

**LAWRENCE BOWE AND CIRILO ARBOLARIO, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, AND TEODORO R. GARCIA,
REPRESENTED BY HIS SON, SERAFIN M. GARCIA, RESPONDENTS.**

G.R. No. 95771. March 19, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for review on certiorari seeking the reversal of the Decision* of December 18, 1989 and the Resolution[*] of October 23, 1990 of the respondent Court of Appeals in CA-G.R. CV No. 17201, entitled "TEODORO R. GARCIA, represented by his son, SERAFIN GARCIA v. LAWRENCE BOWE, ET AL." affirming the decision[**] of the Regional Trial Court of Olongapo City dated December 17, 1987 in Civil Case No. 451-0-84 for termination of a lease contract with damages and reimbursement of rents.

As gathered from the records, the facts of the case are as follows:

On June 27, 1979, private respondent (plaintiff below) Teodoro Garcia's wife Luz Garcia, now deceased, as owner and lessor of a two (2)-storey, 6-door apartment building located at No. 2-B Leo St., Lower Kalaklan, Olongapo City entered into a contract of lease[1] covering the same property with Laura Arbolario (now deceased, substituted by her son by previous marriage Lawrence Bowe),[2] for a period of five (5) years starting September 1, 1979 to terminate on September 1, 1984.[3] It was stipulated, among others, that herein petitioners can sublease the premises and collect rentals therefrom and shall start to pay private respondent the amount of P30,000.00 as yearly rental after the indebtedness of private respondent to petitioners in the amount of P75,000.00 is fully and completely paid by private respondent to the petitioners out of the rental received by the latter on said property.[4]

Sometime in October of 1982, during the efficacy of the contract of lease, Teodoro Garcia and his son, Serafin Garcia, verbally agreed to sell the disputed house and lot to the spouses Cirilo and Laura Arbolario for a consideration of P220,000.00.[5]

Pursuant to said agreement, the first of the downpayments was made on August 18, 1982[6] for P2,600.00. Said receipt was signed by Serafin Garcia in the presence of the petitioners.[7] Succeeding payments were also made in installment and private respondents admittedly received the total amount of P66,000.00[8] and it was agreed that the balance will be paid by the petitioners to private respondent upon the latter's (Teodoro Garcia) return to the Philippines when he could execute the deed of absolute sale.[9] After the petitioners' last payment on December 22, 1983 private respondent wrote them a letter informing them that the deal is off[10] and after the expiration of the lease contract on September 1, 1984, private respondent's son Serafin went to petitioners and offered an accounting of the amounts of money they have paid (to compute them as rentals) but the petitioners refused, claiming that they already own the property.[11]

Hence, Teodoro Garcia, represented by his son, Serafin Garcia filed a complaint against Laura Arbolario, joined by her husband Cirilo (Carlos) Arbolario before the RTC of Olongapo docketed as Civil Case No. 451-0-84, alleging that the conditions on said contract of lease have been fully satisfied; that petitioner's unjust refusal to

vacate the premises after September 1, 1984 has caused actual damages by way of rental from September 2, 1984 up to the time petitioners shall have relinquished the premises; and that defendant's violation of their contractual obligation caused exemplary and moral damages, attorney's fees plus incidental expenses for litigation; and thus prayed for: the termination of the contract of lease as of September 1, 1984; petitioners to reimburse private respondent of all rents received from said 6-door apartment from September 2, 1984 up to the time she shall vacate the premises by virtue of judgment; and petitioners to pay attorney's fee of P10,000.00, miscellaneous expenses of P2,000.00 and moral and exemplary damages.[12]

Petitioners' admit the existence of the contract of lease and assert in defense that in 1982 private respondent agreed to sell to them the house and lot subject of the contract of lease for P220,000.00; that pursuant to said agreement, private respondent or through his children received from petitioners down payments in the total amount of P66,600.00 and it was agreed that the balance will be paid by petitioners to private respondent as soon as the latter returned to the Philippines when he could execute the deed of absolute sale; that petitioners collected rental from tenants thereon and made considerable improvements and repairs on the apartment; that they have a perfect right not to vacate the premises being owners thereof by virtue of the sale; and as counterclaim, petitioners allege that despite the agreement to sell, private respondent refused to accept petitioners' offer and tender of the payment of the additional amount of P153,400.00 which petitioners are willing and able to pay at any time or upon order of the court; and thus praying that the case be dismissed.

