

FELISA RIVERA AND GODOFREDO RIVERA, PETITIONERS, VS. HON. ALFREDO C. FLORENDO PRESIDING JUDGE, COURT OF FIRST INSTANCE OF MANILA, BRANCH XXXVI, AND PACIFICO AQUINO, RESPONDENTS.

G.R. No. 60066. July 31, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

The sole legal issue involved in this petition for review is whether or not the period of the verbal lease agreement between petitioners and private respondent has expired within the meaning of Section 5[c] of Batas Pambansa Bilang 25.[1] In the light of our pronouncement in *Baens vs. Court of Appeals*, 125 SCRA 634, We rule in the affirmative.

Petitioners-spouses Felisa and Godofredo Rivera were the owners of apartment units bearing numbers 2034, 2036 and 2038 on Quirino Avenue, Pandacan, Manila. Sometime in 1965, private respondent Pacifico Aquino started occupying the apartment unit designated as No. 2034 under a verbal lease agreement with petitioners. Although a monthly rent of P120.00 was agreed upon, no stipulation was made as to the period of lease.

In 1979, after having judicially ejected the tenant of unit No. 2036, petitioners moved into said premises. In December of the same year, however, petitioners sold unit No. 2036 to one Mister Mistar in order to raise enough money to pay their loan with the Monte de Piedad Loan and Savings Bank and thereby save the whole apartment building from foreclosure. Petitioners thereafter moved to an apartment in Guadalupe, Makati, which they rented at P500.00 a month.

On January 24, 1980, petitioners notified private respondent thru a letter of their need of the premises being occupied by the latter and asked that he vacate the same after ninety [90] days from notice. When private respondent refused to vacate the premises at the end of said period, petitioners filed on May 2, 1980 before the then City Court of Manila a complaint for ejectment against private respondent docketed as Civil Case No. 054962-CV.[2]

After trial, the City Court rendered a decision on January 27, 1981, the dispositive portion of which reads:

"Premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant, ordering the latter:

1. and all other persons claiming under him to vacate the premises in question and surrender possession thereof to plaintiffs;
2. to pay plaintiffs the rental from January, 1981 at the rate of P120.00 a month until the premises in question shall have been fully vacated and possession thereof surrendered to plaintiffs;
3. to pay plaintiff the sum of P1,000.00 as attorney's fees; and

4. to pay the cost of suit."[3]

On appeal by private respondent, however, the then Court of First Instance in a decision dated May 28, 1981, reversed the decision of the city court and dismissed the complaint. It concluded that since the contract of lease had not yet expired, petitioners could not repossess the apartment unit notwithstanding their need to use the same as their dwelling place.[4]

Upon denial of their motion for reconsideration, petitioners elevated the case to the then Court of Appeals on a petition for review. In a resolution dated November 12, 1981, the Court of Appeals gave due course to the petition and required private respondent to file an answer.[5] In view, however, of the failure of service of said resolution upon Atty. Ephraim Serquina; counsel for private respondent, and private respondent himself, both of whom could not be found at the addresses stated in the petition, the appellate court on January 28, 1982 resolved to consider the petition submitted for resolution without respondent's answer.[6]

On February 17, 1982, the Court of Appeals certified the petition to this Court as one involving pure question of law.[7] On March 15, 1982, We accepted the petition and required private respondent to file an answer within ten [10] days from notice.[8] When service of said resolution could not be made on counsel for private respondent, We required counsel for petitioners to furnish the Court with the new address of Atty. Serquina, but he, too, did not have the information required. Thus, service was made on private respondent himself.

On December 8, 1982, Atty. Nicomedes R. Martelino, Jr. entered his appearance as counsel for private respondent.[9] On June 29, 1983, We gave due course to the petition and reiterated our resolution of March 15, 1982 requiring private respondent to file an answer within ten [10] days from notice. No answer was filed. For such failure, We required Atty. Martelino, Jr. to show cause why no disciplinary action should be taken against him and to file the required Answer.[10] Still, no answer was forthcoming. Hence, on January 16, 1984, We fined Atty. Martelino, Jr. P200.00 for his failure to comply with our resolution.[11] He paid the fine only after he was ordered arrested.

