over the case, and (2) whether respondent alleged a sufficient cause of action in its Complaint.

This Court's Ruling

The Petition has no merit.

First Issue: Jurisdiction

Petitioner argues that the lower court did not acquire jurisdiction over the case, because mere allegation of ownership did not, by itself, show that respondent had prior possession of the property. [14]

We disagree. Jurisdiction in ejectment cases is determined by the allegations pleaded in the complaint. [15] As long as these allegations demonstrate a cause of action either for forcible entry or for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court -- after acquiring jurisdiction -- may resolve to dismiss the action for insufficiency of evidence.

The necessary allegations in a Complaint for ejectment are set forth in Section 1 of Rule 70 of the Rules of Court, which reads thus:

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 lessor, 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 lessor, 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 Municipal Trial 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.

In the present case, the Complaint filed before the trial court on March 28, 1994, stated:

"2. That [respondent] had been in lawful and peaceful possession of a residential lot at Tulip Drive, Ecoland and Subdivision covered by TCT T-82338 of the Registry of Deeds of Davao City being owner thereof, since June 11, 1981, until the day and incident in the following paragraph hereof.

"3. That on or about December 1, 1993, [petitioner] by means of strategy and stealth, unlawfully entered and occupied a portion of said residential lot and constructed what is now known as the 'Habagat Grill', thereby illegally depriving [respondent] of the possession of the premises." [16]

Notably, petitioner alleged (1) prior possession, (2) deprivation thereof by strategy and stealth, and (3) the date such unlawful deprivation started, which was less than one year from the filing of the Complaint. Considering the presence in the Complaint of all the necessary allegations, [17] the trial court evidently acquired jurisdiction over the subject matter of the case.

Date of Entry

Petitioner further contends that, as determined by the court of origin and the regional trial court, respondent has not adduced preponderance of evidence to prove that this case was filed within the one-year prescriptive period.[18] Petitioner presented the testimony of a certain Samuel Ruiz and offered the minutes of the hearings conducted by the Urban Planning and Economic Development (UPED) to prove that the construction of the Habagat Grill began in 1992.[19]

Respondent counters that the CA properly relied on the testimony of the former's real property manager, Bienamer Garcia, as he had personal knowledge of the facts.[20] On the other hand, the two trial courts allegedly relied on the hearings conducted by the UPED in resolving that petitioner had been in possession of the property since 1992. Respondent avers that those hearings referred to a restaurant located 330 meters away, not to Habagat Grill.[21]

The determination of the date of entry into the subject lot is a question of fact. This Court has held in a long line of cases that the review of cases brought before it via Rule 45 of the Rules of Court is limited to errors of law. Findings of fact by the CA are conclusive except in a number of instances, one of which is when its factual findings are contrary to those of the courts below, as in the present case.[22]

The appellate court held that the minutes of the UPED hearing pertained to matters relating to a different establishment, the Kawayan Restaurant.[23] Thus, the UPED minutes did not have any material bearing on the resolution of the present case. Consequently, the determination of the date of entry into the subject lot boils down to the appreciation of the testimonies of Garcia and Ruiz.

"Preponderance of evidence" means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.[24] Where the evidence presented by one side is insufficient to ascertain the claim, there is no preponderance of evidence.[25] In criminal cases in which the quantum of evidence required is greater than in civil cases, the testimony of only one witness -- if credible, straightforward, and worthy of belief -- is sufficient to convict.[26] With more reason then, Garcia's testimony, if clear and positive, may be sufficient to establish respondent's claim.

Under Section 1 of Rule 133 of the Rules of Court, among the facts and circumstances to be considered by the court in determining which of the presented evidence has superior weight is the witnesses' means and opportunity to know the facts to which they testify.[27]

The extent of such means and opportunity are determined by the following considerations:

"First, the 'Actor Rule.' This rule maintains that a person's recollection of his own acts and of the attendant circumstances is more definite and trustworthy than another person's recollection of it, especially if it was an act done in the performance of a duty, or if the other person's testimony is little more than an expression of opinion or judgment. Apart from comparative tenacity of memory, the actor usually knows better than any one else what he did or did not do, and his testimony is generally, but not always, entitled to superior weight on that account. Thus, the execution and attestation of a will or other legal document may be so far regarded as the act of the lawyer who superintends the transactions and knows the formalities required by law, and his testimony to the circumstances will generally outweigh that of a non-professional witness.

"The 'Actor Rule' has been applied in a multitude of admiralty cases and any other cases where a person's testimony concerning his own conduct conflicts with the testimony of a non-participating observer or with inconclusive inferences from facts proved, especially where the 'actor' witness testifies to an act which the duties of his employment required him to perform. But it said that the testimony of one who evidently speaks rather to his custom than to his acts on the particular occasion will hardly suffice to put him in the category of

those who are specially favored by the Actor Rule.

