

SHOEMART, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND ANSON EMPORIUM CORPORATION, RESPONDENTS.

G.R. No. 86956. October 01, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari of the decision* of the Court of Appeals promulgated on November 2, 1988 in CA-GR SP No. 13346, reinstating with modification the decision** of the Regional Trial Court of Makati, Branch 61, in Civil Case No. 14163 entitled Shoemart, Inc. v. Anson Emporium Corporation.

The facts, as found by respondent court, are as follows:

"On August 1, 1971, Anson Emporium Corporation (Anson) leased from Shoemart, Inc. (Shoemart) a portion of the building known as the Makati Arcade consisting of 374 square meters of store area at its ground floor and 678 square meters at its second floor, for a period of two (2) years starting said date at a monthly rental of P18,842.00. It was stipulated in the lease that -

“after termination of the lease for any reason whatsoever, if the Owner shall permit the tenant to remain in possession of the leased premises, it is expressly understood and agreed that the lease shall be on a month to month basis in the absence of a written agreement to the contrary.”

"Anson remained in possession after the two year period but on an increased rental of P34,622.00. Four years later, or on August 1, 1977, Shoemart terminated the month to month lease and gave notice to Anson to vacate not later than August 31, 1977. Notwithstanding the notice and demand, Anson continued to stay on, thus the complaint for ejectment filed with the then Municipal Court of Makati, Civil Case No. 16896.

"In its answer, Anson raised the defenses that (1) the lease did not express the true intention and real agreement of the parties, the true one being that its stay was guaranteed by Shoemart for a maximum period of twenty-four (24) years and (2) assuming that the lease had expired, it still cannot be ejected until a longer term is fixed in accordance with Article 1673 in relation to Article 1687 of the Civil Code.

"After proceedings (sic) were on their way, Shoemart asked for and was granted leave to file supplemental complaint which alleged that the rental of all the tenants of the premises had been increased effective January 1, 1979 to P45,142.00 which Anson refused to pay. The supplemental complaint became an issue in a petition for certiorari in the Court of First Instance of Rizal which upheld the admission, then in the Intermediate Appellate Court which sustained the Court of First Instance and finally in the Supreme Court where the matter was laid to rest with the High Court giving the final imprimatur to the admission.

"In its answer to the supplemental complaint, Anson raised the defenses that Shoemart's claim for increased rentals has been barred by estoppel, novation, statute of frauds/limitations, condonation, release and/or laches and in any event, the increase was inequitable, unconscionable and arbitrary.

"The trial court ruled for Anson and dismissed the complaint in a decision dated January 2, 1987. The decision was appealed to the Regional Trial Court of Makati as Civil Case No. 16530, where respondent Judge entered

a judgment of reversal (dated October 2, 1987) with this dispositive tenor -

‘WHEREFORE, premises above considered, the decision of the Metropolitan Trial Court of January 2, 1987 dismissing the case is hereby REVERSED AND SET ASIDE in this appeal and a new judgment in its stead is hereby rendered for plaintiff/appellant SHOEMART as against defendant/appellee ANSON, which is hereby ORDERED, as follows:

‘1. To vacate the premises situated at the 1st and 2nd Floors (Store No. 12, 13, 14 and 15) MAKATI ARCADE, Makati, Metro Manila together with all persons claiming rights under it and to turn over its possession to plaintiff/appellant SHOEMART;

‘2. To pay SHOEMART damages in the form of reasonable compensation for the use and occupation of the subject premises during the period of unlawful detainer in the amount of P34,622.00 a month from September 1, 1977 up to and including December 31, 1978; and then the amount of P45,142.00 a month from January 1, 1979 until defendant/appellee ANSON finally vacates the subject premises and turn over its possession to plaintiff/appellant SHOEMART; the amount of damages shall bear interest at the rate of one percent (1%) a month starting October 1, 1977 until fully paid;

‘3. To reimburse to SHOEMART the amount of P313,493.25 representing cost of electricity as of March 1986 and such amount representing electricity consumed by ANSON computed monthly as based on electrical billings from April 1986 and every month thereafter up to the time ANSON finally vacates the subject premises;

‘4. To pay the amount of P5,000.00 for and as attorney's fees; and

‘5. To pay the costs of the proceedings.’” (Rollo, pp. 35-37)

Petitioner filed a motion for reconsideration on the ground that the amount of damages awarded in the form of reasonable compensation for the use and occupation of the subject premises is less than what is really due. Private respondent likewise filed its motion for reconsideration seeking the affirmance of the court a quo's appealed decision.

