

**GOLDEN GATE REALTY, CORPORATION, PETITIONER, VS.
INTERMEDIATE APPELLATE COURT, HON. ANTONIO DESCALLAR, AS
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, ILOILO
BRANCH XXIV; SPOUSE...**

G.R. No. 74289. July 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari seeks to nullify the decision of the Court of Appeals which affirmed the order of the Regional Trial Court declaring as void all proceedings conducted before the City Court of Iloilo on the ground that it did not acquire jurisdiction over the ejectment case filed by the petitioner, the latter having failed to allege that a demand to vacate was made to the private respondents.

The facts are not disputed. As found by the respondent appellate court, they are as follows:

"On November 26, 1980, petitioner filed three (3) separate complaints for ejectment against private-respondent Emilio Young and two other defendants before the City Court of Iloilo, docketed as Civil Cases Nos. 13436, 13439, and 13462. These cases were jointly tried. It may be stressed here that so far as relevant to this petition, Civil Case No. 13439 refers to the ejectment case filed against respondent Young.

"On November 4, 1981, a motion to dismiss was filed on the ground of lack of jurisdiction considering that the complaint failed to allege prior demand to vacate the premises. An opposition thereto was filed by the petitioner claiming that only a demand to pay rentals due is a prerequisite to an action for unlawful detainer citing as its authority Section 2, Rule 70 of the Rules of Court.

On December 1, 1981, the motion to dismiss was denied, the pertinent portion of the order reads:

'Going over the complaints filed by the plaintiff in these three cases, the Court agrees, with the findings of the defendant that there is no word or phrase in paragraph 7 of the complaint categorically saying that the defendants 'vacate the premises'.

'But the Court feels that there is no necessity that such a word 'vacate' must have to be stated categorically in the complaint. It could be gleaned from the complaint that the plaintiff, through its counsel, 'gave notice to the defendant to pay the sum of P18,000.00 within five (5) days from receipt of his letter and failing to do so a case of ejectment would be filed against him. Such allegation substantially connotes that warning is given to the defendant that in case he fails to pay the amount demanded for him as rentals in arrears, then he has to vacate the premises. There is no necessity of so categorically stating the word 'vacate' or the phrase containing the word 'vacate' the premises in the allegation in the complaint.

'In view of all the foregoing, the Court believes that there has been substantial compliance in the wordings of the allegation in the complaint that confers jurisdiction upon it.

'WHEREFORE, the 'Motion to Dismiss' is hereby denied for lack of merit.

'Furnish both counsel copies of this order.'"

"A motion for reconsideration was filed but was denied by the same court.

"On December 7, 1981, petitioner filed its motion to declare respondents in default. This motion was granted and the reception of evidence was set on December 17, 1981.

"On January 8, 1982, respondent Young filed with the then Court of First Instance of Iloilo a petition for certiorari and prohibition seeking the nullification of the order of the City Court denying his motion to dismiss, docketed as Civil Case No. 14191.

"Meanwhile, on January 19, 1982, the City Court of Iloilo rendered a decision in the ejectment case in favor of petitioner and against private-respondents and the two other defendants.

"On March 16, 1982, a decision was rendered dismissing the petition for certiorari (Civil Case No. 14191) for having become moot and academic in view of the decision rendered by the City Court of Iloilo.

"A petition for review on certiorari was filed with the Supreme Court relative to Civil Case No. 14191 and docketed as G.R. No. 60402. The petition was dismissed for having been filed out of time per minute resolution of the Supreme Court dated July 28, 1982. The motion for reconsideration filed was denied on October 4, 1982.

"On February 29, 1984, a writ of execution was issued in Civil Case No. 13439 where the City Sheriff ejected the respondent spouses Emilio and Alberta Young and scheduled for auction sale the properties levied upon.

"On May 4, 1984, respondent Young filed Civil Case No. 15712 which seeks to nullify 13439. On even date, respondent-Court (Regional Trial Court of Iloilo) issued ex?parte a temporary restraining order, enjoining the petitioner herein and the City Sheriff of Iloilo from conducting the sale at public auction and set the hearing for the issuance of the writ of preliminary injunction to May 11, 1984 which was reset to May 21, 1984 (Annex "K").