“Second, the witness who had the greater interest in noticing and remembering the facts is to be believed in preference to the one that had a slighter interest to observe or was wholly indifferent. Interest has effect on the power of observation of witness. Thus, it has been held that it was not remarkable that witnesses would not have observed traces of blood along the route through which the deceased was taken because said witnesses had no reason to suspect that the crime was not committed in the place where the dead body was found. Similarly, the failure of witnesses to notice whether or not there were houses at the place where they say the accused maltreat the offended party was attributed as due to the fact that their attention was concentrated to what they say, and they had no interest in knowing whether or not there were houses in or around the place.

“Third, the witness who gives reasons for the accuracy of his observations is preferred to him who merely states the fact to be so, without adverting to any circumstances showing that his attention was particularly called to it. Thus, the testimony of the crew of a vessel that their light on the night of a collision was red, and nothing more, was easily overcome by testimony of witnesses on the other vessel that the light was white, not red, and that fact was a matter of remark among them when the light was observed.

“Fourth, the witness in a state of excitement, fear, or terror is generally incapable of observing accurately. This is so because, if men perceive the most insignificant facts in the most diverse ways, even when it is impossible that these facts should produce on the observer any emotion preventing him from observing with absolute calm, even much more will their impressions be diversified under circumstances calculated to produce in the onlookers excitement, fear or terror.

“Fifth, intoxication tends to impair accuracy both of observation and memory of a witness.”[28] (Citations omitted)

Based on the foregoing criteria, the testimony of Garcia must be given greater weight, considering that it was his task -- as the real property manager of respondent -- to know about matters involving the latter's properties. In contrast, it was not explained how Ruiz could be deemed competent and credible in his testimony as to those matters.

The lower courts dismissed the testimony of Garcia -- regardless of how clear, positive and straightforward it was -- solely on the ground that he was not a disinterested witness. True, he was an employee of respondent; relationship, however, will not by itself determine the true worth of one's testimony.[29] The essential test is whether such testimony is disencumbered, credible, and in accord with human experience.[30] It cannot easily be dismissed by the mere invocation of the witness' relationship with respondent. In sum, we have no reason to disagree with the CA's evaluation that, being credible, Garcia's direct testimony was sufficient to establish respondent's claim that petitioner had entered the premises on December 1, 1993.

Second Issue: Cause of Action

Petitioner avers that no cause of action was alleged by respondent, as shown by the following circumstances: (1) the latter's property was not encroached upon by Habagat Grill, which had allegedly been constructed on a portion of land owned by the City Government of Davao;[31] and (2) respondent failed to prove that its predecessor-in-interest had prior possession of the property.[32]

On the other hand, respondent argues that the trial court indiscriminately ignored the Report of the survey team that had been constituted to determine the exact location of Habagat Grill. Respondent further contends that the trial court erred in taking judicial notice of the metes and bounds of the property covered by Presidential Proclamation No. 20.[33] Although the lower court may take judicial notice of PD No. 20, it may not do so in regard to the metes and bounds of Times Beach. Neither, may it claim knowledge of the situational relation

between the land in question and Times Beach.

Location of the Property

We agree with respondent. “Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them.”[34] Its object is to save time, labor and expense in securing and introducing evidence on matters that are not ordinarily capable of dispute or actually bona fide disputed, and the tenor of which can safely be assumed from the tribunal’s general knowledge or from a slight search on its part.

Indeed, municipal courts may take judicial notice of the municipal ordinances in force in the municipality in which they sit.[35] Such notice, however, is limited to what the law is and what it states.[36] As can be gleaned from its discussions, the trial court took judicial notice of the existence of Presidential Proclamation No. 20, which declared Times Beach a recreation center. The MTC also took judicial notice of the location of the beach, which was from the shoreline to the “road towards the shoreline.” On the basis of these premises, the trial court resolved that the lot on which petitioner’s restaurant was located should necessarily be inside Times Beach, which was owned by the City of Davao. Hence, it was the City -- not respondent -- that had a cause of action against petitioner. To arrive at this conclusion, the MTC made its own estimate of the location of the metes and bounds of the property mentioned by the law.[37]

The location of Habagat Grill cannot be resolved by merely taking judicial notice of Presidential Proclamation No. 20; such location is precisely at the core of the dispute in this case. Moreover, considering respondent’s allegation that the supposed lot covered by the Ordinance has been lost due to inundation by the sea, we cannot fathom how the trial court could have known of the actual location of the metes and bounds of the subject lot.

Neither may the MTC take discretionary judicial notice under Section 2 of Rule 129 of the Rules of Court, because the exact boundaries of the lot covered by that law are not a matter of public knowledge capable of unquestionable demonstration. Neither may these be known to judges because of their judicial functions.

Hence, the CA was correct in disregarding the findings of the trial courts, because they had erred in taking judicial notice of the exact metes and bounds of the property. The appellate court aptly relied on the Report submitted by the survey team that had been constituted by the trial court, precisely for the purpose of determining the location of Habagat Grill in relation to respondent’s lot.

Prior Possession

Finally, petitioner avers that respondent failed to prove that the latter’s predecessor-in-interest had prior possession of the property.[38] Conversely, respondent alleges that its predecessor was in prior physical possession of the property as the registered owner thereof since June 11, 1981.[39] Again, we rule for respondent.