On November 10, 1987, the Regional Trial Court issued an Order denying private respondent's motion for reconsideration but petitioner's motion was granted and the decision dated October 2, 1987 was amended to read as follows:

"xxx xxx xxx

"the award of damages in No. 2 of the dispositive portion of the Decision of October 2, 1987 is hereby adjusted accordingly to include the computation of increases from 1980 to 1985 and should read as follows:

‘2. To pay SHOEMART damages in the form of reasonable compensation for the use and occupation of the subject premises during the period of unlawful detainer, minus payments made by ANSON, as follows:

‘For the period from September 1, 1977 to December, 1978 covering 16 months at the rate of P34,622.00 per month;

‘For the period from January, 1979 to September, 1980 covering 11 months at the rate of P45,142.00 per month;

‘For the period from October, 1980 to February 15, 1983 covering 18 months and 15 days at the rate of P59,402 per month;

‘For the period from February 16, 1983 to February 28, 1985 covering 24 months and 15 days at the rate of P74,340.00 per month;

‘For the period from March, 1985 to present - November, 1987 covering 33 months at the rate of P99,120 per month

and the sum of P99,120 a month starting December, 1987 until defendant fully vacates the premises.

"It is understood that the above amount shall bear interest at the rate of one (1%) percent a month starting October 1, 1977 until fully paid." (Rollo, pp. 134-135)

On appeal, respondent court issued the assailed judgment dated November 2, 1988, which while affirming the ejectment of private respondent from the premises, reduced the amount of damages awarded as reasonable compensation for the use and occupation of the premises. The decretal portion of the said decision reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision dated October 2, 1987 is reinstated except for the portion (1) awarding SHOEMART interests of one (1%) percent a month starting October 1, 1987 and (2) awarding SHOEMART for reimbursement for cost of electricity, REVERSING and SETTING ASIDE in the process the order dated November 10, 1987 insofar as it increased the award for reasonable compensation for the use and occupation of the premises, insofar as it awarded interest and insofar as items therein that are inconsistent with this decision." (Rollo, p. 46)

Both parties filed their respective motions for reconsideration. Private respondent sought the correction of the clerical error regarding date of the effectivity of the one (1%) percent interest from October 1, 1987, to October 1977. Said motion was granted by respondent court. Petitioner's motion for reconsideration seeking the reinstatement of the Regional Trial Court's decision dated November 10, 1987 was denied. Hence, this instant petition.

Petitioner assigns the following errors:

"1. THE HONORABLE COURT OF APPEALS ERRED AS A MATTER OF LAW IN LIMITING ANSON TO PAY ONLY THE SUM OF P45,142.00 MONTHLY STARTING JANUARY 1, 1979 UNTIL IT VACATES THE PREMISES DESPITE THE FACT THAT THERE WERE FOUR (4) RENTAL INCREASES EFFECTED ON THE SUBJECT PREMISES DURING THE UNLAWFUL DETAINER PERIOD AND DURING PENDENCY OF THE INSTANT CASE WHICH INCREASES WERE PROVEN DURING THE TRIAL.

"2. THE HONORABLE COURT OF APPEALS ERRED IN AS A MATTER OF LAW IN ELIMINATING THE ONE (1%) PERCENT INTEREST ON THE UNPAID DAMAGES EFFECTIVE OCTOBER 1, 1977.

"3. THE HONORABLE COURT OF APPEALS ERRED AS A MATTER OF LAW IN ELIMINATING THE AWARD FOR REIMBURSEMENT FOR COST OF ELECTRICITY CONSUMED BY ANSON ON THE SUBJECT PREMISES." (Rollo, pp. 14-15).

In support of its first assignment of error, petitioner contends that there were four rental increases effected during the period of unlawful detainer and during the pendency of the case, which increases were duly proven during the trial. However, according to respondent court, petitioner failed to present evidence on other approved and accepted rental increases and since the supplemental complaint limited itself only to P45,142.00, the award of damages cannot go beyond the said amount.

We note, however, that respondent court conceded the existence of other evidence showing that other tenants of petitioner occupying the Makati Arcade paid rentals over and above the last figure or rental increase subject of the supplemental complaint. Nevertheless, it held that the imposition of higher damages cannot be made because of the limit set by petitioner's supplemental complaint and the absence of evidence regarding the rental increases approved by its board of directors and their acceptance by private respondent (Rollo, p. 48).

Contrary to the conclusion of respondent court, petitioner's recovery is not limited by the amount of P45,142.00 prayed for in the supplemental complaint as increased rental effective January 1, 1979. This is not a case of a complaint subsequently amended, the effect of which is to render the original complaint abandoned or inexistent and let the amendment take form as the sole substitute upon which the case stands for trial. On the other hand, a supplemental complaint or pleading supplies deficiencies in aid of an original pleading, not to entirely substitute the latter. A perusal of the original complaint shows that it prayed, among others, that the defendant (private respondent) be ordered to pay plaintiff (petitioner) the monthly rental of P34,622.00 "and all other rentals and charges that may be due until such time that defendant xxx shall have vacated the premises" (Rollo, p. 52). Petitioner, therefore, did not foreclose its right to demand increased rentals that may be recovered expressed in terms of the fair rental value or the reasonable compensation for the use and occupation of the real property (*Felisilda v. Villanueva*, 139 SCRA 431 [1985]; citing *Sparrevohn v. Fisher*, 2 Phil. 676; *Castuares v. Bayona*, 106 Phil. 340). This is so because, unlike in an amended complaint, the original complaint exists side by side with the supplemental complaint. In the case at bar, the supplemental pleading merely served to aver supervening facts which were then not ripe for judicial relief when the original pleading was filed. As aforesaid, supplemental pleadings are meant to supply deficiencies in aid of the original pleading, and not to dispense with the latter (*Pasay City Government v. CFI of Manila, Br. X*, 132 SCRA 156 [1984]; *British Traders' Insurance Co., Ltd. v. Commissioner of Internal Revenue*, 13 SCRA 719 [1965]).

