

**MARITA CABANGIS AND RODOLFO CABANGIS, PETITIONERS, VS.
HON. COURT OF APPEALS AND ELVIRA DEVIS NICANDRO,
RESPONDENTS.**

G.R. No. 83722. August 09, 1991

Ponente: SARMIENTO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-83722/>

SARMIENTO, J.:

In this petition for review on certiorari, the petitioners assail the decision[1] of the Court of Appeals in CA-G.R. CV No. 06586 in so far as it reversed and set aside the order of the Regional Trial Court (RTC) of Manila, Branch IV, dismissing the complaint for indemnity of improvements with injunction filed by the private respondent and docketed as Civil Case No. 84-27921. The dispositive portion of this challenged decision reads:

WHEREFORE, subject to the findings and conclusions contained herein, the order appealed from is hereby REVERSED AND SET ASIDE insofar as it granted private defendants' motion to dismiss and Affirmed insofar as it denies the issuance of the writ of preliminary injunction. Let the records of the case be remanded to the court below for further proceedings. No special pronouncement as to costs.

SO ORDERED.

The antecedent facts are as follows:

In October 1968, the petitioners, Marita and Rodolfo Cabangis, together with Oscar Cabangis and the deceased Arturo Cabangis, filed an ejectment[2] case against Gaspar Devis, the deceased father of the private respondent Elvira Devis Nicandro, in the then City Court of Manila (now Metropolitan Trial Court) for non-payment of rents of a parcel of land situated in Tondo, Manila, owned by the Cabangises and leased to Devis.

On May 31, 1969, the said court rendered a decision[3] the dispositive portion of which states:

WHEREFORE, judgment on the merits is hereby rendered for the plaintiffs and against the defendant, ordering the latter and all persons claiming right under him to vacate the premises in question and to remove his construction thereon denominated as No. 481 Penalosa St., Tondo, Manila, ordering said defendant to pay the sum of P445.00 as accrued rentals and the sum of P30.00 a month from Nov. 1, 1968 until he vacates the said premises, the further sum of P300.00 as and for attorney's fees, plus costs.

SO ORDERED.

On appeal to the then Court of First Instance (now Regional Trial Court) of Manila, Branch VI, the judgment was affirmed on February 21, 1972. The matter was elevated to the Court of Appeals which likewise affirmed the decision of the then Court of First Instance of Manila on November 27, 1980.

On October 15, 1984, the Metropolitan Trial Court of Manila, Branch VII, granted the motion of the petitioners for a writ of execution since the said decision had already become final and executory.

However, on November 27, 1984, before the said writ of execution could be implemented, herein private

respondent Elvira Nicandro filed, in the Regional Trial Court of Manila, an action[4] for indemnity of improvements with prayer for the issuance of a writ of preliminary injunction against the petitioners. Nicandro was asking for reimbursements of the following improvements made by her father on the properties:

xxx xxx xxx

4. That the lot before and at the commencement of the lease and possession thereof by Gaspar Devis was swampy and muddy, that during rainy and high tide seasons, the soil were (sic) being eroded and washed away;

5. That Gaspar Devis before commencing the construction of the family residential house, in good faith pursuant to the lease agreement filled the lot with truck loads of big stones, escumbro, enclosed the same with hollow blocks and constructed the residential house that was finished sometime in 1955 at the conservative costs of P150,000.00;

6. That the previous owner of the lot, leased by Gaspar Devis from the City Government of Manila, where he constructed his house was the government of the City of Manila, but which lot was included in the parcel of land that was transferred to the herein private defendants, by virtue of the Contract of Exchange, entered into between the government of the City of Manila and the herein private defendants, who stepped into the shoes of the former;[5]

xxx xxx xxx

On December 11, 1984, the petitioners Cabangis filed a motion to dismiss the said complaint for indemnity stating, among others, that the said complaint is barred by the statute of limitations.

