

CLEODUALDO C. SIPIN, JOSE CHUA, LIM SU KHAN, KING WOO, TAN TONG, AND TAN LIM, PETITIONERS, VS. COURT OF FIRST INSTANCE OP MANILA, THE SHERIFF OF MANILA, AND FERNANDEZ HERMANOS, ...*G.R. No. 49145. June 14, 1944*

Ponente: OZAETA, J.

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Respondent Fernandez Hermanos, Inc., the owner of the premises known as No. 525 Rizal Avenue, Manila, obtained from the municipal court a judgment of desahucio against its tenant Jack Maghlen on January 3, 1944, upon which the said court, on the 10th of the same month, issued writ of execution commanding the sheriff "to cause the defendant aforesaid and other occupants forthwith to remove from said premises; and that the plaintiff aforesaid have restitution of the same." Thereupon the above-named petitioners, who are subtenants of the said Jack Maghlen on a day-to-day basis, paying to him an agreed daily rental, instituted civil case No. 1771 in the Court of First Instance of Manila against Judge Guillermo Cabrera of the municipal court of Manila, the sheriff of Manila, and Fernandez Hermanos, Inc., praying, among other things, for the writ of preliminary injunction against the defendants, "ordering them to refrain from enforcing said writ of execution * * * as against the plaintiffs until further order of the court," on the ground that said plaintiffs were not parties in the desahudo case. The Court of First Instance denied the petition for preliminary injunction as well as the plaintiffs' subsequent motion for reconsideration, whereupon said plaintiffs instituted the present certiorari proceedings in this court praying, among other things, "that said respondent court be ordered to issue said Writ of injunction."

Previous to the desahudo case filed by Fernandez Hermanos, Inc., against Jack Maghlen, the latter as sublessor had, since October 19, 1943, instituted desahudo cases and obtained judgments against the present petitioners, who appealed therefrom to the Court of First Instance of Manila, where said appeal was and is still pending. The only defense interposed by the petitioners in said desahudo cases against them is that "they were not given the five days' notice required by the Rules of Court nor the three months' notice required by Executive Order No. 212,"

The only question to decide is whether the respondent Court of First Instance abused its discretion or exceeded its jurisdiction in denying petitioners' application for the writ of preliminary injunction. That question in turn hinges on whether or not the municipal court acted within its jurisdiction in extending its writ of execution to the petitioners as subtenants of the defendant Jack Maghlen.

The petitioners maintain that under Executive Order No. 212 they, as sublessees with the knowledge and consent of the owner of the premises, "are entitled to the same rights and privileges given the original lessee * * * not only as against the sublessor but also as against the original lessor."

We find, however, that section 10 of said Executive Order No. 212 expressly provides that said Order shall not apply "to any contract which clearly contemplates transient or temporary occupation of a building or portion thereof." The contract between the petitioner Sipin and his sublessor Maghlen contains the following clauses:

"3, That I shall remove from the said premise at my own expense, my goods, merchandise, and belongings, every day at the close of the business hour which shall not be later than 8:00 o'clock p.m.

"4. That this contract is good from day to day, so that I could be made to vacate the said premise at any time by Mr. Jack Maghlen or his duly appointed representative," (Exhibit 1.)

There is no question that the contract of the other petitioners is the same as that of Sipin. From the terms of such contract, it seems undeniable that the petitioners are transient or temporary tenants and therefore not entitled to the benefit afforded by said Executive Order No. 212. The fact urged by counsel for the petitioners that the latter have established stores in said premises with the knowledge of their sublessor Jack Maghlen does not change the transient or temporary nature of the contract between them, and much less can it bind the owner of the building to the extent of depriving him of his right to enforce his contract with his lessee, Jack Maghlen.

Under article 1551 of the Civil Code a subtenant, without prejudice to his obligation with respect to the sublessor, shall be liable to the lessor for all the acts which concern the use and preservation of the thing leased, in the manner agreed upon between the lessor and the lessee. Article 1552 further provides that the sublessee shall also be liable to the lessor for any part of the rent agreed upon in the sublease which may be due at the time of the demand. The sublessee, therefore, can invoke no right superior to that of his sublessor, and the moment the latter is duly ousted from the premises the former has no leg to stand on. The sublessee's right, if any, is to demand reparation for damages from his sublessor, should the latter be at fault.

Upon the equity aspect of the case, we are not impressed by the petitioners' plea that their sublessor did not give them five days' notice before instituting the desahucio cases against them which are now pending appeal in the Court of First Instance. Aside from the fact that that allegation is denied by the respondents and is not supported by the order of the respondent judge complained of, that circumstance, even if true, cannot be invoked against Fernandez Hermanos, Inc., in view of the nonapplicability of Executive Order No. 212 as aforesaid. Moreover; it is apparent that all that the petitioners could expect under the circumstances is more time within which to look for another place, and it appears that since the institution of the cases against them by Jack Maghlen, not only five days, not only three months, but more than seven months have elapsed. Hence they have obtained more than they could expect, assuming that they are acting in good faith.

It results from all of the foregoing that the municipal court acted within its jurisdiction in issuing the writ of execution. Hence the Court of First Instance did not, in turn, exceed its jurisdiction nor did it abuse its discretion in denying the petitioners' application for preliminary injunction.

The petition is dismissed and the writ of preliminary injunction heretofore issued herein is dissolved, with costs.

Yulo, C. J., Moran, Horrilleno, and Bocobo, JJ., concur.

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