Furthermore, failure of petitioner in the case at bar to amend its complaint or file additional supplemental pleadings to allege subsequent rental increases is of no moment. Records indicate that during the trial, petitioner presented evidence, without objection of private respondent, showing that during the pendency of this case, there were four (4) rental increases effected on the subject premises as follows:

1. The sum of P45,142.00 a month from January 1979 to September 1980 (Exh. "F-1");
2. The sum of P59,402.00 a month from October 1980 to February 15, 1983 (Exh. "F-2");
3. The sum of P74,340.00 a month from February 16, 1983 to February 28, 1985 (Exh. "F-3"); and
4. The sum of P99,040.00 a month from March, 1985 to the present (Exh. "F-4"). Actually, up to January 31, 1989 when private respondent vacated the leased premises.

In view of the failure of private respondent to object to the presentation of evidence showing that there were four (4) rental increases on the subject premises although three (3) of said increases are not alleged in the pleadings, judgment may be rendered validly as regards the said increases or issues which shall be considered as if they have been raised in the pleadings (*I Moran*, p. 377, 1979 ed.). Thus, section 5, Rule 10 provides:

"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. xxx"

Private respondent contends, however, that since petitioner failed to present any resolution of its board of directors authorizing the imposition of higher rentals over the premises and their acceptance by private respondent, the award of damages was properly limited by respondent court to P45,142.00 monthly rental.

The argument is untenable. An examination of respondent's answer to the complaint made no reference to the alleged board resolution which is now being insisted upon to escape the payment of the increased rentals. Having failed to raise the board resolution as a defense before the trial court, private respondent is deemed likewise have waived the same (Sec. 2, Rule 9). But this is not all. As found by the Regional Trial Court, private respondent did

not controvert the evidence submitted by petitioner in determining the fair rental value of the premises including those imposed on all other tenants of petitioner occupying the Makati Arcade (Rollo, p. 133). It is only when the rental demanded is clearly exorbitant would the courts interfere as a matter of equity. If, indeed, the rental increases were unconscionable, respondent should have at least presented evidence to substantiate its claim. This is because the burden of proof to show that the rental demanded is unconscionable or exorbitant rests upon private respondent as the lessee (*Vda. de Roxas v. CA*, 63 SCRA 302 [1975]). Private respondent failed to discharge its burden when it omitted to present any evidence at all on what it considers is the fair rental value other than what were submitted by petitioner. As a matter of fact, all the other tenants of petitioner in the Makati Arcade did not question the reasonableness of the rental increases and paid the same.

As regards the imposition of one (1%) percent interest on unpaid rentals, respondent court committed no error in eliminating the same not only because it was not prayed for in the complaint but also because Art. 1956 (Civil Code) so provides -- "(n)o interest shall be due unless it has been expressly stipulated in writing". While the one (1%) percent interest on delayed payment of rentals may have been provided in the original written contract of lease, it must be noted that said contract has already been terminated as of August 1, 1973. By the time petitioner filed its complaint for ejectment in 1977, there was no longer any written contract to speak of, much less a written stipulation on payment of interest.

Finally, petitioner Shoemart assails the decision of the Court of Appeals excluding the award of cost of electricity consumed in the premises on the ground that the claim for reimbursement may be filed in another action before the proper forum. In *Felisilda vs. Villanueva* (139 SCRA 431 [1985]), we have repeatedly held that the only damage that can be recovered in an ejectment suit is the fair rental value or the reasonable compensation for the use and occupation of the real property. Other damages must be claimed in an ordinary action.

WHEREFORE, the decision of the Court of Appeals dated November 2, 1988 is REVERSED and SET ASIDE. The decision of the Regional Trial Court dated November 10, 1987 is Reinstated with the modification that the award of 1% interest starting October 1, 1977 and the reimbursement of cost of electrical consumption is excluded without prejudice to the institution of the proper collection case to enforce recovery and/or reimbursement of such cost for electrical consumption.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.
Fernan, C.J., no part.

* Penned by Camilon, J., with Pronove, Jr. and Cacdac, Jr., concurring

** Penned by Judge Fernando V. Gorospe, Jr.

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