After hearing the lower court rendered its decision dated December 17, 1987, the dispositive portion of which reads:

"WHEREFORE, from the FOREGOING considerations, this Court hereby renders judgment as follows:

- 1). Pronouncing the termination of the written and implied Contract of Lease between plaintiff and the defendants;
- 2). Directing the defendants to vacate the apartment building and land located at No. 2-B Leo Street, (formerly Indiana Street) Lower Kalaklan, Olongapo City, and surrender the same to the plaintiff-owner;
- 3). Directing the defendants to pay the amount of P6,900.00 representing the balance of the unpaid rentals from September 1979 to September 1984;
- 4). Directing the defendants to pay plaintiff annual rental's from September 1, 1984 to September 1, 1987, which this Court holds as an implied renewal of their written Contract of Lease at the same yearly rental of P30,000.00 or a total of P90,000.00 and thereafter to pay the amount of P2,500.00 every month from October 1, 1987 up to the time that defendants shall vacate the premises;
- 5). Directing the defendant's to pay the plaintiff the amount of P8,000.00 by way of attorney's fees and costs; and
- 6). All other contending claims of the parties are hereby DISMISSED."[13]

Petitioners appealed the decision of the lower court to the respondent Court of Appeals which affirmed in full[14] the said decision.

Hence, this petition.

Petitioners assign the following errors:

THE HONORABLE COURT OF APPEALS, SERIOUSLY ERRED IN AFFIRMING AND IN FINDING NO REVERSIBLE ERROR IN THE APPEALED DECISION OF THE TRIAL COURT A QUO BECAUSE:

A. IT ERRED IN FINDING THAT THE CONTRACT OF SALE WAS NEVER CONSUMMATED.

B. IT ERRED IN FINDING THAT THE CONTRACT OF SALE WAS RESCINDED.

C. IT ERRED IN PLACING UNDUE EMPHASIS ON NOVATION OF THE CONTRACT OF LEASE WHEN THE SAME HAS BEEN SUPPLANTED AND/OR ABANDONED.

D. IT ERRED IN NOT DISMISSING THE CASE AS AN EJECTMENT CASE EXCLUSIVELY COGNIZABLE BY THE INFERIOR COURT, HENCE, THIS HONORABLE COURT OF APPEALS HAS NO APPELLATE JURISDICTION OVER THE PRESENT CASE.

The main issue to be resolved is whether or not the contract of lease has been supplanted and/or abandoned.

Petitioners contend that the contract of lease between them and private respondent was already supplanted and/or abandoned in 1982 when their contract of sale, although admittedly verbal, was perfected and partially performed. Consequently, their relationship as lessor and lessee was terminated effectively and ipso facto upon such perfection of their contract of sale. To bolster their contention, petitioners introduced several receipts, Exhibits 1-6, as evidence of their payment in installments.

Private respondent, on the other hand, counters that the contract was not one "of sale" but a mere "contract to sell", or at most, a conditional contract of sale.

The petition is devoid of merit.

Indeed a contract of sale is perfected by mere consent.[15] It is not enough to state, however, that the contract of sale, being consensual, became effective between petitioners and private respondent as of 1982. Such fact is beyond dispute. What is crucial at this point is to ascertain those undertakings which the parties have consented in order to determine the nature of their agreement.

According to *Lim vs. Court Appeals*: [16]

"x x x A distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x x x where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolutive condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract."

Inevitably, the foregoing distinctions lead to a finding that the verbal agreement between petitioners and private respondent was only a contract to sell, not a contract of sale.

A careful examination of the receipts [17] presented by the petitioners shows that only Exhibits "2", "4" and "5" have direct bearing on the agreement of the petitioners and private respondent regarding the disputed properties. Those exhibits reveal that the amounts contained therein are either "downpayments", "deductible from apartment sale" or "an advanced payment of unconsummated sale". Those are the only terms contained in the said exhibits. Nothing more.

Prescinding therefrom, there was no immediate transfer of title to petitioners to speak of as would have happened if there had been a sale at the outset.[18] Clearly the absence of formal deed of conveyance strongly indicates that the parties did not intend immediate transfer of title, but only a transfer after full payment of the price.[19]

It is unlikely that if the contract were an absolute sale, the petitioners would not have insisted that the same be reduced to writing despite several opportunities to do so. Another thing is that at the time petitioners were

delivering the unpaid balance which was allegedly rejected by private respondent, they simply asked private respondent (Teodoro Garcia) to give back the amounts that had been given as advance payment.[20] This simply goes against the grain of their argument that they are already the owners of the disputed properties. Hence, as payment of the consideration was a positive suspensive condition, title to the subject property never passed to the petitioners.

