

**SPOUSES EUTQUIANO CLUTARIO AND ARACELI CLUTARIO,
PETITIONERS, VS. HON. COURT OF APPEALS, HON. GEORGE C.
MACLI-ING, RTC JUDGE OF QUEZON CITY, BRANCH C (100) AND
SPOUSES MELQUIAD...**

G.R. No. 76656. December 11, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

Private respondents, the Spouses Melquiades Gandia and Maria V. Gandia, are the owners of a two-storey residential apartment located at No. 56 Liberty St., Murphy, Cubao, Quezon City. Since 1961, while private respondents have been occupying the upper storey of the house, petitioners have been staying on the ground floor by virtue of a verbal lease agreement for a monthly rental of P150.00.

On May 9, 1980, private respondents, through their counsel, wrote a letter to the petitioners giving them ninety (90) days to vacate the premises. According to them, due to their advanced age and failing health, they have decided to occupy the entire apartment, including the ground floor leased to petitioners. Because petitioners did not heed the demand letter, private respondents brought the matter to the Katarungan Pambarangay for settlement, but this did not meet with success. Another demand letter was sent by private respondents to petitioners on January 20, 1981.

In the meantime, it appears that from August 1980, petitioners were in arrears in the payment of their rentals. On March 4, 1981, private respondents filed a complaint for ejectment against petitioner Araceli Clutario[1] before the Metropolitan Trial Court (MTC) of Quezon City citing the following two grounds: (1) their need for the premises; and (2) non-payment of rentals by petitioners from August 1980. Pending the proceedings before the MTC, petitioners paid the back rentals from August 1980 until May 1981.

After trial, the MTC rendered judgment[2] on January 16, 1984 dismissing the complaint on the ground that private respondents "failed to support their causes of action with substantial evidence." [3]

Private respondents then filed an appeal with the Regional Trial Court (RTC) of Quezon City. On March 29, 1985, respondent Judge George C. Macli-ing rendered a well-written decision reversing the MTC judgment. Respondent Judge ruled that petitioners' non-payment of rentals for more than three months and private respondents' genuine need for the leased premises are sufficient causes for petitioners' ejectment. The dispositive portion of the RTC decision reads:

"WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED and SET ASIDE, and in lieu thereof, another one is rendered and entered in favor of the appellants and against the appellees:

1. Ordering the defendants-appellees and all persons claiming rights under them to vacate the premises, identified as the Ground Floor of No. 56 Liberty Avenue, Murphy, Cubao, Quezon City, and restore possession thereof to plaintiffs-appellants.

2. Ordering defendants-appellees to pay rental arrearages from June, 1981, at the rate of P150.00 per month, until such arrearages shall have been fully paid and the premises vacated and possession thereof restored to plaintiffs-appellants.

3. Ordering defendants-appellees to pay P2,000.00 as and for attorney's fees; and to pay the costs.

SO ORDERED.”[4]

It was then petitioners' turn to impugn this judgment by filing a petition for review before the Court of Appeals. In a decision dated September 18, 1986,[5] the respondent Court of Appeals affirmed the RTC judgment but deleted the award of attorney's fees to private respondents. Petitioners elevated the case before this Court, on a petition for review under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals' decision affirming the RTC ruling that they can be ejected by their lessors, the private respondents.

The petition is without merit.

B.P. Blg. 25 (1979), which was the governing law at the time of the filing of the complaint and which the parties had to rely on, provides, in section 5, six (6) grounds for ejectment.[6] In seeking to oust petitioners from the leased premises, private respondents invoke two of those six grounds, namely: (1) arrears in payment of rent for three (3) months at any one time;[7] and (2) need of the lessors to repossess their property for their own use or for the use of any immediate member of their family as a residential unit.[8] Petitioners contend that private respondents cannot avail of either ground.

No longer disputed is the rule that non-payment of rentals is a sufficient ground for ejectment.[9] Under sec. 5 (b) of B.P. Blg. 25 (1979), the arrears in rent payment must be for at least three (3) months. Petitioners started defaulting on their payments in August 1980. On May 15, 1981, they paid P1,500.00 for their rents for the period August 1980 to May 15, 1981 at the rate of P150.00 per month. By then, they had been in arrears for nine (9) months. However, petitioners contend that private respondents, by accepting the payment of the back rentals, waived their non-payment of rentals for more than three (3) months as a ground for ejectment.

The contention is without merit.

