

**PEREGRINO ROSALES, PETITIONER, VS. COURT OF APPEALS, THE
HON. SALVADOR A. MEMORACION, PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT OF BASILAN, BRANCH 2, THE HON.
EDUARDO F. CARTA...**

G.R. No. 95697. August 05, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The main issue in this case is whether or not respondent Court of Appeals was correct in appreciating that the petition for review therein filed by herein petitioner involved a complete change of theory. If so, respondent court properly applied Our ruling in *Tible v. Aquino*[1] that a new theory could not be raised for the first time on appeal for being unfair to the adverse party.

The factual antecedents are not disputed: Wee Yek Sui also known as Gregorio Wee was the registered owner of a commercial lot situated at Roxas Avenue, Isabela, Basilan, with an area of 287square meters as described under TCT No. T-906. Petitioner Peregrino Rosales was the occupant of a certain portion of this property by virtue of a lease agreement on a month-to-month basis dated April 13, 1962 with rent at the rate of P50.00 per month. Pursuant to this lease agreement, Peregrino Rosales constructed a commercial building wherein he established his photography studio, known as Rosales Studio. On April 3, 1966, Wee died leaving behind as heirs his son, Daniel Wee and widow, Kuaya Ong. His estate through his son on several occasions requested petitioner to vacate the lot because the heirs wished to put up their own building. Petitioner refused despite the termination of the term of the lease. Hence, the estate of Wee, herein private respondent, was constrained to file an action for ejectment against petitioner.[2]

The present petition is the upshot of what should have been an ordinary ejectment case. However, the procedural background of this case is a virtual comedy fraught with procedural errors committed by all parties involved, i.e., the complainant, the defendant and the lower courts. This case presents the classic example of a simple factual background wittingly or unwittingly made more complicated by ill-prepared counsel and judges who know no better, that it behooves this Court to make a discussion on the same with the end in view of obviating the repetition of these lapses and for the guidance of the Bench and Bar.[3]

In the complaint for unlawful detainer[4] private respondent alleged that petitioner occupied the property by virtue of a lease agreement. However, the substance of the lease agreement was not set forth in the complaint and no copy of the lease agreement was attached as an exhibit, a violation of Rule 8, Section 7 of the Rules of Court, the rule on actionable documents.[5] Private respondent also alleged that petitioner stopped paying rent as early as 1979 and prayed for the recovery of the outstanding rental of P51,660.00 computed at the new rate of P160.00 a month. Additionally, private respondent prayed for damages for loss of expected income in an amount to be fixed by the court and attorney's fees equivalent to 30% of the recoverable amount but not less than P10,000.00. In effect, the sum of at least P61,660.00 was specified as the total amount sought to be recovered by private

respondent.

At this point it should be clear that respondent Municipal Trial Court judge erred when he did not *motu proprio* dismiss the complaint for failure to comply with the rule on actionable documents,[6] as he is empowered to do under the Rule on Summary Procedure, Section 3(A) of which provides:

SEC. 3. Duty of court upon filing of complaint. -- Upon the filing of the complaint, the court, from a consideration of the allegations thereof:

A. may dismiss the case outright due to lack of jurisdiction, improper venue, failure to state a cause of action, or for any other valid ground for the dismissal of a civil action; or

B. if a dismissal is not ordered, shall make a determination whether the case falls under summary procedure. In the affirmative case, the summons must state that the summary procedure under this Rule shall apply. [Emphasis supplied.]

The trial court judge further compounded the mistake when he made a finding that the Rule on Summary Procedure was applicable in gross disregard of Section 1(A)(1) thereof,[7] notwithstanding that the damages and unpaid rentals sought exceed P20,000.00, and required petitioner to file an answer and not a motion to dismiss.[8]

Municipal Trial Court judges should well take note of Section 3(A) of the foregoing rule which, unlike the rules of ordinary procedure, equips them with the relatively unfettered discretion to immediately dismiss a complaint for any of the grounds mentioned therein without prior need of an opposing party calling attention thereto.[9] It should also be emphasized that this section confers on the judge the discretion to dismiss complaints on the lower courts concerned dealing with cases properly covered both by summary procedure and by regular procedure; in the sequence of events, the ascertainment of whether or not a case falls under summary procedure is made after an assessment has been done on the formal and substantive sufficiency of the complaint.

