

FRANCISCO LAO LIM, PETITIONER, VS. COURT OF APPEALS AND BENITO VILLAVICENCIO DY, RESPONDENTS.

G.R. No. 87047. October 31, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Respondent Court of Appeals having affirmed in toto on June 30, 1988 in CA-G.R. SP No. 13925[1] the decision of the Regional Trial Court of Manila, Branch XLVI, in Civil Case No. 87-42719, entitled "Francisco Lao Lim vs. Benito Villavicencio Dy," petitioner seeks the reversal of such affirmance in the instant petition.

The records show that private respondent entered into a contract of lease with petitioner for a period of three (3) years, that is, from 1976 to 1979. After the stipulated term expired, private respondent refused to vacate the premises, hence, petitioner filed an ejectment suit against the former in the City Court of Manila, docketed therein as Civil Case No. 051063-CV. The case was terminated by a judicially approved compromise agreement of the parties providing in part:

"3. That the term of the lease shall be renewed every three years retroacting from October 1979 to October 1982; after which the above-named rental shall be raised automatically by 20% every three years for as long as defendant needed the premises and can meet and pay the said increases, the defendant to give notice of his intent to renew sixty (60) days before the expiration of the term;"[2]

By reason of said compromise agreement the lease continued from 1979 to 1982, then from 1982 to 1985. On April 17, 1985, petitioner advised private respondent that he would no longer renew the contract effective October, 1985.[3] However, on August 5, 1985, private respondent informed petitioner in writing of his intention to renew the contract of lease for another term, commencing November, 1985 to October, 1988.[4] In reply to said letter, petitioner advised private respondent that he did not agree to a renewal of the lease contract upon its expiration in October, 1985.[5]

On January 15, 1986, because of private respondent's refusal to vacate the premises, petitioner filed another ejectment suit, this time with the Metropolitan Trial Court of Manila in Civil Case No. 114659-CV. In its decision of September 24, 1987, said court dismissed the complaint on the grounds that (1) the lease contract has not expired, being a continuous one the period whereof depended upon the lessee's need for the premises and his ability to pay the rents; and (2) the compromise agreement entered into in the aforesaid Civil Case No. 051063-CV constitutes *res judicata* to the case before it.[6]

Petitioner appealed to the Regional Trial Court of Manila which, in its decision of January 28, 1988 in Civil Case No. 87-42719, affirmed the decision of the lower court.[7]

As stated at the outset, respondent Court of Appeals affirmed in full said decision of the Regional Trial Court and held that (1) the stipulation in the compromise agreement which, in its formulation, allows the lessee to stay on the premises as long as he needs it and can pay rents is valid, being a resolutive condition and, therefore, beyond the ambit of Article 1308 of the Civil Code; and (2) that a compromise has the effect of *res judicata*. [8]

Petitioner's motion for reconsideration having been denied by respondent Court of Appeals, this present petition is now before us. We find the same to be meritorious.

Contrary to the ruling of respondent court, the disputed stipulation "for as long as the defendant needed the premises and can meet and pay said increases" is a purely potestative condition because it leaves the effectivity and enjoyment of leasehold rights to the sole and exclusive will of the lessee. It is likewise a suspensive condition because the renewal of the lease, which gives rise to a new lease, depends upon said condition. It should be noted that a renewal constitutes a new contract of lease although with the same terms and conditions as those in the expired lease. It should also not be overlooked that said condition is not resolutory in nature because it is not a condition that terminates the lease contract. The lease contract is for a definite period of three (3) years upon the expiration of which the lease automatically terminates.

The invalidity of a condition in a lease contract similar to the one at bar has been resolved in *Encarnacion vs. Baldomar, et al.*,^[9] where we ruled that in an action for ejectment, the defense interposed by the lessees that the contract of lease authorized them to continue occupying the premises as long as they paid the rents is untenable, because it would leave to the lessees the sole power to determine whether the lease should continue or not. As stated therein, "(i)f this defense were to be allowed, so long as defendants elected to continue the lease by continuing the payment of the rentals, the owner would never be able to discontinue it; conversely, although the owner should desire the lease to continue, the lessees could effectively thwart his purpose if they should prefer to terminate the contract by the simple expedient of stopping payment of the rentals. This, of course, is prohibited by the aforesaid article of the Civil Code: (8 *Manresa*, 3d ed., pp. 626, 627; *Cuyugan vs. Santos*, 34 Phil. 100.)"

