

**CRESENCIO VIRAY AND BENJAMIN D. DE ASIS, PETITIONERS, VS.
HON. INTERMEDIATE APPELLATE COURT AND RUSTICO VICTOR,
RESPONDENTS.**

G.R. No. 81015. July 04, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

It is about a written lease agreement that the case at bar turns. The lease concerns residential premises identified as Apartment A at 1836 Sulu Street, Sta. Cruz, Manila. Said lease was executed on April 1, 1981 by the owner of the place, Benjamin de Asis, and Rustico Victor, as lessee.[1] The agreement included stipulations (a) fixing the term of the lease and (b) governing the lessor's right of repossession, viz.:

(a. Term of Lease)

"2. The term of this lease shall be for a period of three (3) months and shall be impliedly renewable from month to month under the same terms and conditions, unless revised by the parties in writing with previous notice to each other of at least fifteen (15) days."

(b. Repossession by Lessor)

"7. Upon failure of the Lessee to comply with any of the terms and conditions of this lease, as well as such other terms and conditions which may be imposed by the Lessor prior to and/or upon renewal of this lease agreement as provided in par. 2 above, then the Lessor shall have the right, upon five (5) days written notice to the Lessee or in his absence, upon written notice posted at the entrance of the premises leased, to enter and take possession of the said premises holding in his trust and custody and such possessions and belongings of the Lessee found therein after an inventory of the same in the presense of a witness, all these acts being hereby agreed to by the Lessee as tantamount to his voluntary vacation of the leased premises without the necessity of suit in court."

A duplicate original of the contract was given to the lessee, Rustico Victor.

Sometime in October, 1983, Victor and his wife left for Ontario, Canada and did not return to the Philippines until February, 1985. They left the apartment in the care of their son, Ramon.

Believing that the Victor spouses had abandoned the apartment -they having been away for more than a year, and the place being occupied by Ramon Victor, an unauthorized stranger -- De Asis brought suit in the Metropolitan Trial Court in December, 1984 to evict the latter. But as aforestated, the spouses returned in February, 1985, and on their representation that they did not mean to give up the apartment, the case was dismissed on joint motion of the parties dated March 12, 1985.[2]

It seems, however, that Rustico Victor did not re-occupy the apartment but continued to leave it in the care of his son, Ramon. Later, in the second week of October, 1985, Ramon himself left for Canada. He asked his brother, Roldan, to look after the place. But Roldan Victor did not actually move into the apartment; all he did was to

install a padlock at the main door, visit the place once a week, and sleep there occasionally.[3]

When De Asis learned of this state of affairs sometime in December, 1985, he went to the place to see for himself if it was true. He saw there was nobody in the apartment, but he could not get inside because it was locked. De Asis then caused the cutting off of the electrical and water service connections and, on the following day, posted at the main door of the apartment a notice of termination of the lease, on the ground of abandonment and failure to pay rentals in accordance with the contract. He could not serve the notice of termination directly on the lessee since he did not know where the latter was.

In the first week of January, 1986, De Asis returned to the apartment and noted that the termination notice he had posted at the door was no longer there. He posted another notice, this time announcing that he would repossess the place after five (5) days in order to secure it from fire, repair it to preserve its value, and inventory such of the lessee's things as were inside which might thereafter be claimed at his residence in Quezon City.[4]

De Asis also wrote on January 2, 1986 to the local barangay captain requesting his presence at the premises on January 5, 1986 at which time he intended to open and repossess the apartment. On January 5, 1986, as announced, and in the presence of the barangay authorities, De Asis had the door of the apartment opened by a carpenter, and hauled to his residence the things found inside after making an inventory of them. Thereafter, he made repairs on the apartment at a cost of P13,108.00, and then leased it to Cresencio C. Viray.[5]

Not long afterwards an action of forcible entry was instituted in the Metropolitan Trial Court against De Asis and his new lessee, Viray, by Roldan Victor in behalf and in the name of his father, Rustico. The action was docketed as Civil Case No. 115635-CV and resulted in a judgment rendered on December 29, 1986 "against the defendants ** De Asis (owner-lessor) and Sgt. C. Viray (present occupant) ordering the said defendants to restore plaintiff to the possession and enjoyment of the leased premises at No. 1836-A Sulu Street, Sta. Cruz, Manila and to pay the costs of this suit." [6] The Metropolitan Trial Court ruled that Rustico Victor could not be deemed to have abandoned the premises, and even if he had, the apartment could not be repossessed without judicial action, the stipulation authorizing the lessor to do so being void as "against public policy and existing precedents."