On September 3, 1984, We required private respondent himself to file an answer in view of his counsel's failure to do so.[12] On October 17, 1984, Ricardo Aquino, in behalf of his father, the private respondent, requested this Court for an extension of fifteen [15] days within which to file the answer.[13] On October 31, 1984, Atty. Jaime N. de la Cruz appearing as counsel for private respondent, filed another motion for extension of sixty [60] days, followed by a similar motion on November 2, 1984. On November 28, 1984, We granted counsel for private respondent only thirty [30] days instead of the sixty-day extension requested, with a warning that no further extension would be given.[14] Regrettably, still, no answer was filed. Thus, on March 25, 1985, We resolved to suspend Atty. de la Cruz from the practice of law until further orders.[15] Atty. de la Cruz filed a motion for reconsideration of said resolution, alleging that he prepared the required answer in the first week of January, 1985 and gave all the copies to Ricardo Aquino for submission to the Court, with the instruction to furnish all the parties concerned with their respective copies. De la Cruz alleged further that without his knowledge, Ricardo Aquino left in the third week of January for the United States as an immigrant to join his father, Pacifico Aquino, without submitting the Answer to this Court; and that diligent search for the answer as well as the records of the case in the last known address of Ricardo Aquino had proven futile.[16] Attached to his motion was the certification of Barangay Chairman Zenaida de la Cruz of Barangay 856, City of Manila, stating that:

"Messrs. Pacifico Aquino and Ricardo Aquino, who are members of this Barangay are no longer residing in their last known address at 2034 Pres. Quirino, Pandacan, Manila. Information gathered revealed that said persons had already left for the United States as immigrants."[17]

On August 1, 1985, Atty. de la Cruz filed a motion to withdraw as counsel for private respondent. In our

resolution dated September 4, 1985, We granted said motion and likewise lifted the suspension imposed on Atty. de la Cruz.[18]

Meanwhile, petitioner Felisa Rivera by herself or thru counsel had filed motions or sent several letters to this court, to wit: letters dated June 3, 1983, May 7, 1984, August 30, 1984, June 18, 1985, February 27, 1986 and May 21, 1986[19] requesting for an early resolution of the case and informing the Court that since private respondent and his son had left for the United States, the premises in question had been occupied by a relative of private respondent, without any rent being paid therefor.

In denying petitioners' right to repossess the premises in question the then Court of First Instance reasoned out as follows:

"x x x Since there is no fixed or definite period of the verbal lease contract, it is clear that the applicability of Article 1673 of the Civil Code is suspended. Article 1673 provides:

'Art. 1673. The lessor may judicially eject the lessee for any of the following causes:

1. When the period agreed upon, or that which is fixed for the duration of leases under Article 1682 and 1687, has expired;

xxx xxx xxx

"In view of the findings of the court that the contract of lease is on a month to month basis, the duration of the lease is fixed by Article 1687, which provides partly that if the period for the lease has not been fixed, it is understood to be from month to month if it is monthly.

"If we apply the aforesaid provision of Article 1687 to the case at bar, it is obvious that the contract of lease had already expired considering that plaintiffs-appellees have given notice to the defendant-appellant three months in advance. However, this particular provision of the Civil Code has been suspended by Sec. 6 of Batas Pambansa Blg. 25 as quoted above. So, it is crystal clear that the contract of lease has not expired. The reason for the suspension of Article 1673 and 1687 insofar as they refer to residential units can be gleaned from the case of *Salaria vs. Buenviejo*, L-45642, February 28, 1978, 81 SCRA 722." [20]

The conclusion reached by the respondent court is erroneous. Section 6 of Batas Pambansa Blg. 25 provides:

"Sec. 6. Application of the Civil Code and Rules of Court of the Philippines. - Except when the lease is for a definite period, the provisions of paragraph [1] of Article 1673 of the Civil Code of the Philippines insofar as they refer to residential units covered by this Act shall be suspended during the effectivity of this Act, but other provisions of the Civil Code and the Rules of Court on lease contracts, insofar as they are not in conflict with the provisions of this Act, shall apply."

What is suspended under the aforequoted provision of law is Article 1673 of the Civil Code of the Philippines and not Article 1687 of the same Code. The effect of said suspension is that independently of the grounds for ejectment enumerated in Batas Pambansa Blg. 25, the owner/lessor cannot eject the tenant by reason of the expiration of the period of lease as fixed or determined under Article 1687. It does not mean that the provisions of Article 1687 itself had been suspended. Thus, the determination of the period of a lease agreement can still be made in accordance with said Article 1687.

