

PAUL T. IRAO, PETITIONER, VS. BY THE BAY, INC., RESPONDENT.

G.R. No. 177120. July 14, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Resolution of February 20, 2008, this Court denied the Petition for Review on Certiorari filed by Paul T. Irao (petitioner) due to non-compliance with the September 17, 2007 Resolution directing him to file a reply to the comment of By the Bay, Inc. (respondent) on the petition.

Petitioner, through counsel, promptly filed an Urgent Omnibus Motion[1] praying for the reconsideration of the above-said February 20, 2008 Resolution, the reinstatement of his petition, and the admission of his belated reply attached to the motion.

Explaining the non-compliance, petitioner's counsel Atty. Tristram B. Zoleta of A., Tan, Zoleta and Associates alleges that "the previous lawyer (Atty. Wilfred F. Neis) assigned to this case inadvertently and unintentionally failed to file the required reply due to his resignation from the law firm, without properly turning over all the cases assigned to him;" that "the law firm and its associates had no slightest intention" to disobey the September 17, 2007 Resolution; and that they have "committed themselves under their oath as lawyers that they will be more circumspect in the supervision and handling of petitioner's case." [2] Atty. Zoleta further averred that "petitioner has a valid and meritorious case," warranting the grant of the petition. [3]

The Court finds counsel's excuse to be flimsy and hackneyed. It is preposterous for his law firm to allow the handling lawyer to resign without requiring him to turn over all the cases assigned to him.

Given that the findings on the case by the Metropolitan Trial Court and the Regional Trial Court on one hand, and the Court of Appeals on the other, are conflicting, however, and the prima facie merit of the petition, the Court heeds petitioner's entreaty and thus reconsiders the February 20, 2008 Resolution, reinstates the petition, and admits petitioner's belated reply to respondent's comment on the petition.

In June of 2002, the Estate of Doña Trinidad de Leon Roxas represented by Ruby Roxas as lessor, and herein respondent represented by Ronald M. Magbitang as lessee, forged a contract of lease [4] over a three-storey building with an area of 662 square meters, located at Roxas Boulevard corner Salud Street, Pasay City, for a term of five (5) years commencing on July 1, 2002 until June 30, 2007, for a monthly rental of P200,000.00, to be increased annually by P50,000.00. [5]

It appears that in November 2003, respondent's restaurant business at the leased premises was "closed down by the City Government."

Respondent defaulted in the payment of rentals which, as of January 2004, totaled P2,517,333.36 [6] inclusive of interest and penalty charges. Despite demands to pay the amount and comply with the terms and conditions of the contract, respondent failed and refused to do so. [7]

The lessor's counsel thereupon demanded, by letter [8] of January 16, 2004, the payment by respondent of

P2,517,333.36 within five (5) days from notice "otherwise the Contract of Lease would be terminated without notice." It appears that the letter to respondent was received on January 23, 2004.[9]

Respondent failed to heed the demand, however, drawing the lessor to terminate the contract without notice, in accordance with Section 31 of the contract which provides:

- DEFAULT – The LESSEE agrees that all the covenants and agreements herein contained shall be deemed conditions as well as covenants and that if default or breach be made of any of such covenants and conditions then this lease, at the discretion of the LESSOR, may be terminated and cancelled forthwith, and the LESSEE shall be liable for any and all damages, actual and consequential, resulting from such default and termination.

If after due notice has been given to the LESSEE of the cancellation of the lease, the latter fails to comply with the LESSOR's demand for the return to it of the possession of the premises and the payment of the LESSEE's accrued obligations pursuant to the provisions of this Contract or in the event the LESSOR should exercise its Contract or in the event the LESSOR should exercise its right to enforce its preferred lien on the personal properties of the LESSEE existing on the Leased Premises, or in the event of default or breach by the LESSEE of any of the provisions herein contained, the LESSEE hereby empowers the LESSOR and/or her authorized representatives to open, enter, occupy, padlock, secure, enclose, fence and/or discontinue public utilities and otherwise take full and complete physical possession and control of the Leased Premises without resorting to court action; x x x. For purposes of this provision and other pertinent provisions of this Contract, the LESSEE hereby constitutes the LESSOR and her authorized representatives as the LESSEE's attorney-in-fact, and all acts performed by them in the exercise of their authority are hereby confirmed. The LESSEE hereby expressly agrees that only or all acts performed by the LESSOR, her authorized agents, employees and/or representatives under the provisions of this Section may not be the subject of any Petition for a Writ of Preliminary Injunction or Mandatory Injunction in court.[10] (Emphasis and underscoring supplied)