De Asis and Viray appealed to the Regional Trial Court, without success. That Court rendered judgment on June 15, 1987, affirming that of the Metropolitan Trial Court.[7] It adopted "by reference the findings of fact and conclusions of law ** in the Decision appealed from;" declared the findings to be "in strict accord with the evidence presented and the conclusions ** so obviously correct that a detailed discussion would serve no useful purpose;" and directed "the court of origin to issue a writ of possession immediately in favor of the plaintiff and family, and to issue an order directing the immediate return of the personal belongings of plaintiff taken by defendant Benjamin De Asis inside the apartment in question that were hauled and/or transported to his residence in Quezon City on April 15, 1987."

De Asis and Viray then appealed to the Court of Appeals. Their appeal met the same fate. By judgment promulgated on November 27, 1987 by the Fifteenth Division,[8] their petition for review was dismissed and the Regional Trial Court's decision affirmed.

It is to overturn these three adverse verdicts that De Asis and Viray are now before this Court. They ask this Court to rule favorably to them on two questions of law, viz.: (a) whether or not the posting in the premises, in the first week of December, 1985, of notice of termination of the lease had legally caused its cessation or extinguishment as of December 31, 1985; and (b) whether or not De Asis had "the legal and contractual right to repossess the premises" without and independently of prior judicial authority.[9]

The Court gave the petition due course by Resolution dated June 28, 1989 and required the parties to submit

memoranda. The petitioners submitted their memorandum on August 23, 1989. No memorandum was filed by or in behalf of Rustico Victor within the time appointed.

It is indisputable that the parties' written agreement created a lease on a month-to-month basis. Such a lease, therefore, must be construed, by established doctrine,[10] as providing a definite period and as terminable by notice at the end of any given month.

It appears undisputed, too, that the lessor had posted a notice of termination of the lease at the doorway of the leased apartment and that that notice had subsequently been noted and removed by the lessee's representative. The giving of notice of termination in this manner is explicitly authorized by Section 2, Rule 70 of the Rules of Court, which pertinently provides that a demand by a landlord for payment of rent or comply with the conditions of the lease and to vacate the premises may inter alia be made "by posting such notice on the premises if no persons be found thereon."

The lease having thus been licitly terminated, the lessee, Rustico Victor and his sons became obliged to surrender the leased apartment to the lessor. They did not. They stayed away from the place and did not show up during the repossession undertaken by the lessor, announced in advance through the posting of another notice on the door of the apartment.

What the Victors eventually did was to bring a forcible entry suit against De Asis on the theory that the stipulation in the lease contract authorizing repossession by the lessor without court action was void as contrary to public policy, and De Asis had perpetrated the legally proscribed act of taking the law into his own hands.

The stipulation referred to does by its terms empower the lessor to repossess the apartment extrajudicially. It states that [11]

"7. Upon failure of the Lessee to comply with any of the terms and conditions of this lease, as well as such other terms and conditions which may be imposed by the Lessor prior to and/or upon renewal of this lease agreement as provided in par. 2 above, then the Lessor shall have the right, upon five (5) days written notice to the Lessee or in his absence, upon written notice posted at the entrance of the premises leased, to enter and take possession of the said premises holding in his trust and custody and such possessions and belongings of the Lessee found therein after an inventory of the same in the presence of a witness, all these acts being hereby agreed to by the Lessee as tantamount to his voluntary vacation of the leased premises without the necessity of suit in court."

It is noteworthy that in an earlier case decided in 1975, *Consing v. Jamandre*,[12] this Court sustained the validity of a substantially identical condition in a written lease agreement, which read as follows:[13]

"9. That in case of the failure on the part of the SUB-LESSEE to comply with any of the terms and conditions thereof, the SUB-LESSEE hereby gives an authority to the SUB-LESSOR or to any of his authorized representatives to take possession of the leased premises, including all its improvements thereon without compensation to the SUB-LESSEE and without necessity of resorting to any court action but in which case the SUB-LESSEE shall be duly advised in writing of her failure to comply with the terms and conditions of the contract by way of reminder before the take-over."

This Court ruled that the stipulation "is in the nature of a resolutory condition, for upon the exercise by the Sub-lessor of his right to take possession of the leased property, the contract is deemed terminated;" and that such a contractual provision "is not illegal, there being nothing in the law proscribing such kind of agreement." [14]

Similarly, there is considerable authority in American law upholding the validity of stipulations of this nature.[15]

"Although the authorities are not in entire accord, the better view seems to be, even in jurisdictions adopting

the view that the landlord cannot forcibly eject a tenant who wrongfully holds without incurring civil liability, that nevertheless, where a lease provides that if the tenants holds over after the expiration of his term, the landlord may enter and take possession of the premises, using all necessary force to obtain the actual possession thereof, and that such entry should not be regarded as a trespass, be sued for as such, or in any wise be considered unlawful, the landlord may forcibly expel the tenant upon the termination of the tenancy, using no more force than is necessary, and will not be liable to the tenant therefor, such a condition in a lease being valid."