The continuance, effectivity and fulfillment of a contract of lease cannot be made to depend exclusively upon the free and uncontrolled choice of the lessee between continuing the payment of the rentals or not, completely depriving the owner of any say in the matter. Mutuality does not obtain in such a contract of lease and no equality exists between the lessor and the lessee since the life of the contract is dictated solely by the lessee.

The interpretation made by respondent court cannot, therefore, be upheld. Paragraph 3 of the compromise agreement, read and interpreted in its entirety, is actually to the effect that the last portion thereof, which gives the private respondent sixty (60) days before the expiration of the term the right to give notice of his intent to renew, is subject to the first portion of said paragraph that "the term of the lease shall be renewed every three (3) years," thereby requiring the mutual agreement of the parties. The use of the word "renew" and the designation of the period of three (3) years clearly confirm that the contract of lease is limited to a specific period and that it is not a continuing lease. The stipulation provides for a renewal of the lease every three (3) years; there could not be a renewal if said lease did not expire, otherwise there is nothing to renew.

Resultantly, the contract of lease should be and is hereby construed as providing for a definite period of three (3) years and that the automatic increase of the rentals by twenty percent (20%) will take effect only if the parties decide to renew the lease. A contrary interpretation will result in a situation where the continuation and effectivity of the contract will depend only upon the will of the lessee, in violation of Article 1308 of the Civil Code and the aforesaid doctrine in *Encarnacion*. The compromise agreement should be understood as bearing that import which is most adequate to render it effectual.^[10] Where the instrument is susceptible of two interpretations, one which will make it invalid and illegal and another which will make it valid and legal, the latter interpretation should be adopted.^[11]

Moreover, perpetual leases are not favored in law, nor are covenants for continued renewals tending to create a perpetuity, and the rule of construction is well settled that a covenant for renewal or for an additional term should not be held to create a right to repeated grants in perpetuity, unless by plain and unambiguous terms the parties

have expressed such intention.[12] A lease will not be construed to create a right to perpetual renewals unless the language employed indicates clearly and unambiguously that it was the intention and purpose of the parties to do so.[13] A portion in a lease giving the lessee and his assignee the right to perpetual renewals is not favored by the courts, and a lease will be construed as not making such a provision unless it does so clearly.[14]

As we have further emphasized:

"It is also important to bear in mind that in a reciprocal contract like a lease, the period of the lease must be deemed to have been agreed upon for the benefit of both parties, absent language showing that the term was deliberately set for the benefit of the lessee or lessor alone. We are not aware of any presumption in law that the term of a lease is designed for the benefit of the lessee alone. Koh and Cruz in effect rested upon such a presumption. But that presumption cannot reasonably be indulged in casually in an era of rapid economic change, marked by, among other things, volatile costs of living and fluctuations in the value of the domestic currency. The longer the period the more clearly unreasonable such a presumption would be. In an age like that we live in, very specific language is necessary to show an intent to grant a unilateral faculty to extend or renew a contract of lease to the lessee alone, or to the lessor alone for that matter. We hold that the above-quoted rulings in Koh v. Ongsiaco and Cruz v. Alberto should be and are overruled." [15]

In addition, even assuming that the clause "for as long as the defendant needed the premises and can meet and pay said increases" gives private respondent an option to renew the lease, the same will be construed as providing for but one renewal or extension and, therefore, was satisfied when the lease was renewed in 1982 for another three (3) years. A general covenant to renew is satisfied by one renewal and will not be construed to confer the right to more than one renewal unless provision is clearly and expressly made for further renewals.[16] Leases which may have been intended to be renewable in perpetuity will nevertheless be construed as importing but one renewal if there is any uncertainty in that regard.[17]

The case of Buccat vs. Dispo, et al., [18] relied upon by respondent court, to support its holding that respondent lessee can legally stay on the premises for as long as he needs it and can pay the rents, is not in point. In said case, the lease contract provides for an indefinite period since it merely stipulates "(t)hat the lease contract shall remain in full force and effect as long as the land will serve the purpose for which it is intended as a school site of the National Business Institute, but the rentals now stipulated shall be subject to review every after ten (10) years by mutual agreement of the parties." This is in clear contrast to the case at bar wherein, to repeat, the lease is fixed at a period of three (3) years although subject to renewal upon agreement of the parties, and the clause "for as long as defendant needs the premises and can meet and pay the rents" is not an independent stipulation but is controlled by said fixed term and the option for renewal upon agreement of both parties.

