

**VICENTE MALLARTE, PETITIONER, VS. HON. COURT OF APPEALS,
SPS. NICOLAS GOPIAO & RAMONA CALMA GOPIAO,
REPRESENTED THEIR ATTORNEY-IN-FACT, NICOLAS GOPIAO, JR.,
RESPONDENTS.**

G.R. No. 85108. October 04, 1989

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This case involves a contract for the lease of an apartment in Sampaloc, Manila, which stipulates that the leased premises may not be subleased, or transferred to another, or any portion thereof used in any manner without the written consent of the lessor, and that the violation of this stipulation would be a ground for the ejectment of the lessee.

The lessee, without the written consent of his lessors, accepted boarders in the apartment. The lessors alleged that the lessee violated the lease by subleasing portions of the leased premises.

The City Court, the Regional Trial Court, and the Court of Appeals (CA-G.R. SP No. 12091, July 11, 1988) held that he did, indeed, violate the lease and ordered him to vacate the apartment. The lessee argues that he did not, and so filed a petition for review in this Court.

On June 1, 1972, the respondents, spouses Nicolas and Ramona Gopiao, leased to the petitioner, Vicente Mallarte, an apartment at 840 Moret, Sampaloc, Manila, on a month-to-month basis for a monthly rental of P300. Paragraphs 8 and 9 of the lease agreement prohibited the subleasing or assignment of a portion of the leased premises.

The Gopiaos, through their attorney-in-fact, made annual inspections of their apartment. In June, 1979, they discovered that two rooms on the second floor and a portion of the living and dining rooms had been converted into bed spaces for boarders. There were eight (8) bed spacers and boarders, named (1) Adoracion Penalver, (2) Josefina Penalver, (3) Lourdes Sulaput, (4) Gaudiosa Reyes, (5) Evelyn Reyes, (6) Adora Cruz, (7) Neptali and (8) Cesar Penaranda. Adoracion Penalver, a NAWASA employee, occupied one of the second-floor rooms with her sister, Josephine, but they moved out of the apartment on November 7, 1980 and Mallarte's daughter moved in on the same day.

Alleging that Mallarte had violated the lease contract, the Gopiaos, demanded that he vacate the premises. When he did not comply, they filed a complaint for ejectment in the barangay court of Zone 45, 3rd district of Manila. Eventually, the case reached the courts.

Petitioner alleged that the boarders were his nephew, nieces, grandchildren or other relatives, who are students at the Far Eastern University, and that the Gopiaos filed the ejectment suit because they had demanded an increase in his rent from P300 to P600 per month which he refused to pay.

We find for the petitioner. The taking in of boarders by the petitioner in the leased premises, without the consent of the lessors, did not violate the lease agreement, for a prohibition against subleasing may not embrace the taking in of boarders. Accepting boarders is not equivalent to subleasing the premises. The lessee, by accepting boarders and assigning rooms or bed spaces for them in the leased premises, does not relinquish or surrender his lease to them. He did not cease to become the actual occupant and possessor of the demised premises. He did not surrender the possession and control of the leased premises or a part thereof.

"The word 'sublet' has a clear and distinct meaning, that is, it means to make a sublease, accompanied by a surrender of the possession and control of the premises, or at least a part thereof." (51C C.J.S. 108.)

By accepting boarders in the apartment, the petitioner did not sublease portions of the apartment to the boarders, but only agreed to provide them with meals and/or lodging for a price. To this effect are the following rulings:

"Letting a room for personal occupation to a lodger does not constitute a subletting" (51C C.J.S., citing *Pembroke vs. Goldman*, App., 176 So. 888).

"Since a roomer or lodger is not a tenant in the strict legal sense, it has generally been held that the taking in of roomers or lodgers by a lessee does not constitute a violation of a covenant or provision against subletting. However, where the lease of one of the two houses of a double brick dwelling contained a provision that there should be no subletting of the leased premises, it was held that there was a technical violation of the lease where the lessees rented one of the rooms of such house to a person who was not related to the lessees in any way, and who, in addition to having a room and private bath, had breakfast with the lessees, and who was certified by such lessees as a tenant to the Price Administration." (49 Am. Jur. 2d. Section, 490, pp. 476.)

"A sublease is a grant by a tenant of an interest in the demised premises less than his own, retaining to himself a reversion, and a subtenant is a person who rents all or a portion of leased premises from the lessee for a term less than the original one, leaving a reversionary interest in the first lessee." (49 Am. Jur. 2d Sec. 480, pp. 469.)

"A lessee's common-law right to sublet may be expressly restricted by a covenant or stipulation against subletting, but since such restriction are in restraint of alienation, they are not looked upon with favor by the courts: they are construed with the utmost jealousy, and very easy modes have always been countenanced for defeating them." (49 Am. Jur. 2d Sec. 485, pp. 472-473.)

"Permitting lodgers or boarders to occupy rooms in a demised building is not a subletting." (*White v. Maynard*. III Mass 250, 15 Am. Rep. 28; 32 Am. Jur. pp. 331--332.)

Since neither the law (BP Blg. 25, as amended) nor his contract with the property owner prohibits the petitioner from accepting roomers, bed spacers, or boarders in the leased apartment, the lease has not been violated. The lessors have no cause of action for the judicial ejectment of petitioner-lessee.

WHEREFORE, the petition for review is granted. The decision of the Court of Appeals in CA-G.R. SP No. 12091, July 11, 1988, is hereby set aside. The ejectment complaint against the petitioner is dismissed, with costs against the private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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