"* * although there is contrary authority, the rule supported by a substantial number of cases is that despite the effect of forcible entry and detainer statutes, where a lease expressly gives a landlord a right to use such reasonable force as is necessary in making re-entry and dispossessing a tenant, when the landlord becomes entitled to possession because of the termination of the term, the landlord can use force in making re-entry and dispossessing the tenant."

Be this as it may, since the lessor (De Asis) had licitly and efficaciously terminated the month-to-month lease by notice, and had therefore acquired an affirmative right of action to judicially eject the lessee after giving notice to vacate, the existence of such an affirmative right of action constitutes a valid defense against, and is fatal to any action by the tenant who has been ousted otherwise than judicially to recover possession. So has this Court had occasion to rule, with unassailable logic, it might be added. In *Apundar v. Andrin*,^[16] this Court said:

"In *Medel v. Militante* (41 Phil., 526), we held that when the tenant denies his landlord's title this gives rise to a right of action on the part of the landlord to recover immediate possession of the demised premises; and it follows as a necessary corollary from this proposition that if the landlord acquires possession peacefully, as in this case, by the mere act of reentry, the tenant cannot maintain an action to put the landlord out. The existence of an affirmative right of action on the part of the landlord to oust the tenant is fatal to the maintenance of any action by the tenant. Otherwise, the absurd result would follow that a tenant ousted under the circumstances here revealed would be restored to possession only himself to be immediately put out in a possessory action instituted by the landlord. To prevent circuitry of action, therefore, we must recognize the affirmative right of action on the part of the landlord as a complete and efficacious defense to the maintenance of an action by the tenant. *Circuitus est evitandus; et boni judices est lites dirimere, ne lis ex lite oriatur.*

Another consideration based upon an idea familiar to jurisprudence is equally decisive. This is found in one of the implications of the familiar maxim, *Ubi jus ibi remedium*, the converse of which is of course equally true, namely: *Nullum jus nullum remedium*. Applying this idea to the case before us, it is manifest that inasmuch as the plaintiffs right of possession has been destroyed, the remedy is also necessarily taken away. Even under the language of the statute itself (Sec. 80, Code of Civ. Proc.), the action of unlawful detainer does not lie unless the property is unlawfully withheld from the plaintiff, which imports an actual present right of possession in him."

Upon the view that the Court thus takes of the facts, the petition for review on *cetiorari* must be accorded merit and relief correspondingly granted to the petitioners.

WHEREFORE, the judgment of the Court of Appeals of November 27, 1987 in CA-G.R. SP No. 12280, subject of the appeal, is REVERSED AND SET ASIDE, and another rendered DISMISSING Civil Case No. 115635-CV of the Metropolitan Trial Court of Manila (Branch 6). Costs against private respondent.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.
Gancayco, J., on leave.

[1] Rollo, p. 33 (CA Decision, p. 3 [Exh. 1]). It appears that for many years prior to the execution of the written lease agreement, Viray had already been occupying the premises as lessee under a verbal contract.

[2] *Id.*, pp. 33-34 (CA Decision, pp. 3-4)

[3] *Id.*, p. 34

[4] *Id.*, pp. 34-35 (CA Decision, pp. 4-5)

[5] *Id.*, p. 35 (CA Decision, p. 5)

[6] *Id.*, pp. 42-45; the judgment was rendered by Hon. Pedro M. Areola

[7] *Id.*, p. 41. The appeal was docketed as Civil Case No. 87-39807 and the judgment was written by Hon. Doroteo N. Cañeba, presiding Judge of Branch 20 of the Manila RTC.

[8] *Id.*, pp. 31-40. The decision was written for the 15th Division by Ejercito, J., with whom concurred Chua and Lapeña, JJ.

[9] A third issue sought to be raised, whether or not the lessee had abandoned the leased premises, is obviously a factual one, not proper for review by the Supreme Court.

[10] *Rantael v. C.A.*, 97 SCRA 453; *Cruz v. Puno, Jr.*, 120 SCRA 384; *Madriaga v. C.A.*, 163 SCRA 461; *United Realty Corp. v. C.A.*, 183 SCRA 725; *Uy Hoo & Sons Realty Dev. Corp. v. C.A.*, 174 SCRA 100; *Palanca v. I.A.C.*, 180 SCRA 119

[11] *Italics supplied*

[12] 64 SCRA 1

[13] *Italics supplied*

[14] Citing (1) *Froilan v. Pan Oriental Shipping Co.*, 12 SCRA 276, 286 (1964) to the effect that the right to rescind in reciprocal obligations is necessarily implied; that nothing prevents the parties to a contract to agree that a violation thereof cancels the same even without court intervention; and (2) *De la Rama Steamship Co. v. Tan*, 99 Phil. 1034, to the effect that judicial permission to rescind or cancel is necessary only if there be no stipulation to this effect.

[15] 22 Am Jur, p. 916; and Am Jur 2d, Sec. 1220, pp. 104-105

[16] 42 Phil. 356, 361-362

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