Admittedly, no definite period for the lease was agreed upon by petitioners and private respondent. However, as the rent was paid on a monthly basis, the period of lease is considered to be from month to month in accordance with Article 1687. When petitioners gave private respondent notice to vacate the premises in question, the contract of lease is deemed to have expired as of the end of the month. As We have ruled in *Baens v. Court of Appeals*, supra, "even if the month to month arrangement is on a verbal basis, if it is shown that the lessor needs

the property for his own use or for the use of an immediate member of the family or for any of the other statutory grounds to eject under Section 5 of Batas Pambansa Blg. 25, which happens to be applicable, then the lease is considered terminated as of the end of the month, after proper notice or demand to vacate has been given. [See *Crisostomo v. Court of Appeals*, 116 SCRA 199]."

Respondent Court evidently overlooked a crucial factor in applying the *Salaria* case, *supra*, to the case at bar. It must be noted that the law involved therein was Presidential Decree No. 20. As said presidential decree did not recognize as a ground for ejectment the need of the lessor/owner of the leased premises, the only ground that therein plaintiff Buenviaje could legally rely upon was the expiration of the lease agreement under par. 1 of Article 1673, in relation to Article 1687 of the Civil Code. But precisely because said par. 1 of Article 1673 had been suspended by P.D. No. 20, it was obvious that therein plaintiff did not have any legal ground for ejecting petitioner *Salaria*.

The law invoked in the case at bar, on the other hand, is Batas Pambansa Blg. 25. Section 5[c] thereof allows ejectment on the ground of need by the owner/lessor of the leased premises for his own use or that of a member of his immediate family. The inclusion of this ground was obviously intended to correct the inequity and hardship imposed by P.D. 20 on small landowners/lessors, whose property rights, protected as they are by the fundamental law itself, We upheld even during the effectivity of P.D. No. 20.[21] To adopt, therefore, the construction given by respondent court is to render Section 5[c] of Batas Pambansa Blg. 25 illusory in cases where the lease agreement is verbal and for an indefinite period, because in this case, the owner/lessor, notwithstanding his pressing and urgent need for the premises could never successfully eject the tenant as the period of lease would never expire during the effectivity of Batas Pambansa Blg. 25.

Private respondent had migrated to the United States. He clearly had no need for the premises under consideration. Despite this, he obstinately and unmercifully resisted the right of petitioner to repossess said apartment unit, not only to the grave prejudice of the latter, but likewise at the risk of jeopardizing the career of the two counsels who re-presented him before this Court. We condemn this attitude of private respondent.

The instant case, which is summary in nature, had dragged on for over five [5] years. To obviate further delay, the decision rendered herein is final and immediately executory.

WHEREFORE, the petition is hereby granted. Private respondent and all other persons claiming under him are hereby ordered to vacate the premises known as No. 2034 Quirino Avenue, Pandacan, Manila, and to surrender possession thereof to petitioners. Private respondent is likewise ordered: a) to pay petitioners the rental from January, 1981 at the rate of P120.00 a month until the premises in question shall have been fully vacated and possession thereof surrendered to petitioners; b) to pay petitioners the sum of P1,000.00 as attorney's fees; and c) to pay treble costs. This decision is final and immediately executory.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Section 5[c] of Batas Pambansa Blg. 25 reads:

"Section 5. Grounds for Judicial Ejectment.- Ejectment shall be allowed on the following grounds:

xxx xxx xxx

c. Need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family as a re-sidential unit, such owner or immediate member not being the owner of any other

avail-able residential unit: Provided, however, That the period of lease has expired: Pro-vided, further, That the lessor has given the lessee notice three months in advance of the lessor's intention to repossess the property; and Provided, finally, That the owner/lessor or immediate members stays in the residential unit for at least one year, except for justifiable cause.

[2] Annex "B", Petition, p. 18, Rollo.

[3] Annex "D", Petition, p. 30, Rollo.

[4] Annex "A", Petition, p. 12, Rollo.

[5] P. 40, Rollo.

[6] P. 49, Rollo.

[7] P. 59, Rollo.

[8] P. 62, Rollo.

[9] P. 68, Rollo.

[10] Resolution dated October 17, 1983, p. 79, Rollo.

[11] P. 82, Rollo.

[12] P. 122, Rollo.

[13] P. 123, Rollo.

[14] P. 131, Rollo.

[15] P. 134, Rollo.

[16] Pp. 139-140, Rollo.

[17] P. 141, Rollo.

[18] P. 149, Rollo.

[19] Pp. 71, 88, 121, 143, 150 and 152, respectively, Rollo.

[20] Annex "A", Petition, pp. 15-16, Rollo.

[21] See *Onchengco v. City Court of Zamboanga*, 95 SCRA 313, and *Sinclair v. Court of Appeals*, 115 SCRA 318.

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