For, indeed, the solution to the problem of overcrowded court dockets need not be limited to the expeditious disposition of pending cases. An approach should also be conducted from the other end, at the inception or filing of cases. With proper exercise of the discretion conferred by this powerful tool, not only will the number of cases be trimmed in the short term, but the long run effect will be an improvement in the quality of questions and issues presented for judicial inquiry and adjudication. In other words, municipal trial courts, and subsequently the higher courts by way of the hierarchy of appeal and review, will be asked to resolve each case on the merits of the legal issues presented and no longer on procedural technicalities. Legal pettifogging would thus be greatly obviated.

Going back to the present case, instead of filing an answer as the appropriate pleading under the rule on summary procedure, petitioner, through counsel, filed a motion to dismiss[10] the complaint where he alleged as grounds, lack of jurisdiction, lack of cause of action and failure to comply with the rule on actionable documents. Anent the ground of lack of jurisdiction, petitioner argued that, under the complaint, inasmuch as the demand to vacate was made in 1979, also the year petitioner allegedly stopped paying rent, the unlawful detainer action was filed beyond the mandatory one-year period. Private respondent's remedy should have been an *accion publiciana*. With regard to lack of cause of action, petitioner contended that his continued stay in the premises was protected by P.D. No. 20, the rent control law then in force.

On the other hand, because petitioner did not file the appropriate responsive pleading under the Rule on Summary Procedure, private respondent moved to declare defendant in default -- itself, like petitioner's motion to dismiss, a prohibited pleading under Section 15 of the Rule on Summary Procedure.

The judgment rendered by respondent municipal trial court recognized and resolved the motion to dismiss filed by petitioner but addressed only one of the grounds raised therein by petitioner, that of lack of jurisdiction.

Respondent Municipal Trial Court ruled that it had jurisdiction inasmuch as the complaint also alleged that the latest demand was made barely over a month before the filing of the complaint in 30 January 1990; a copy of said demand letter dated 27 December 1988 was subsequently admitted in evidence and labeled as Exhibit "C." The trial court found in favor of private respondent, ordered petitioner to vacate the premises and awarded all the damages prayed for by private respondent. The judgment, however, did not deal with the other grounds raised by petitioner.[11]

Parenthetically, petitioner argues in the present petition that, notwithstanding it being labeled as a motion to dismiss, said pleading should have been considered as his answer pursuant to the liberal interpretation accorded the rules and inasmuch as the grounds invoked therein also qualify as defenses proper in an answer. In this instance the Court agrees. Indeed, the rule on summary procedure was conceptualized to facilitate the immediate resolution of cases such as the present one. Well-settled is the rule that forcible entry and detainer cases being summary in nature and involving disturbance of social order, procedural technicalities should be carefully avoided[12] and should not be allowed to override substantial justice.[13] With this premise in mind and having insisted, however erroneously, on its jurisdiction over the case, it certainly would have been more prudent for the lower court to have treated the motion to dismiss as the answer of petitioner and examined the case on its merits. As will be shown shortly, the long drawn out proceedings that took place would have been avoided.

The procedural infirmities did not stop there. Petitioner further revealed his ignorance of the Rules by filing a motion for reconsideration of the judgment rendered by the Municipal Trial Court,[14] another pleading prohibited under the rule on summary procedure. Action on the same being unfavorable, petitioner appealed to the Regional Trial Court. Before said forum, petitioner again committed a blunder: he failed to comply with the order of the court requiring the parties to submit memoranda and thus was not able to sufficiently argue his appeal.

The Regional Trial Court contributed its fair share to the succession of mistakes when it dismissed the appeal and affirmed in toto the judgment of the Municipal Trial Court with the finding that no error was committed by the lower court in applying the rule on summary procedure.[15] The Regional Trial Court further ruled that because petitioner failed to deny under oath the genuineness and due execution of the lease agreement, the same is deemed admitted. Apparently, the Regional Trial Court did not consider that said agreement was not properly pleaded in the complaint as an actionable document.