On the second issue, we agree with petitioner that respondent court erred in holding that the action for ejectment is barred by res judicata. While it is true that a compromise agreement has the effect of res judicata, this doctrine does not apply in the present case. It is elementary that for a judgment to be a bar to a subsequent case, (1) it must be a final judgment, (2) the court which rendered it had jurisdiction over the subject matter and the parties, (3) it must be a judgment on the merits, and (4) there must be identity between the two cases as to parties, subject matter and cause of action.[19]

In the case at bar, the fourth requisite is lacking. Although there is identity of parties, there is no identity of subject matter and cause of action. The subject matter in the first ejectment case is the original lease contract while the subject matter in the case at bar is the lease created under the terms provided in the subsequent compromise agreement. The lease executed in 1978 is one thing; the lease constituted in 1982 by the compromise agreement is another.

There is also no identity in the causes of action. The test generally applied to determine the identity of causes of

action is to consider the identity of facts essential to their maintenance, or whether the same evidence would sustain both causes of action.[20] In the case at bar, the delict or the wrong in the first case is different from that in the second, and the evidence that will support and establish the cause of action in the former will not suffice to support and establish that in the latter.

In the first ejectment case, the cause of action was private respondent's refusal to comply with the lease contract which expired on December 31, 1978. In the present case, the cause of action is a similar refusal but with respect to the lease which expired in October, 1985 under the compromise agreement. While the compromise agreement may be *res judicata* as far as the cause of action and issues in the first ejectment case is concerned, any cause of action that arises from the application or violation of the compromise agreement cannot be said to have been settled in said first case. The compromise agreement was meant to settle, as it did only settle, the first case. It did not, as it could not, cover any cause of action that might arise thereafter, like the present case which was founded on the expiration of the lease in 1985, which necessarily requires a different set of evidence. The fact that the compromise agreement was judicially approved does not foreclose any cause of action arising from a violation of the terms thereof.

WHEREFORE, the decision of respondent Court of Appeals is REVERSED and SET ASIDE. Private respondent is hereby ordered to immediately vacate and return the possession of the leased premises subject of the present action to petitioner and to pay the monthly rentals due thereon in accordance with the compromise agreement until he shall have actually vacated the same. This judgment is immediately executory.

SO ORDERED.

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

[1] Per Justice Emeterio C. Cui, with Justices Luis A. Javellana and Jesus M. Elbinias concurring.

[2] Original Record, 19.

[3] *Ibid.*, 7.

[4] *Ibid.*, 63.

[5] *Ibid.*, 8.

[6] Rollo, 68-70.

[7] *Ibid.*, 61-67.

[8] *Ibid.*, 39-42.

[9] 77 Phil. 470 (1946).

[10] Art. 1373, Civil Code.

[11] *De Luna, et al. vs. Linatoc*, 74 Phil. 15 (1942).

[12] 51 C.J.S. 606.

[13] 50 Am. Jur. 2d 56.

[14] 50 Am. Jur. 2d 53.

[15] Fernandez vs. Court of Appeals, 166 SCRA 577 (1988).

[16] 51 C.J.S. 605-606.

[17] Becker vs. Submarine Oil Co., 55 Cal App 698, 204 P 245.

[18] 160 SCRA 240 (1988).

[19] Aroc, etc. vs. People's Homesite and Housing Corporation, et al., 81 SCRA 350 (1978); Gitgano vs. Borromeo, etc., et al, 133 SCRA 437 (1984); Santos vs. Intermediate Appellate Court, et al., 145 SCRA 592 (1986).

[20] Pagsisihan, et al. vs. Court of Appeals, et al., 95 SCRA 540 (1980); Aroc vs. People's Homesite and Housing Corporation, et al., ante, as cited in Angela Estate, Inc. vs. Bacolod-Murcia Milling Co, Inc., et al. 144 SCRA 482 (1986).

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