

LA CAMPANA FOOD PRODUCTS, INC., PETITIONER, VS. HON. COURT OF APPEALS AND CASCADE COMMERCIAL CORP., RESPONDENTS.

G.R. No. 88246. June 04, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

On February 15, 1982, petitioner La Campana Food Products, Inc. leased a building and lot in Quezon City to private respondent Cascade Commercial Corporation for a period of 4 years beginning March 1, 1982.[1]

On January 22, 1986, Cascade received a demand letter[2] from the lessor reading in part as follows:

In this connection, demands are hereby repeated again made to you for the full payment of your above rentals in arrears and unpaid water bill in the total sum of P73,902.00 within a period of three (3) days from your receipt hereof, otherwise upon your failure, we may forward this matter to our legal counsel for proper action thereof.

On February 19, 1986, La Campana filed against Cascade a complaint for ejectment with preliminary attachment in the Metropolitan Trial Court of Quezon City. The complaint alleged non-payment of rentals since August 1985 despite repeated demands by the plaintiff on the defendant. It prayed that a writ of preliminary attachment be issued for the amount of P73,820.60 to answer for the unpaid rentals. The defendant was also asked to vacate the premises and to pay the unpaid rentals in the sum of P73,820.60 plus the amount of P15,000 monthly starting from March 1986 as the reasonable value of the use of the premises.[3]

On April 4, 1986, Cascade filed a Motion to Dismiss and Motion for Discharge of Attachment.[4] The motions alleged that, in view of the circumstances surrounding the case, the complaint should be considered an action for a sum of money and not ejectment. Since the amount claimed was over P20,000, the Metropolitan Trial Court had no jurisdiction. Cascade also alleged that it vacated the leased premises on March 3, 1986, and that when copies of summons and complaint were tendered upon it on March 26, 1986, the court could no longer acquire jurisdiction over it and the subject of the action.

The trial court denied the defendant's motions on April 15, 1986, and reconsideration of such denial on June 30, 1986.[5]

Cascade then filed a petition for review on certiorari with prohibition in the Court of Appeals, again assailing the jurisdiction of the Metropolitan Trial Court.[6] The petition claimed that there was no allegation in the complaint that Cascade was unlawfully withholding possession of the leased premises. Instead, it was averred that Cascade was removing its properties from the leased premises, a clear admission that it had the intention to voluntarily vacate the premises upon the expiration of the lease contract. The allegation that the petitioner had failed to pay the monthly rental amounting to P73,820.60 as of February 1986, showed that the complaint was for collection of unpaid rentals and not for ejectment.

Meanwhile, on July 25, 1986, Cascade filed its answer with counterclaim in the Metropolitan Trial Court praying

for the dismissal of the complaint and the payment to it of actual expenses, moral and exemplary damages, attorney's fees, as well as the costs of the suit.[7]

On July 28, 1986, the Court of Appeals denied the petition filed by Cascade, holding that it was actually a special civil action for certiorari and prohibition that should have been filed in the Regional Trial Court.[8]

Thereafter, in a decision dated April 6, 1987, Judge Pacifico L. Punzalan of the Metropolitan Trial Court found that the defendant had indeed vacated the leased premises on March 3, 1986. It also ordered the defendant to pay the plaintiff the sum of P40,237.70 as unpaid rentals (after deducting the rental deposit and withholding tax), P50,000.00 as attorney's fees, and the costs of the suit. All the counterclaims were dismissed.[9]

Cascade appealed to the Regional Trial Court, where it reiterated the arguments raised in the Court of Appeals questioning the lack of jurisdiction of the lower court.

On August 24, 1987, Judge Tomas V. Tadeo, Jr. affirmed the appealed decision and on September 29, 1987, denied reconsideration.[10]

In its subsequent petition for review before the Court of Appeals, Cascade again challenged the jurisdiction of the Metropolitan Trial Court, but this time on a different ground. It pointed out that in the complaint for ejectment, La Campana failed to allege that prior demands had been made upon the defendant to vacate the premises. This was an indispensable averment and its omission was fatal. The demands alleged in the complaint were merely for payment of unpaid rentals.[11]

On February 8, 1989, the respondent Court of Appeals reversed the challenged decision[12] and dismissed the complaint, holding as follows:

Indeed, to constitute unlawful detainer, it is not enough for the complainant to allege that petitioner did not pay the rentals due, because failure to pay rent does not make unlawful petitioner's withholding of the leased premises. It is the owner's demand for the tenant to vacate the premises, when the tenant has failed to pay the rents on time, and tenant's refusal or failure to vacate, which make unlawful the withholding of possession. The demand to vacate is indispensable and jurisdictional, and if none is made, the case falls within the jurisdiction of the Regional Trial Court.

La Campana and, surprisingly, even the trial judge filed separate motions for reconsideration. On May 11, 1989, the respondent Court of Appeals denied both motions.