Petitioner subsequently filed a petition for review with respondent Court of Appeals assigning the following as errors committed by the lower courts:

1. The respondent estate does not have any legal personality and its alleged representative has no authority to represent it.
2. The respondents Municipal Trial Court and Regional Trial Court do not have original or appellate jurisdiction over the case that gave rise to this recourse.
3. The respondent did not have any ground under P. D. No. 20 (as amended by B.P. Blg. 25) to eject the petitioner, thereby lacking in cause of action.
4. The complaint failed to set forth or attach to itself (sic) [a] copy of the supposed lease contract as an actionable document under Section 7, Rule 8 of the Rules of Court, although one of the grounds alleged for ejectment was the claimed expiration of its term and compliance with this rule was the only chance to determine the matter of expiration of the term since there was no trial or formal presentation of evidence before any of the respondent courts.
5. The respondent Municipal Trial Court failed to comply with its duty under Section 3 of the Rule on Summary Procedure.

6. The demolition of petitioner's building which was ordered right in the decision or judgment (Annex "E") is null and void for lack of hearing, lack of evidence on petitioner's failure to remove the same, and lack of special order under Rule 39, Section 14, Rules of Court.[16]

In its decision, respondent Court of Appeals[17] did not discuss any of the foregoing errors assigned by petitioner and denied due course to the petition solely on the ground that, as claimed by private respondent, the issues raised therein involved a complete change of theory which could not be made for the first time on appeal, citing *Tible v. Aquino*.[18]

Petitioner, therefore, felt constrained to bring this present petition for review mainly on the ground that respondent Court Appeals erred in its assessment that petitioner changed his theory on appeal.

In this regard, the Court finds that the present petition is impressed with merit.

A perusal of the errors assigned by petitioner before respondent court reveals that its assessment is true only in so far the first assigned error, that is, the issue dealing with the legal personality of the estate of Wee and the authority of his son to represent it. The others concern the questions of jurisdiction, of cause of action and the violation of Rule 8, Section 7 of the Rules of Court, all of which were timely raised before the lower courts. Further, unlike *Tible* which involves a complete change of theory, no such change of theory obtains in this case. Petitioner merely added another ground to his list of assigned errors committed by the lower courts to buttress his contention that the complaint should have been dismissed. At best, respondent court may have chosen not to deal with said issue on the well-settled rule that questions not raised in the lower courts cannot be raised for the first time on appeal.[19] The refusal to entertain the petition as to the other validly raised grounds, however, cannot be justified on the basis of *Tible* alone whose application is clearly misplaced. Respondent Court of Appeals should, therefore, have gone into the merits of the petition for review filed by petitioner.

Having passed upon the first three assigned errors raised by petitioner with respondent court, We now take a look at his defense of lack of cause of action. He argues that this continued stay on the leased premises is protected by Presidential Decree No. 20 as amended by Batas Pambansa Blg. 25 inasmuch as the reason relied upon by private respondent, i.e., construction of a bigger commercial building for higher rental income, is not one of those enumerated by the law as grounds for ejectment. Unfortunately for petitioner, he is mistaken. It is clear from Presidential Decree No. 20[20] that the same pertains only to dwelling units or to land on which dwelling units are located, in other words, residential buildings. On the other hand, Batas Pambansa Blg. 25, entitled *An Act Regulating Rentals of Dwelling Units or of Land on Which Another's Dwelling is Located and for Other Purposes*, defines the term residential unit as referring to

an apartment, house and/or land on which another's dwelling is located used for residential purposes and shall include not only buildings, parts or units thereof used solely as dwelling places, except motels, motel rooms, hotels, hotel rooms, boarding houses, dormitories, rooms and bedspaces for rent, but also those used for home industries, retail stores or other business purposes if the owner thereof and his family actually live therein and use it principally for dwelling purposes: Provided, That in the case of a retail store, home industry or business, the capitalization thereof shall not exceed five thousand pesos (P5,000.00): Provided, further, That in the operation of the store, industry or business, the owner thereof shall not require the services of any person other than the immediate members of his family.[21]

In the case of petitioner, it is clear that the building he constructed on the lot of private respondent is devoted purely to commercial purposes. Petitioner operates his photography business therein. Not once has petitioner claimed to use the premises also as a place of residence. The lot itself is located in the commercial district of the municipality. This has been the consistent finding of the lower courts and the same is supported by the representations of petitioner since the beginning. His stay on the leased lot owned by private respondent is

unmistakably not countenanced by the rent control laws. To allow petitioner to continue occupying the land would be to deny private respondent the effective exercise of property rights over the same.