"On May 21, 1984, petitioner filed its answer and opposition to the issuance of a writ of preliminary injunction. Thereafter, a hearing was conducted.

On May 24, 1984, for lack of material time within which to decide the prayer for preliminary injunction, respondent-Court issued an order extending to ten (10) days the effectivity of the restraining order, or up to June 4, 1984 (Annex "M").

(pp. 27-28, Rollo)

On June 4, 1984, the Regional Trial Court of Iloilo City issued the questioned order nullifying the decision in Civil Case No. 13439 of the City Court of Iloilo for having been rendered without jurisdiction. According to the respondent trial court, for the said city court to have acquired jurisdiction over the ejectment case which was filed by the petitioner, the demand to vacate by the latter should have been couched in definite and not conditional words. Thus, the principle of res judicata cannot be applied to the ejectment case.

The court, further, permanently restrained the petition-ers from enforcing and executing the annulled decision and directed the Sheriff to desist from carrying out the public auction sale and to return the properties levied upon by him to the private respondents.

The petitioner appealed contending, among others, that the trial court committed grave abuse of discretion in issuing a temporary restraining order and in extending the effectivity thereof; in issuing a final injunction based on the evidence presented during the hearing of an application for a preliminary injunction; and in enjoining the enforce-ment of a judgment that has become final and executory.

On January 28, 1986, the Court of Appeals dismissed the petition. In its decision, the appellate court ruled that the trial court acted correctly in issuing a temporary restraining order and in extending the same because the prescribed 20-day period for the efficacy of such an order is not a hard and fast rule. Accordingly, where the party against whom a temporary restraining order is directed adopts a posture which would unreasonably prevent the court from deciding the propriety of issuing a writ of preliminary injunction within the prescriptive period as in this case where the petitioner filed its answer three days before the expiration of the restraining order, the Court may, as an exception and on a case to case basis as justice dictates, extend the period of effectivity of such order provided that such extension is definite and does not go beyond another twenty days. Furthermore, the appellate court also ruled that there is nothing strange or unusual for evidence in a hearing for injunction to be considered in the final determination of the merits of the case. Also, where the allegation in the complaint merely refers to a demand for payment of the rentals agreed upon, without any statement to the effect that a demand has been made to vacate the premises, such allegation is insufficient to confer jurisdiction upon the court in an unlawful detainer case. Consequently, there can be no valid and final judgment which may serve as a basis for the application of the principle of res judicata.

In this instant petition, the petitioner maintains that the respondent appellate court erred in sustaining the order of the trial court: (a) extending the efficacy of the restraining order; (b) holding that it can issue a final injunction based on evidence presented for the issuance of a preliminary injunction and before the hearing of the trial on the merits; (c) holding that the decision in Civil Case No. 13439 does not constitute res judicata to Civil Case No. 15712 and (d) declaring that the City Court has no jurisdiction to hear Civil Case No. 13439 for lack of demand to vacate.

Petitioner contends that the twenty (20)-day period of efficacy of a temporary restraining order is non-extendible and the courts have no discretion to extend the same, otherwise the life of such provisional remedy would be only permissive and not mandatory as intended by the rule.

We agree.

In the recent case of *Ortigas & Company, Limited Partnership v. Hon. Vivencio M. Ruiz, et al.* (G. R. No. L-33952, March 9, 1987) we ruled that a temporary restrain-ing order has a limited life of twenty (20) days:

"Finally, under Section 5, Batas Pambansa Blg. 224, a judge may issue a temporary restraining order with a limited life of twenty (20) days from date of issue. If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary restraining order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20-days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. A temporary restraining order can no longer exist indefinitely for it has become truly temporary (*Board of Transportation v. Castro*, 125 SCRA 417 (1983) citing *Dionisio, et al., v. Court of First Instance of South Cotabato, Branch II*, G.R. No. 61048 promulgated on August 17, 1983). xxx."