On March 29, 1985, the trial court dismissed the complaint and denied Nicandro's motion for preliminary injunction, as follows:

xxx xxx xxx

Without discussing the grounds relied upon by the defendant in his motion to dismiss, the Court, after examining the pleadings and arguments of the parties arrived at the conclusion that the plaintiff's action is designed to alter the dispositive portion of the decision that has long been final and executory which provides that the defendants should vacate the premises and remove the improvements introduced thereon, denominated as 481 Penalosa St., Tondo, Manila. This action of the plaintiff for indemnification for the improvements introduced will constitute an alteration of the said decision.[6]

Accordingly, the trial court decreed:

Finding therefore plaintiff's motion for issuance of a preliminary injunction to be not meritorious, the same is hereby denied, and considering the plaintiff's lack of cause of action against the defendants, this case is, as it is hereby dismissed, without pronouncement as to costs.[7]

On appeal, however, the respondent appellate court reversed the said order of dismissal while affirming the denial of the issuance of a writ of injunction in a decision dated June 6, 1988.

The respondent court, in its decision, declared:

xxx xxx xxx

Plaintiff's instant action is "not designed to alter the dispositive portion of the decision that has long become final and executory." Plaintiff is not contesting the decision in the ejectment case against her father. She is not claiming prior possession much less ownership of the land as the heir of her father. She is merely praying in her complaint for the issuance of a cease-and-desist injunctive writ against the implementation of the decision

in the ejectment proceedings and the consequent removal or demolition of her father's house and improvements on the lot "until plaintiff's claims for said house and improvements are paid by the private defendants" in the principal sum of P150,000.00. Hence, she did not file an action for annulment of the judgment in the ejectment proceedings.

xxx xxx xxx

And her action has not prescribed. Her cause of action is predicated on Articles 448 and 546 of the Civil Code and hinges on the father of plaintiff's good or bad faith as a builder of the house and introducer of the improvements which converted the lot from a swampy land into a habitable one. Payment of indemnity or refund under said Articles are obligations created by law and the action therefor should be brought within ten (10) years from the time right of action accrues. (Art. 1144, Civil Code). The plaintiff's right of action accrued only on December 11, 1984 when private defendants' filed their motion to dismiss which, in effect, partook of a rejection of plaintiff's claim for reimbursement of the sum of P150,000.00 representing the value of the house and improvements which her father had introduced on the land.[8]

The petitioners raise a question of law to justify this Court's review of the said decision of the respondent court, to wit:

THE HOLDING OF THE COURT OF APPEALS THAT THE ACTION FOR INDEMNITY HAS NOT PRESCRIBED IS NOT IN ACCORDANCE WITH THE LAW AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT.

To us, the crucial issues that are to be resolved in this controversy are:

Whether or not the plaintiff in Civil Case No. 175034, the private respondent herein, has a cause of action to bring a suit for indemnity of improvements with injunction against the petitioners; and if she has,

Whether or not her cause of action has been abandoned, waived, barred by prescription, or barred by failure to seasonably set it up as a compulsory counterclaim.

The petition is impressed with merit.

The reliance by the respondent Court of Appeals on Articles 448 and 546 of the Civil Code of the Philippines is misplaced. These provisions have no application to a contract of lease which is the subject matter of this controversy. Instead, Article 1678 of the Civil Code applies. We quote:

Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

xxx xxx xxx

On the other hand, Article 448 governs the right of accession while Article 546 pertains to effects of possession. The very language of these two provisions clearly manifest their inapplicability to lease contracts. They provide:

ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree

upon the terms of lease and in case of disagreement, the court shall fix the terms thereof.

xxx xxx xxx

ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

The petitioners do not dispute the contention of the private respondent that her father, Gaspar Devis, filled the leased parcel of land with truck loads of big stones or rocks (escumbro), and enclosed or walled the same with hollow blocks before constructing a residential house thereon. All these, being in the nature of expenses which augmented the value of the land,[9] or increased the income from it, or improved its productivity, are useful improvements within the purview of the law.[10]

But, it must be remembered, as in fact it is not controverted, that Gaspar Devis was a lessee by virtue of a lease contract between him and the City of Manila. As a mere lessee, he knew that the parcel of land in question was not his but belonged to the latter. Even the respondent court conceded this fact when it stated that the private respondent was "not claiming prior possession, much less ownership of the land as heir of her father." [11]

Thus, the improvements that the private respondent's father had introduced in the leased premises were done at his own risk as lessee. The right to indemnity equivalent to one-half of the value of the said improvements--the house, the filling materials, and the hollow block fence or wall--is governed, as earlier adverted to, by the provisions of Art. 1678, first paragraph of the Civil Code above-quoted. But this right to indemnity exists only if the lessor opts to appropriate the improvements.[12] The refusal of the lessor to pay the lessee one-half of the value of the useful improvements gives rise to the right of removal. On this score, the commentary of Justice Paras is enlightening.