Subsequently or on February 4, 2004, the lessor executed a lease contract[11] over the same property with herein petitioner, Paul T. Irao, effective February 1, 2004 until January 30, 2009. Paragraph 6 of this contract empowers petitioner to enter and take over the possession of the leased premises, thus:

- TURNOVER OF POSSESSION – The Leased Premises is presently being unlawfully detained by the previous lessee and the LESSEE acknowledges and recognizes such fact. The LESSEE undertakes that it shall take the necessary legal measures to eject or evict the previous lessee and its employees and assigns and take over possession of the Leased Premises.[12]

Consequently, on or about February 6, 2004, petitioner, accompanied by a Barangay Kagawad and some security guards from the Spy Master Security Agency, entered and took possession of the leased premises.

Respondent thereupon filed with the Metropolitan Trial Court (MeTC) of Pasay City a complaint[13] for forcible entry with prayer for preliminary mandatory injunction and damages against petitioner and all persons claiming rights under him, docketed as Civil Case No. 89-04 CFM.

In its complaint, respondent alleged that its lease contract had not been terminated[14] because the lessor's demand letter was merely a demand to pay the rental arrears, without a notice to terminate the contract, hence, it "has the right to occupy the leased premises until June 30, 2007,"[15] the expiry date of the lease; and that, therefore, petitioner's taking over the possession of the leased premises on February 6, 2004 was illegal.

By Decision[16] of May 21, 2004, Branch 44 of the MeTC dismissed respondent's complaint, it holding that by respondent's failure to pay monthly rentals, it "violated its contractual obligations and therefore come to Court with unclean hands." [17]

On appeal, the Regional Trial Court (RTC) of Pasay City, Branch 108, by Decision[18] dated August 16, 2004,

dismissed respondent's appeal and affirmed the MeTC Decision.

Respondent elevated the case via petition for review to the Court of Appeals which, by Decision[19] of February 22, 2006, granted the petition, disposing as follows:

WHEREFORE, the petition is GRANTED. Accordingly, the August 16, 2004 Decision of the Regional Trial Court of Pasay City, Branch 108, and May 21, 2004 Decision of the Metropolitan Trial Court of Pasay City, Branch 44, are REVERSED and SET ASIDE. A NEW JUDGMENT is rendered ordering respondent [herein petitioner] Paul Irao to turn over the possession of the subject premises to petitioner.

SO ORDERED. (Emphasis in the original; underscoring supplied)

In reversing the RTC decision, the appellate court held that "while the contract with respondent provided that [i]n case of default, the parties stipulated that the lessor (or its authorized representative) could take over the physical possession of the leased premises `without resorting to court action,' [t]his empowerment, however, comes into play only `after due notice has been given to the LESSEE of the cancellation of the lease,'"[20] citing the second paragraph of Section 31 of respondent's lease contract, quoted earlier. Finding that a termination notice and a demand to vacate the leased premises were not incorporated in the lessor's demand letter, the appellate court ruled that respondent's eviction was improper.

Petitioner's motion for reconsideration was denied by Resolution[21] of March 26, 2007.

Hence, the present petition for review on certiorari filed on May 15, 2007 hinged on the issue of whether the lessor's demand letter to respondent contains a notice of termination of the lease contract and a demand to vacate the leased premises to justify the taking over of possession thereof by the lessor and/or its representative-herein petitioner.

The Court finds in the affirmative.

The pertinent portions of the demand letter read:

x x x x

Our client [the lessor] has informed us that since June 2003, you failed to pay and refused to pay your monthly rentals including the interest due thereon, which to date amounts to Php1,450,000. In addition, you also owe our client the amount of Php567,333.36 by way of penalty and interest for late payment of your rentals from January 2003 to January 2004. A statement of account is attached herewith for your guidance and information.

x x x x

In view of the foregoing, formal demand is hereby made on you to pay our client the full amount of Php2,517,333.36 within five (5) days from receipt hereof, otherwise we shall be constrained, much to our regret, to terminate your Contract of Lease and take the necessary legal measures against you to protect our client's interest, without further notice. (Emphasis and underscoring supplied)

The language and intent of the abovequoted portions of the demand letter are unambiguous. The lessor demanded from respondent the full payment of its unpaid rentals of P2,517,333.36 within five days from notice. The phrase "otherwise we shall be constrained, much to our regret" in the letter sends a clear warning that failure to settle the amount within the stated period would constrain the lessor to "terminate [the] Contract of Lease" and "take the necessary legal measures against [respondent] to protect [its] interest without further notice."