Case law is to the effect that the acceptance by the lessor of the payment by the lessee of the rentals in arrears does not constitute a waiver of the default in the payment of rentals as a valid cause of action for ejectment.[10] The Court notes that when petitioners paid the back rentals on May 15, 1981, private respondents had already filed the complaint for ejectment earlier, to be specific, on March 4, 1981. The conduct of private respondents subsequent to their acceptance of the back rentals belies any intention to waive their right to eject petitioners as a result of the latter's failure to pay the rent for more than three (3) months. They did not enter into an amicable settlement with petitioners. Neither did they notify the trial court of their intention to have the complaint dismissed. Instead, they participated actively in the proceedings before the MTC during all the time that the case dragged on for almost three years.[11] When the MTC decided adversely against them, private respondents appealed the judgment to the RTC. Not only have they participated earnestly in all subsequent proceedings even after they obtained favorable judgments from the RTC and the Court of Appeals, but they have likewise been consistent in their position that petitioners should be ejected, not only because they need the leased premises, but also because of petitioners' default in the payment of rentals for more than three (3) months.

In light of the surrounding circumstances of the case, as well as the prevailing jurisprudence, the Court rules that the acceptance by private respondents of the petitioners-lessees' back rentals did not constitute a waiver or abandonment of their cause of action for ejectment against the latter.

Proof of any one of the factors enumerated in section 5 of B.P. Blg. 25 (1979) is sufficient cause for judicial

ejectment of a lessee. Having proved one of such grounds, i.e., arrears in payment of rent for three (3) months at any one time, private respondents may legally eject petitioners without having to prove the other grounds for ejectment. Nevertheless, to bolster their action for ejectment, private respondents invoked in their complaint a second ground for ejectment, namely, their need for the leased premises.[12]

Petitioners are bound by the established jurisprudence that under B.P. Blg. 25 (1979), the need by the lessor of the leased premises for his own use or that of his immediate family is a valid ground for ejectment.[13] They, however, submit that this ground for ejectment is not available to private respondents who own, apart from the disputed premises, three other apartment units located at Nos. 56-A, 56-B and 56-C Liberty St., Murphy, Cubao, Quezon City, at least one of which is allegedly available for occupancy by private respondents.

Indeed, for the lessor to be able to validly eject the lessee on the ground of need for the leased property, it must be shown that there is no other available residential unit to satisfy that need.[14] The non-availability must exist at the time of the demand by the lessor on the lessee to vacate the property.[15] In the instant case, petitioners allege that the other apartment units of private respondents are vacant and available to the latter for occupancy.[16] Private respondents deny this allegation, claiming that the other units were occupied when they gave notice to the petitioners to vacate the disputed premises, and remain so occupied until now.[17] None of the three courts which have already adjudicated on the controversy gave credence to petitioners' allegation. The MTC which decided in petitioners' favor did not make a finding that the other apartment units of private respondents were available for occupancy by the latter. On the contrary, the respondent Court of Appeals ruled that "the other apartments of private respondents were tenanted." [18] The Court finds no cogent reason to disturb this finding.

The MTC, in deciding in favor of petitioners, ruled that private respondents did not need the disputed premises which is the ground floor of the apartment unit leased to petitioners, because they were already occupying the upper floor of the unit. The relevant portion of the MTC decision reads:

On this score, the evidence is clear that the plaintiffs, though owners of the residential house identified as No. 56 Liberty Avenue, Murphy, Quezon City, occupying the upper floor thereof, are the only persons living on this upper floor of the house. The only reason advanced by them for needing to repossess the ground floor or lower part of the house occupied by the defendant, is because the plaintiffs are aging and sickly, as according to the plaintiffs' letter (Exh. "B") to the defendant, plaintiffs "personally need that lower portion of the house for personal use and occupancy since they are getting older and aggravated by their poor health, they get easily tired in going up and downstairs." Obviously, plaintiffs' need of the lower portion of the house is for convenience. It is the view of this Court that when the framers of Batas Pambansa Blg. 25 included "need of the premises" as a ground for judicial eviction, personal convenience is not intended, because the law states clearly that the repossession of the property for the use of the owner/lessor (or immediate member) must concur with the other requisites, one of which is that the owner/lessor does not own any other residential unit.

Plaintiffs' position therefore, on this ground, is not only weak but more so not in accord with the spirit, intent and letter of Batas Pambansa Blg. 25. It may be true that plaintiffs are sickly and aging but their physical condition is not a legal argument to effect eviction of the defendant.[19]

The need for the leased premises by the lessor as a valid ground for ejectment has already been given a liberal interpretation in *Caudal v. Court of Appeals*, [20] where it was held that the conversion of the leased property into a servants' quarters was a legitimate need within the purview of sec. 5 (c) of B.P. Blg. 25 (1979). The Court, speaking through then Chief Justice Marcelo B. Fernan, made the following statements:

Observe that the law does not strictly confine the meaning of the word "residence" mainly for habitation purposes as restrictedly interpreted by petitioner. In a way, the definition admits a measure of liberality, albeit limited, since a residence may also be the site of a home industry, or a retail store or be used for business

purposes so long as it is principally used for dwelling purposes. The law in giving greater importance to the abode being used principally for dwelling purposes, has set the limitation on the maximum amount of capitalization to P5,000.00, which is small by present standards.