Note that under the 1st paragraph of Art. 1678, the law on the right of REMOVAL says that "should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer thereby." While the phrase "even though" implies that Art. 1678 always applies regardless of whether or not the improvements can be removed without injury to the leased premises, it is believed that application of the Article cannot always be done. The rule is evidently intended for cases where a true accession takes place as when part of the land leased is, say, converted into a fishpond; and certainly not where as easily removable thing (such as a wooden fence) has been introduced. There is no doubt that in a case involving such a detachable fence, the lessee can take the same away with him when the lease expires.[13]

Now then, indeed the private respondent would have a cause of action against the petitioners for indemnity under Article 1678 of the Civil Code if the latter had chosen to appropriate the said improvements. However, there is nothing in the records to indicate that such choice was made. On the other hand, there is no showing either that the private respondent manifested her desire to remove these improvements absent any payment of the required indemnity. She, or her deceased father, should have removed the improvements at the time when the lease expired[14] on July 26, 1968[15] there being no true accession (the improvements consisting of the house, escumbro, and hollow blocks, being removable without really destroying the land), or at the time of the filing of the unlawful detainer case which was on October 19, 1968.[16]

Her failure to do so, we rule, constitutes a waiver or abandonment of her right of removal of the improvements. But even if there was no abandonment or waiver of her right of removal, still she could not later file a complaint for the indemnity of the improvements because that cause of action had long prescribed, accruing as it did when the petitioners effectively appropriated the improvements when the lease expired on July 26, 1968, or even when

the ejectment case was filed on October 19, 1968. The complaint of the private respondent for indemnity was filed on November 27, 1984, more than sixteen years from the accrual of the cause of action. Hence, the complaint was filed six years after the expiration of the prescriptive period of ten years as provided in Article 1144, paragraph (2)[17] of the Civil Code. The obligation of the lessor to indemnify the lessee is created by law, viz., Article 1678, first paragraph, of the Civil Code earlier quoted.

In any event, well-established is the doctrine that the counterclaim for reimbursement of the useful expenses is in the nature of a compulsory counterclaim and the failure to set it up in the ejectment suit bars the right to raise it in a subsequent litigation.[18]

WHEREFORE, the petition is GRANTED. The decision of the respondent Court of Appeals is hereby REVERSED and the order of the Regional Trial Court dated March 29, 1985 is REINSTATED. Costs against the private respondent.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Luciano, Leonor Ines, J., Ponente; Lantin, Jaime M. and Santiago, Fernando A., JJ., Concurring; promulgated on June 6, 1988.

[2] Docketed as Civil Case No. 175034, Branch VII.

[3] Rollo, 12.

[4] Docketed as Civil Case No. 84-27921, Branch IV.

[5] Rollo, 13.

[6] Cited in "Nicandro v. Cabangis," C.A. G.R. CV No. 06586, June 6, 1988, Rollo 15-16.

[7] Id., 11.

[8] Id., 16-17.

[9] 4 Manresa 270 cited in 2, A. TOLENTINO CIVIL CODE 110 (2nd ed., 1972).

[10] Alburo vs. Villanueva, 7 Phil. 277 (1907); Valencia vs. Roxas, 13 Phil. 45 (1909).

[11] Rollo, 16.

[12] Alburo vs. Villanueva, supra, note 10 at 279-280; Valencia vs. Ayala de Roxas, supra, note 10 at 46.

[13] 5 E. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 345 (11th ed., 1986).

[14] Ibid.

[15] Rollo, 20.

[16] Ibid.

[17] ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[18] Rule 9, section 4, The Revised Rules of Court In The Philippines; Cojuangco v. Villegas, G.R. No. 76838, April 17, 1990, 184 SCRA 374; Heirs of Agripina Baclayon, et al. v. Court of Appeals, et al., G.R No. 89132, February 26, 1990, 182 SCRA 761; Camara, et al. v. Aguilar, et al., 94 Phil. 527 (1954).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.