This Court's ruling in *Lim v. Court of Appeals*,[21] is worth quoting:

"It is true that the contract to sell imposes reciprocal obligations and so cannot be terminated unilaterally by either party. Judicial rescission is required under Article 1191 of the Civil Code. However, this rule is not absolute. We have held that in proper cases, a party may take it upon itself to consider the contract rescinded and act accordingly albeit subject to judicial confirmation, which may or may not be given. It is true that the rescinding party takes a risk that its action may not be approved by the court. But as we said in *University of the Philippines v. De los Angeles* [35 SCRA 102 (1970)]:

x x x

x x x But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages."

It is also contended by petitioners that the suit initiated by herein private respondent denominated, as termination of lease with damages and reimbursement of rents, was actually a suit for unlawful detainer. Hence, the Regional Trial Court has no jurisdiction to entertain the same.

This contention is also bereft of merit.

There is no question that the original lease contract between the parties was only for five (5) years nonetheless petitioners continued occupying the leased premises beyond that date and it was only sometime in October 1984, that Serafin Garcia went to see petitioners for accounting purposes regarding the advance payment made by the latter and informing them at the same that a case will be filed against them.[22] There is no evidence on record that petitioners were served with notice to vacate. This Court will have to determine whether such continued occupancy was with or without the implied acquiescence of private respondent.

An implied new lease or tacita reconduccion will set in if it is shown that: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for fifteen days with the acquiescence of the lessor. This acquiescence may be inferred from this failure to serve a notice to quit.[23]

In the instant case, there is an implied renewal of the lease contract. As aforementioned, no talks have been held between the lessor and the lessees concerning the renewal of the lease. By the inaction of the lessor, there can be no inference that he intends to discontinue it. In such a case, no less than an express notice to vacate must be made within the statutory 15-day period. Not only was there an absence of notice to vacate but there were also no communications that transpired between the parties regarding the lease. The earliest communication that has been shown was in October, 1984, definitely way beyond the 15-day statutory period required by law.

Considering that there was an implied renewal of lease, there is no unlawful detainer to speak of. The filing of the termination of contract was, therefore, appropriate and clearly the Regional Trial Court has jurisdiction over the case since it is an action involving the title to or possession of real property or any interest therein.[24]

WHEREFORE, the petition is DENIED. The decision and resolution of the respondent Court of Appeals dated December 18, 1989 and October 23, 1990 respectively, are AFFIRMED. Costs against petitioners.
SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[*] Penned by Justice Alfredo Marigomen, concurred in by Justices Josue N. Bellosillo and Cezar D. Francisco.

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[**] Penned by Judge Alicia L. Santos.

[1] Original Records, pp. 5-6.

[2] Ibid., p. 65; p. 176.

[3] Rollo, p. 59.

[4] Ibid., p. 21.

[5] Original Records, p. 29; TSN, February 10, 1987, pp. 7-8.

[6] Exh. "1".

[7] Exh. "1-a"; TSN, February 10, 1987, p. 10.

[8] Exhs. "1" to "6".

[9] Rollo, pp. 21-22.

[10] Ibid., pp. 10-11.

[11] Ibid., pp. 11-12; Comment p. 3, Rollo, p. 73.

[12] Complaint, p. 2.

[13] Original Records, pp. 159-160.

[14] Rollo, p. 69.

[15] *Dalion vs. Court of Appeals*, 182 SCRA 872 (1990).

[16] 182 SCRA 564, 570 (1990), citing *Sing Yee v. Santos*, 47 O.G. 6372 (December, 1951).

[17] Exhs. "1-6".

[18] *Lim v. Court of Appeals*, *supra*, note 16.

[19] *Manuel v. Rodriguez, et al.*, 109 Phil. 1 (1960).

[20] TSN, August 21, 1986, p. 21.

[21] *Supra*, note 16 at pp. 571-572.

[22] TSN, February 10, 1987, p. 12.

[23] *Arevalo Gomez Corporation v. Lao Hian Liong*, 148 SCRA 372 (1987).

[24] *Guasch v. Court of Appeals*, 175 SCRA 31 (1989).

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