We, therefore, rule that the respondent trial court erred in extending the period of the temporary restraining order for another ten (10) days in order to give itself more time to decide on the propriety of the issuance of a writ of preliminary injunction. We also rule that the said court should not have permanently enjoined the sheriff from conducting an auction sale and more importantly, it should not have annulled the proceedings in Civil Code No. 13439 altogether because by doing so, the said court pre-empted itself from conducting any further trial on the merits of the case. It went beyond the extent of the relief that the called-for hearing may grant, and that is, the issuance of a preliminary injunction.

As regards the issue of whether or not Civil Case No. 13934 constituted res judicata to Civil Case No. 15712, we

find this question anchored on another issue and that is, whether or not the City Court of Iloilo acquired jurisdiction over the ejectment case filed by the petitioner so much so that the judgment therein would constitute a bar to the filing of Civil Case No. 15712.

The petitioner maintains that the allegations in the original complaint for ejectment substantially meet the required demand to vacate and hence, the City Court acquired jurisdiction to hear the case.

On the other hand, the appellate court in sustaining the trial court's order, held, that it is the lessor's demand to vacate the premises, when the tenant has failed to pay the rents on time, and the tenant's refusal or failure to vacate after such a demand that makes the possession of the latter unlawful, and not his mere failure to pay the said rents. Thus, the filing of the unlawful detainer case by the petitioner, absent the demand to vacate, was done in disregard of the statutory requirement in order for the court to acquire jurisdiction over the same.

In the case of *Lesaca v. Cuevas*, (125 SCRA 384, 389-390) we ruled:

"x x x However, in the present case, the petitioner had the right to terminate the lease at the end of every month as he did so in May, 1975, when the lessee refused to pay the increased rentals. The lessee, therefore, had no alternative but to vacate the premises and his refusal made him a deforciant who could be ousted judicially without the need of the more specific demand he insists upon. Furthermore, even assuming that there was a need for such a demand in the instant case, we believe that the alternative demand to pay the increased rental or to vacate the premises is sufficient under the law to enable the lessor to bring an ejectment case because as stated earlier, the lessee lost all his rights to remain in the premises upon the expiration of the lease contract in May, 1975. There is, therefore, no need for a more definite and unconditional demand to vacate as he had no legal right to remain in the premises. x x x."

As in the above-quoted case, when the private respondents defaulted in the payment of rents in the amount of P18,000.00, they lost their rights to remain in the premises. Hence, when the petitioner demanded payment of the P18,000.00 due and unpaid rentals or a case for ejectment would be filed against them, the owner was giving strong notice that "you either pay your unpaid rentals or I will file a court case to have you thrown out of my property." The word "vacate" is not a talismanic word that must be employed in all notices. The alternatives in this case are clear cut. The tenants must pay rentals which were fixed and which became payable in the past, failing which they must move out. There can be no other interpretation of the notice given to them. Hence when the petitioner demanded that either he pays P18,000.00 in five days or a case for ejectment would be filed against him, he was placed on notice to move out if he does not pay. There was, in effect, a notice or demand to vacate. As held by the city court:

"x x x But the court feels that there is no necessity that such a word 'vacate' or a phrase containing the word 'vacate' must have to be so stated categorically in the complaint. It could be gleaned from the complaint that the plaintiff, through its counsel 'gave notice to the defendant to pay the sum of P18,000.00 within five (5) days from receipt of his letter and failing to do so a case of ejectment would be filed against him.' Such allegation substantially connotes that warning is given to the defendant that in case he fails to pay the amount demanded of him as rentals in arrears, then he has to vacate the premises. There is no necessity of so categorically stating the word 'vacate' or the phrase containing the word 'vacate' the premises in the allegation in the complaint."

Therefore, we find that the City Court of Iloilo acquired jurisdiction over Civil Case No. 13439 and rendered a valid and final judgment which may very well serve as a basis for invoking the principle of *res judicata* in Civil Case No. 15712.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED and the decision of the respondent Court of Appeals dated January 28, 1986 and the order of the respondent Regional Trial Court dated June 4, 1984 are REVERSED and SET ASIDE. The decision of the City Court of Iloilo in Civil Case No. 13439 is

REINSTATED, and is immediately executory.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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