The petitioner invokes the case of *Golden Gate Realty v. Intermediate Appellate Court*,[13] where a motion to dismiss was filed before the Metropolitan Trial Court on the ground of lack of jurisdiction for failure to allege in the complaint that the plaintiff had made prior demands on the defendant to vacate the premises. The trial court denied the motion, holding that the complaint had alleged therein that the plaintiff gave notice to the defendant that he would be sued for ejectment if he failed to pay the rentals. This Court, agreeing with the lower court, said that there was no necessity to categorically use the word "vacate" in the lessor's demand.

The January 20, 1986 letter of La Campana to Cascade, however, is rather ambiguous. It warned that upon failure of Cascade to pay the rentals and unpaid water bill, "we may forward this matter to our legal counsel for proper action thereof." We do not see in this statement an unequivocal or even an implied demand on the defendant to vacate the leased premises. The doctrine covered in the *Golden Gate* case is therefore not applicable.

Nevertheless, we will not sustain the finding of the respondent court that the Metropolitan Trial Court had no jurisdiction over the ejectment case.

The reason is that the lack of the averment that there was demand to vacate the premises was never raised by the

private respondent in the Metropolitan Trial Court and the Regional Trial Court, and not even in the Court of Appeals in G.R. Sp No. 09550. The private respondent had questioned the jurisdiction of the Metropolitan Trial Court in its Motion to Dismiss on the ground that the action was not for ejectment but for the collection of a sum of money. The answer it later filed did not raise the lack of the said allegation but in fact, recognizing the jurisdiction of the court, actually sought affirmative relief therefrom, thus:

WHEREFORE, after due hearing, defendant prays:

1. That the Complaint be dismissed;
2. That the counterclaim be granted ordering the plaintiff to pay the defendant:
 - a. Actual expenses, the amount of which to be presented during trial;
 - b. Moral and exemplary damages in an amount left to the discretion of the Honorable Court;
 - c. Attorney's fees in an amount equivalent to P5,000.00, plus P300.00 per appearance;
 - d. Cost of suit.

Defendant further prays for such other reliefs and remedies as may be deemed just and equitable under the premises.

In the case of *Jakihaca v. Aquino*,^[14] this Court held on a similar question:

As a general rule, jurisdiction over the subject matter of a case may be objected to at any stage of the proceeding even on appeal, but this is not without exception. In the case of *Tijam v. Sibonghanoy*, 23 SCRA 30, cited in *Tejones v. Cironella*, 159 SCRA 104, We held:

"It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief to afterwards deny that same jurisdiction to escape penalty. Upon this same principle is what we said x x x to the effect that we frown upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favorable and attacking it for lack of jurisdiction.

Nowhere in the Answer of respondents contain an allegation attacking the jurisdiction of the Municipal Trial Court based on the issue on demand. Again, in *PNB v. Intermediate Appellate Court*, 143 SCRA 305, We held:

"While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoke the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent Planas. Upon that premise, petitioners cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily."

It is settled that where a party voluntarily submits to the jurisdiction of the court and thereafter loses on the merits, he may not thereafter be heard to say that the court had no jurisdiction after all. The party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication but because such a practice cannot be tolerated for reasons of public policy.^[15]

In *Sibonghanoy*, we held that the defense of lack of jurisdiction of the court that rendered the questioned ruling was barred by estoppel or laches, which we defined as "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting presumption that the party entitled to assert it has abandoned it or declined to assert it." ^[16]

We cannot close this opinion without expressing our disapproval of the action taken by Judge Tomas V. Tadeo in filing his own motion for reconsideration of the decision of the respondent court. He should be admonished for his disregard of a well-known doctrine imposing upon the judge the duty of detachment in cases where his decision is elevated to a higher court for its review. The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation. The more circumspect policy is to recognize one's role in the scheme of things, remembering always that the task of a judge is to decide and not to litigate.

WHEREFORE, the decision of the respondent Court of Appeals is REVERSED and SET ASIDE, and the decision of the Regional Trial Court affirming the decision of the Metropolitan Trial Court is REINSTATED, with costs against the private respondents.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Records, Vol. 1, p. 5.

[2] Ibid., p. 8.

[3] Id., p. 1.

[4] Id., p. 26.

[5] Id., pp. 35, 44.

[6] Id., p. 47.

[7] Id., p. 79.

[8] Id., p. 84; AC-G.R. Sp. No. 09550; penned by Justice Luis A. Javellana with Zosa, Mendoza V., and Tensuan, JJ., concurring.

[9] Id., p. 129.

[10] Records, Vol. II, pp. 16, 26.

[11] Rollo, p. 50.

[12] Ibid, p. 77; penned by Justice Luis A. Javellana, with Cui and Elbinias, JJ., concurring.

[13] 152 SCRA 684.

[14] 181 SCRA 70.

[15] Salen vs. Dinglasan, 198 SCRA 623; Abalos vs. Court of Appeals, 196 SCRA 596; F. David Enterprise et al. vs. IBAA, 191 SCRA 516.

[16] Supra.

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