

**QUINTINA S. VDA. DE AMPIL, AND DOMINGO BROTHERS, INC.,
PETITIONERS, VS. THE HON. JUDGE CARMELINO G. ALVENDIA,
BRANCH XVI, COURT OF FIRST INSTANCE OF MANILA AND VICENTE
MANUEL, R...**

G.R. No. 19761. April 30, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioners, Quintina S. Vda. de Ampil and Domingo Brothers, Inc., pray for a writ directing the respondent, Judge Carmelino S. Alvendia of the Court of First Instance of Manila to order the execution pending appeal of a decision of the Municipal Court directing respondent Vicente Manuel to vacate the premises held by him as lessee of petitioners.

At issue in this case is the time for making deposits of current rentals pending appeal in a forcible entry or detainer case. The decision of the Municipal Court (Annex D of the Petition) is, in terms, as follows:

"This is an ejectment case, where the judgment was appealed to the Court of First Instance which remanded the case to this Court for trial on the merits and allowed DOMINGO BROS., INC., co-plaintiffs.

From the evidence adduced by the parties, the Court believes and so holds that the defendant is in arrears in the payment of rent at the rate of P70.00 a month from April, 1958 up to the present and that due notice had been made upon the defendant by the plaintiff before filing of the complaint.

While defendant maintains that the house is owned by his deceased wife, not by him alone, yet it is the considered opinion of the Court that, considering his answer to the complaint, he is in estoppel at this stage of the proceedings to raise the question of propriety of the party defendant.

Wherefore, judgment is hereby rendered in favor of plaintiff and against defendant, ordering the latter and all persons claiming under him to vacate the premises referred to in the complaint; to pay the sum of P1,870.00 representing the rent in arrears from April 1, 1958 up to July, 1960, at the rate of P70.00 a month and monthly thereafter, within the first five (5) days of each month, beginning August, 1960, at the said rate of P70.00 until defendant and all others claiming under him surrender possession of the premises in question unto plaintiff; plus the further sum of P100.00 as attorney's fees and costs of this suit." (*Italics supplied*)

Pending Manuel's appeal from the judgment abovequoted in the Court of the respondent judge, the petitioners filed a motion averring that the appellant-lessee had failed to deposit the P70.00 monthly set by the lower court within the first five (5) days of each month, as ordered in the appealed judgment; wherefore, it was prayed that, as provided by Rule 72, section 8, of the Rules of Court, the judgment under appeal be executed as to the possession and the defendant-appellant ordered to vacate premises under litigation.

After hearing, the respondent judge found that the appellant had been making the monthly deposits exacted by the appealed judgment "within the first ten days of the month following that for which the deposit was made", and "it

can not, therefore, be said that the defendant has failed to make the monthly deposit on time" (Annex F).

Reconsideration having been denied, petitioners resorted to this Court.

We think the order of the Court of First Instance is correct, there being no finding in the decision by the Municipal Court (Annex D) that the contract of lease required the monthly rent to be paid within the first five (5) days of each month. While the initial complaint (Annex A) did allege that defendant-appellant "agreed and undertook to pay a rental thereon at the rate of P70.00 per month to be paid in advance within the first five (5) days of every month", mere allegations do not satisfy the requirements of the Rule. Section 8 of Rule 72 expressly prescribes that the defendant-appellant should pay or deposit, during the pendency of the appeal,—

"the amount of rent due from time to time under the contract, as found by the judgment of the justice of the peace or municipal court to exist, or in the absence of contract, he pays to the plaintiff or unto the Court, on or before the tenth day of each calendar month,

In the absence of any finding as to the provisions of the lease contract by the Municipal Court, the monthly deposit may be made within the first ten (10) days of each succeeding month. It was so ruled by this Court, in *Yu Khi Kim vs. Ten Giok Yan*, G. R. No. L-544, Nov. 29, 1952, passing on this very issue;

"The words 'in the absence of a contract' covers not only the situation where there is no contract actuality, but also where the judgment does not wxtlce findings as to the existence and/or terms of the contract. The amount required to be paid in such case being equivalent to the reasonable value of occupation.

In other words where the time for payment under the contract of lease is not specifically declared in the judgment of the justice of the peace or municipal court, the ten-day period must be followed. There is no desire or purpose to permit the Court of First Instance, in a motion like this, to go beyond the judgment receiving evidence as to the terms of the contract and the time of payment." (*Kim vs. Yan, et al*, G. R. No. L-5441, Nov. 29, 1952). *Italics ours.*"

It follows that the portion of the decision of the Municipal Court requiring; the appellant to deposit current rentals within the first five (5) days of each month is not controlling, there being no pronouncement that the contract calls for such payments. As ruled in the *Kim vs. Yan* case (*supra*), section 8 of the Rules "requires as a condition sine qua non that the judgment shall make specific findings as to the existence and the terms of the contract. The words "as found by the judgment" are very material".

The apparently contrary ruling in *Chung Ben vs. Co Bun Kim*, 51 Off. Gaz., 6197, was predicated on the failure of the appellant to dispute the terms of the contract, as averred by the landlord in his petition. But in the case now before us, the lessee explicitly avers "that the landlord in his petition. But in the case now before us, the lessee explicitly avers "that there is no specific contract providing for time of payment" (Answer, page 2, par. c).

IN VIEW OF THE FOREGOING, the writ prayed for is denied. Costs against petitioners.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Barrera, Dizon, and Makalintal, JJ., concur.

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