The letter made it clear to respondent that the therein stated adverse consequences would ensue "without further notice," an unmistakable warning to respondent that upon its default, the lease contract would be deemed

terminated and that its continued possession of the leased premises would no longer be permitted.

The notice of impending termination was not something strange to respondent since it merely implemented the stipulation in Section 31 of their contract that "if default or breach be made of any of such covenants and conditions, then this lease, at the discretion of the LESSOR, may be terminated and cancelled forthwith."

To "warn" means "to give notice to somebody beforehand, especially of danger;" and a "warning" may be "a notice of termination of an agreement, employment, etc." [22] Its purpose is "to apprise a party of the existence of danger of which he is not aware to enable him to protect himself against it." [23]

"[W]here," as here, "the party is aware of the danger, the warning will serve no useful purpose and is unnecessary, and there is no duty to warn against risks which are open and obvious." [24]

The appellate court's ruling that the lessor's letter did not demand respondent to vacate is flawed. A notice or demand to vacate does not have to expressly use the word "vacate," as it suffices that the demand letter puts the lessee or occupant on notice that if he does not pay the rentals demanded or comply with the terms of the lease contract, it should move out of the leased premises. [25]

It bears reiteration that the demand letter priorly warned respondent that upon its default the lease contract would not only be terminated, but the lessor would "take the necessary legal measures against [respondent] to protect [its] interest, without further notice" and "without resorting to court action" as stipulated in their lease contract. The "necessary legal measures" are those expressly stipulated in Section 31 of the lease contract among which are, for expediency, requested below:

"x x x in the event of default or breach by the LESSEE of any of the provisions herein contained, the LESSEE hereby empowers the LESSOR and/or her authorized representatives to open, enter, occupy, x x x and otherwise take full and complete physical possession and control of the Leased Premises without resorting to court action; x x x. For purposes of this provision and other pertinent provisions of this Contract, the LESSEE hereby constitutes the LESSOR and her authorized representatives as the LESSEE's attorney-in-fact, and all acts performed by them in the exercise of their authority are hereby confirmed. x x x." (Emphasis and underscoring supplied)

Contractual stipulations empowering the lessor and/or his representative to repossess the leased property extrajudicially from a deforciant lessee, as in the present case, have been held to be valid. [26] Being the law between the parties, they must be respected. Respondent cannot thus feign ignorance that the repossession of the leased property by the lessor and/or its representative-herein petitioner was the appropriate legal measure it (respondent) itself authorized under their contract.

In *Viray v. Intermediate Appellate Court* [27] where the lessor and the lessee stipulated as follows:

- Upon failure of the Lessee to comply with any of the terms and conditions of this lease, as well as such other terms and conditions which may be imposed by the Lessor prior to and/or upon renewal of this lease agreement as provided in par. 2 above, then the Lessor shall have the right, upon five (5) days written notice to the Lessee or in his absence, upon written notice posted at the entrance of the premises leased, to enter and take possession of the said premises holding in his trust and custody and such possessions and belongings of the Lessee found therein after an inventory of the same in the presence of a witness, all these acts being hereby agreed to by the Lessee as tantamount to his voluntary vacation of the leased premises without the necessity of suit in court." (Underscoring supplied; italics in the original),

this Court, finding that the stipulation empowered the lessor to repossess the leased premises extrajudicially, and citing, *inter alia*, *Consing v. Jamadre* [28] wherein this Court sustained the validity of a lease agreement empowering the sub-lessor to take possession of the leased premises, in case the sub-lessee fails "to comply with

any of the terms and conditions" of the contract "without necessity of resorting to court action," held that the stipulation was valid.

In *Subic Bay Metropolitan Authority v. Universal International Group of Taiwan*,^[29] this Court, in resolving in the affirmative the issue of whether a "stipulation authorizing [the therein petitioner-lessor] to extrajudicially rescind its contract [with the therein respondent-lessee] and to recover possession of the property in case of contractual breach is lawful," considered, among other things, the therein lessee's several violations of the Lease and Development Agreement including its failure to complete the "rehabilitation of the Golf Course in time for the APEC Leaders' Summit, and to pay accumulated lease rentals, and to post the required performance bond," which violations the lessee did not deny or controvert. The Court therein concluded that the lessee "effectively . . . offered no valid or sufficient objection to the lessor's exercise of its stipulated right to extrajudicially rescind the [agreement] and take over the property in case of material breach."