To settle this matter once and for all, therefore, the Court finds that petitioner should vacate the land and remove his improvements thereon at his expense. Back rental outstanding must also be paid by petitioner which shall be computed with legal interest at the original monthly rate of P50.00, as if the defective complaint brought by private respondent was not filed at all.

WHEREFORE, the petition is GRANTED. The decision of respondent Court of Appeals is hereby SET ASIDE and a new judgment is hereby rendered ordering petitioner to vacate the premises and pay back rental at the monthly rate of P50.00 with legal interest. No other pronouncement as to costs.

Let copies of this decision be furnished all judges of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] G. R. No. L-28967, 22 July 1975, 65 SCRA 207.

[2] Rollo, p. 18.

[3] See *Salonga v. Cruz Paño*, G. R. No. 59524, 18 February 1985, 134 SCRA 438.

[4] Rollo, pp. 22-25.

[5] Rule 8 Allegations in Pleadings. -

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SEC. 7. Action or defense based on document. --Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

[6] See 1 F. Regalado, *Remedial Law Compendium* 104 (5th rev. ed., 1988), citing *Convets, Inc., v. National Development Co.*, G. R. No. L--10232, 28 February 1958, 103 Phil. 46.

[7] SECTION 1. Scope. -- This Rule shall govern the procedure in the Metropolitan Trial Courts, the Municipal Trial Courts and the Municipal Circuit Trial Courts in the following cases:

A. Civil Cases:

(1) Cases of forcible entry and unlawful detainer, except where the question of ownership is involved, or where the damages or unpaid rentals sought to be recovered by the plaintiff exceed twenty thousand pesos (P20,000.00) at the time of the filing of the complaint;

x x x x x x x x. [Emphasis supplied.]

[8] Rollo, p. 29.

[9] By contrast, under Section 1, Rule 14, of the Rules of Court, the clerk of court, upon the filing of the complaint, forthwith issues the corresponding summons to the defendants.

[10] Rollo, pp. 26-27.

[11] Rollo, pp. 28-32. The Judgment was penned by the Hon. Cesar S. Principe, presiding judge, Municipal Trial Court of Isabela, Basilan Province.

[12] Salvador v. Salamanca, A. M. No. R-177-MTJ, 24 September 1986, 144 SCRA 276.

[13] Dakudao v. Consolacion, G. R. No. 54753, 24 June 1983, 122 SCRA 877.

[14] Rollo, pp. 33-34.

[15] Rollo, pp. 35-37. The order rendered by the Hon. Salvador A. Memoracion, presiding judge, RTC, 9th Judicial Region, Branch 2, Isabela, Basilan.

[16] Rollo, pp. 5-6.

[17] Thirteenth Division composed of Justices Manuel C. Herrera, Chairman, Eduardo R. Bengzon and Jainal D. Rasul, with the latter as the ponente.

[18] *supra*, note 1.

[19] See Anchuelo v. Intermediate Appellate Court, G. R. No. 71391, 29 January 1987, 147 SCRA 434, citing Garcia v. Court of Appeals, G. R. No. L-47553, 31 January 1981, 102 SCRA 597 and Matienzo v. Servidad, G. R. No. L-28135, 10 September 1981, 107 SCRA 276.

[20] Amending Certain Provisions of Republic Act No. 6359, Entitled "An Act to Regulate Rentals for Two Years of Dwelling Units or of Land on Which Another's Dwelling is Located and Penalizing Violations Thereof, and for Other Purposes."

[21] Section 2(b). Batas Pambansa Blg. 25 was promulgated on 10 April 1979 and under Section 11 thereof was to remain in force for five (5) years thereafter. Another rent control law, Batas Pambansa Blg. 877, was subsequently enacted in 1985 to remain in force until 31 December 1987. Republic Act No. 6643 extended the effectivity of Batas Pambansa Blg. 877 up to 31 December 1989, while Republic Act No. 6828 again extended the effectivity of Batas Pambansa Blg. 877 up to 31 December 1992. In all instances, the definition of the term residential unit was substantially preserved.

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