Thus, if an abode can be used for limited business purposes, we see no reason why it cannot be used as an abode for persons rendering services usually necessary or desirable for the maintenance and enjoyment of a home and who personally minister to the personal comfort and convenience of the members of the houses.[21]

In the case at bar, it appears that the decision of private respondents to occupy both the lower and upper portions of the property sprang, not only from mere convenience, but from necessity as well, due to their advanced age and the poor health of respondent Melquiades Gandia. While the upper portion of the premises may have been sufficient to satisfy private respondents' residential needs in 1961 when they leased the lower portion to petitioners, it no longer sufficed in 1980 or nineteen (19) years later when they served the notice to vacate, their personal circumstances having drastically changed.

WHEREFORE, the Petition is DENIED and the Decision of the Court of Appeals AFFIRMED.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

[1] Although petitioner Araceli Clutario was named sole defendant before the MTC, she was joined by her husband, petitioner Eutiquiano Clutario, in all subsequent proceedings.

[2] Penned by Judge Pacifico L. Punzalan.

[3] MTC Decision, p. 4; Rollo, p. 60.

[4] RTC Decision, p. 5; Rollo, p. 65.

[5] Penned by Justice Reynato S. Puno with the concurrence of Justice (now Supreme Court Justice) Jose C. Campos, Jr. and Justice Venancio D. Aldecoa, Jr. of the Twelfth (12th) Division of the Court of Appeals.

[6] SEC. 5. Grounds for Judicial Ejectment. -- Ejectment shall be allowed on the following grounds:

a. Subleasing or assignment of lease of residential units in whole or in part, without the written consent of the owner/lessor: Provided, That in the case of subleases or assignments executed prior to the approval of this Act, the sublessor/assignor shall have sixty days from the effectivity of this Act within which to obtain the written approval of the owner/lessor or terminate the sublease or assignment.

b. Arrears in payment of rent for three (3) months at any one time: Provided, That in case of refusal by the lessor to accept payment of the rental agreed upon, the lessee shall either deposit, by way of consignment, the amount in court, or in a bank in the name of and with notice to the lessor.

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 residential unit, such owner or immediate member not being the owner of any other available residential unit: Provided, however, That the period of lease has expired: Provided, 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 member stays in the residential unit for at least one year, except for justifiable cause.

d. Ownership by the lessee of another residential unit which he may use as his residence: Provided, That the

lessee shall have been notified by the lessor of the intended ejectment three months in advance.

e. Need of the lessor to make necessary repairs of the leased premises which is the subject of an existing order of condemnation by appropriate administrative authorities concerned in order to make the said premises safe and habitable: Provided, That after said repair, the lessee ejected shall have the right of first refusal of the lease of the same premises.

f. Expiration of the period of a written lease contract.

In no case shall the lessor or his successor-in-interest be entitled to eject the lessee upon the ground that the leased premises has been sold or mortgaged to a third person.

[7] B.P. Blg. 25, sec. 5 (b).

[8] B.P. Blg. 25, sec. 5 (c).

[9] Uy v. Court of Appeals, G.R. No. 78538, October 25, 1989, 178 SCRA 671; Ipapo v. Intermediate Appellate Court, 72740, January 27, 1987, 147 SCRA 342. See also Ercillo v. Court of Appeals, G.R. No. 55361, December 10, 1990, 192 SCRA 163 which used Art. 1673 of the Civil Code instead of B.P. Blg. 25 for its ruling that the failure of the lessee to pay rents is a ground for ejectment.

[10] Cetus Development, Inc. v. Court of Appeals, G.R. Nos. 77647, 77648, 77649, 77650, 77651, 77652, August 7, 1989, 176 SCRA 72.

[11] The complaint was filed on March 4, 1981 and the MTC rendered judgment on January 16, 1984.

[12] This was initially their only ground for seeking to eject petitioners when they brought the matter to the Katarungan Pambarangay but subsequently, petitioners, by being in arrears in the payment of rentals, provided them another cause for ejectment.

[13] Galang v. Court of Appeals, G.R. No. 76221, July 29, 1991, 199 SCRA 683; Pascua v. Court of Appeals, G.R. Nos. 76851, 78431, March 19, 1990, 183 SCRA 262; Mabutol v. Pascual, G.R. No. 60898, September 29, 1983, 124 SCRA 867.

[14] B.P. Blg. 25, sec. 5 (c).

[15] See Pascua v. Court of Appeals, *supra*, note 12 at pp. 269--271.

[16] Petition, p. 4; Rollo, p. 8.

[17] Comment, p. 2; Rollo, p. 111.

[18] Court of Appeals Decision, p. 4; Rollo, 40.

[19] MTC Decision, p. 3; Rollo, p. 59.

[20] G.R. No. 83414, July 31, 1989, 175 SCRA 798.

[21] *Id.*, at 804-805. Underscoring supplied.

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