There is only one issue in ejectment proceedings: who is entitled to physical or material possession of the premises; that is, to possession de facto, not possession de jure? Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.[40]

The two forms of ejectment suits -- forcible entry or unlawful detainer -- may be distinguished from each other mainly by the fact that in forcible entry, the plaintiffs must prove that they were in prior possession of the premises until they were deprived thereof by the defendant; in unlawful detainer, the plaintiff need not have been in prior physical possession.[41]

Spouses Benitez v. CA[42] has held that possession can be acquired not only by material occupation, but also by

the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.

Possession can be acquired by juridical acts. "These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, x x x execution and registration of public instruments, and the inscription of possessory information titles." [43] For one to be considered in possession, one need not have actual or physical occupation [44] of every square inch of the property at all times. In the present case, prior possession of the lot by respondent's predecessor was sufficiently proven by evidence of the execution and registration of public instruments and by the fact that the lot was subject to its will from then until December 1, 1993, when petitioner unlawfully entered the premises and deprived the former of possession thereof.

WHEREFORE, the Petition is DENIED and the challenged Decision and Resolution AFFIRMED. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 12-33.

[2] Id., pp. 37-42. Seventeenth Division. Penned by Justice Hilarion L. Aquino (Division chairperson), with the concurrence of Justices Edgardo P. Cruz and Amelita G. Tolentino (members).

[3] Id., pp. 54-55.

[4] Assailed CA Decision, p. 6; rollo, p. 42.

[5] Id., pp. 1-2 & 37-38.

[6] Id., pp. 3 & 39.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Id., pp. 5 & 41.

[12] The case was deemed submitted for decision on May 22, 2003, upon this Court's receipt of respondent's Memorandum, signed by Antonio P. Avelino (respondent's general administration manager) assisted by Atty. Inobobby P. Pinili. Petitioner's Memorandum, signed by Atty. Lucilo B. Sarona Jr., was received by this Court on May 20, 2003.

[13] Petitioner's Memorandum, p. 8; rollo, p. 109. Original in upper case.

[14] Id., pp. 13 & 114.

[15] Lizo v. Carandang, 73 Phil. 649, August 17, 1942.

[16] Complaint, p. 1; rollo, p. 63.

[17] See Herrera v. Bollos, 374 SCRA 107, January 18, 2002.

- [18] Petitioner's Memorandum, p. 10; rollo, p. 111.
- [19] Ibid.
- [20] RTC Decision, p. 3; rollo, p. 79.
- [21] Respondent's Memorandum, pp. 15-16; rollo, pp. 136-137.
- [22] Siguan v. Lim, 318 SCRA 725, November 19, 1999.
- [23] Petitioner's Memorandum, pp. 3-4; rollo, pp. 39-40.
- [24] Municipality of Moncada v. Cajuigan, 21 Phil. 184, January 12, 1912; Stronghold Insurance Company, Inc. v. CA, 173 SCRA 619, May 29, 1989; Metro Manila Transit Corp. v. CA, 223 SCRA 521, June 21, 1993.
- [25] Sapu-an v. CA, 214 SCRA 701, October 19, 1992.
- [26] People v. Candado, 84 SCRA 508, August 1, 1978; People v. Ferrer, 325 Phil. 269, March 14, 1996; People v. Sotto, 325 Phil. 646, March 29, 1996; People v. Canuzo, 325 Phil. 840, March 29, 1996.
- [27] "SECTION 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses though the preponderance is not necessarily with the greater number."
- [28] Francisco, Basic Evidence, 2nd ed. (1999), pp. 493-494.
- [29] People v. Nitcha, 240 SCRA 283, January 19, 1995; People v. Magsombol, 322 Phil. 196, January 23, 1996; People v. Magallano, 334 Phil. 276, January 16, 1997.
- [30] People v. Gapasan, 312 Phil. 964, March 29, 1995; People v. Reyes, 312 Phil. 304, March 9, 1995.
- [31] Petitioner's Memorandum, pp. 14-15; rollo, pp. 115-116.
- [32] Id., pp. 3-4 & 104-105.
- [33] It declared Times Beach as a recreation site in Davao City. CA Decision, p. 5; rollo, p. 41.
- [34] Francisco, supra, p. 23.
- [35] Id., p. 25.
- [36] United States v. Pons, 34 Phil. 729, August 12, 1916.
- [37] MTC Decision, pp. 2-3; rollo, pp. 73-74.
- [38] Petitioner's Memorandum, pp. 3-4; rollo, pp. 104-105.
- [39] Respondent's Memorandum, pp. 20-21; rollo, pp. 141-142.
- [40] Pitrague v. Sorilla, 92 Phil. 5, September 17, 1952.
- [41] Sumulong v. Court of Appeals, 232 SCRA 372, May 10, 1994; Javelosa v. Court of Appeals, 333 Phil. 331,

December 10, 1996.

[42] 334 Phil. 216, January 16, 1997 (citing *Pharma Industries, Inc. v. Pajarillaga*, 100 SCRA 339, October 17, 1980).

[43] Tolentino, *Civil Code of the Philippines*, Vol. II, (1992 ed.), p. 262.

[44] *Spouses Benitez v. Court of Appeals*, *supra*.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.