As in *Subic Bay*,^[30] herein respondent-lessee violated its agreement with the lessor and offered no valid or sufficient objection to the exercise by the lessor through petitioner of its stipulated right to extrajudicially take possession of the leased premises.

Apropos with respect to herein respondent's having already been ousted of the leased premises is this Court's explanation in *Viray* that "the existence of . . . an affirmative right of action [of the lessor] constitutes a valid defense against, and is fatal to any action by the tenant who has been ousted otherwise than judicially to recover possession," citing *Apundar v. Andrin*^[31] which held:

. . . The existence of an affirmative right of action on the part of the landlord to oust the tenant is fatal to the maintenance of any action by the tenant. Otherwise, the absurd result would follow that a tenant ousted under the circumstances here revealed would be restored to possession only himself to be immediately put out in a possessory action instituted by the landlord. To prevent circuitry of action, therefore, we must recognize the affirmative right of action on the part of the landlord as a complete and efficacious defense to the maintenance of an action by the tenant. *Circuitus est evitandus; et boni judices est lites dirimere, ne lis ex lite oriatur.*

Another consideration based upon an idea familiar to jurisprudence is equally decisive. This is found in one of the implications of the familiar maxim, *Ubi jus ibi remedium*, the converse of which is of course equally true, namely: *Nullum jus nullum remedium*. Applying this idea to the case before us, it is manifest that inasmuch as the plaintiffs right of possession has been destroyed, the remedy is also necessarily taken away.^[32] (Underscoring supplied)

To restore possession of the premises to herein respondent, who was ousted under the circumstances reflected above, would undoubtedly, certainly result to absurdity.

WHEREFORE, the petition is GRANTED. The challenged Court of Appeals Decision dated February 22, 2006 and its Resolution dated March 26, 2007 are REVERSED and SET ASIDE.

The August 16, 2004 Decision of the Regional Trial Court of Pasay City, Branch 108 affirming that of the Metropolitan Trial Court of Pasay City, Branch 44 is REINSTATED.

Costs against respondent.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 176-185.

- [2] Id. at 177-178.
- [3] Id. at 179.
- [4] Annex "C," Petition, rollo, pp. 61-69.
- [5] Id. at 61.
- [6] Annex "D" (lessor's demand letter dated January 16, 2004), Petition, rollo, pp. 70-71.
- [7] Petition, id. at 14-15.
- [8] Annex "D," supra note 6.
- [9] Vide Exhibit "K-1," left bottom portion, records, p. 65.
- [10] Rollo, pp. 67-68.
- [11] Annex "E," id. at 72-80.
- [12] Id. at 73.
- [13] Annex "F," id. at 81-89.
- [14] Par. 6, id. at 82.
- [15] Par. 17, id. at 84.
- [16] Annex "H," Petition; Rollo, pp. 140-147.
- [17] Id. at 147.
- [18] Annex "H-1," id. at 148-151.
- [19] Penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Jose L. Sabio, Jr. and Arturo G. Tayag; Annex "A," id. at 32-43.
- [20] CA Decision, p. 7; rollo, p. 39.
- [21] Annex "B," Petition; id. at 44.
- [22] English Dictionary, Penguin Reference, Centennial Edition 2004, London, England, p.1589.
- [23] Black's Law Dictionary, Sixth Centennial Edition, p. 1584, citing *Wiseman v. Northern Pac. Ry. Co.*, 214 Minn. 101, 7 N.W.2d 672, 675.
- [24] Id.
- [25] *Golden Gate Realty, Corporation v. Intermediate Appellate Court*, No. L-74289, July 31, 1987, 152 SCRA 684.
- [26] *Viray v. Intermediate Appellate Court*, G.R. No. 81015, July 4, 1991, 198 SCRA 786, 791; *Consing v. Jamandre*, No. L-27674, May 12, 1975, 64 SCRA 1.
- [27] Ibid.
- [28] Ibid.
- [29] G.R. No. 131680, September 14, 2000, 340 SCRA 359.

[30] Ibid.

[31] G.R. No.. 16220, November 19, 1921, 42 Phil. 356, 361-362; vide also *Medel v. Militante*, No. 16096, March 30, 1921, 41 Phil. 526.

[32] *Viray v. Intermediate Appellate Court*, supra citing also *Medel v. Militante*, No. 16096, March 30, 1921, 41 Phil. 526.

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