

ALEJANDRO SY JUECO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND ELENA HOCSON, RESPONDENTS.

G.R. No. 98270. July 05, 1993

Ponente: MELO, J.

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MELO, J.:

Disturbed by the instruction of respondent court for petitioner to tolerate and suffer the continued presence of his lessee whose lease covenant had expired, until petitioner has fully reimbursed the expenses supposedly incurred by the tenant for the necessary and major repairs on the leased premises, petitioner seeks to rectify this significant point via the petition for review on certiorari before us.

Petitioner's dismay is focused on the decretal portion of the decision rendered on April 8, 1991 by the Fourteenth Division of the Court of Appeals in CA-G.R. SP No. 23321 through Justice Gloria Paras with whom Justices Elbinias and Martin, Jr. concurred, to wit:

WHEREFORE, the Metropolitan Trial Court and Regional Trial Court decisions are hereby modified as this Court:

1. Declares that the petitioner Elena Hocson shall have the right to continue with the lease in question at the same monthly rent of P2,200.00 until private respondent Alejandro Sy Jueco reimburses to her the exact amount she spent for the necessary and major repairs she made on the leased premises; and

2. Orders -

a. petitioner Elena Hocson to pay private respondent Alejandro Sy Jueco the sum of P2,200.00 for the unpaid rental for May, 1989 with one (1%) percent stipulated monthly interest from said date until fully paid;

b. that this case be remanded to the Metropolitan Trial Court, Branch 64 of Makati, Metro Manila, for the purpose only of receiving evidence on and determining the actual amount of the aforesaid expenses for necessary and major repairs, which amount the private respondent shall fully reimburse the petitioner; and

c. that within thirty (30) days from the date of full reimbursement in accordance with par. b above, petitioner Hocson shall vacate the leased premises without any further orders from the court.

(p. 31, Rollo)

On August 1, 1982, Alejandro Sy Jueco executed a lease contract with Elena Hocson whereby the latter agreed to rent an apartment unit at 1255-C Cardona Street, Makati for a monthly rental of P1,600.00 payable within the first five days of each calendar month until August 1, 1983 (p. 36, Rollo). After the lease contract expired, the lessee continued to stay at the leased unit and paid the increased monthly rental of P2,200.00 which petitioner accepted. The check issued by private respondent intended as rental payment for the month of May, 1989 was allegedly dishonored for "insufficient funds" while those checks accepted by petitioner for the months of June, July, August, and September, 1989 were honored and encashed.

On July 24, 1989, private respondent received a letter of demand from petitioner dated July 18, 1989 which reads:

On behalf of our client, Mr. Alejandro Sy Jueco, your lessor of the apartment premises at 1255-C Cardona Street, Makati, Metro Manila, and in accordance with Paragraph 10 of your contract of lease, advance notice is hereby given that your lease of the said premises will be terminated effective at the end of next month, i.e., AUGUST 31, 1989, and demand is hereby made for you to vacate the said premises by said date.

Further, we are informed that you have failed to pay until the present time the monthly rent due May 5, 1989, as the Allied Bank Check #00835160 you issued for payment thereof was dishonored and refused payment by the drawee bank for insufficient fund, and despite notice and demand upon you, you have failed to redeem and pay the same until now. Demand therefore is hereby likewise made for you to pay the same within five (5) days from notice hereof. (p. 58, Rollo)

When private respondent declined to respond in accordance with the letter of demand, the lessor initiated a suit for desahucio premised on the expired lease covenant and default of payment in the rental for May, 1989 (p. 33, Rollo). Apart from traversing the propositions set forth in the initial pleading, private respondent reacted by interposing a subtle claim for reimbursement of the expenses spent for the improvements on the leased premises including minor and major repairs (p. 43, Rollo).

Subsequent to the submission below by the parties of their respective position papers, judgment was rendered by the court of origin in favor of the lessor on account of the principal finding regarding the extinct contract of lease which could not have been revived by payments posterior to the letter of demand. Aside from requiring the tenant to shoulder the sum of P4,000.00 as attorney's fees including the cost of the suit, private respondent was directed to liquidate the sum of P2,200.00 as unpaid rental for May, 1989 with 1% monthly interest and to surrender possession after paying P4,000.00 per month as reasonable rental from September 1, 1989 less the P2,200.00 a month paid from September to December, 1989 (p. 81, Rollo).

The disposition arrived at by the court of origin was affirmed in toto when the dispute was elevated and raffled to the Presiding Judge of Branch 136 of the Regional Trial Court of the National Capital Judicial Region stationed in Makati. The reviewing magistrate recorded his insights in this manner:

It is the understanding of the court that the plaintiff's demand to vacate embodied in its letter of July 18, 1989, above-quoted, is based on the expiration of the lease. It precisely states that "advance notice is hereby given that your lease of the said premises will be terminated effective at the end of next month, i.e., August 31, 1989, and demand is hereby made for you to vacate the said premises by said date."

Plaintiff's demand to vacate can not be said to be based also on defendant's alleged non-payment of the rental for May 1989. For, there is nothing in said demand letter of plaintiff which justifies such contention. Indeed, with respect to said supposedly unpaid rental, the only demand of plaintiff is, "for you (the defendant) to pay the same within five (5) days from notice thereof."

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In light of the foregoing, this Court agrees with the lower court that plaintiff's aforementioned demand had effectively terminated the implied new lease between the parties, and hence, under Article 1673 of the Code, plaintiff may legally eject the defendant from the leased premises on that ground. (pp. 88-89, Rollo)

But respondent court was of a different perception with respect to the lease contract and approached the problem of improvements introduced allegedly by the tenant on the leased premises ignored by both the court of origin as

well as the regional trial court, thus:

The stipulation in the original written contract of lease that the improvements, alterations or additions on the leased premises shall form part of the leased premises upon the termination of the lease, does not include the necessary repairs which by provision of law is an obligation of the Lessor or the private respondent in this case (Article 1654 of the same Code). In regard to major repairs, the herein parties had expressly agreed in the said original contract of lease that such repairs shall be for the account of the Lessor or the private respondent. While the petitioner has established right to reimbursement for such necessary and major repairs, there is need to specify and prove the exact amount of the same. Equity dictates that the case be remanded to the trial court for the purpose only of receiving evidence thereon and determining the amount of reimbursement due the petitioner as regards such expenses of repair.

The other matter for resolution is the fixing of a longer period for the petitioner to occupy the leased premises.

While it may appear that the private respondent can demand that the petitioner vacate the leased premises at the expiration of the month, for the lease with a definite one-year term had expired and, pursuant to Art. 1687 of the Civil Code, had been converted to one on a month-to-month basis, since the rent was paid monthly, the same Article, however, also provides that "x x x even though a monthly rent is paid, and no period for the lease had been set, the courts may fix a longer period for the lease after the lessee had occupied the premises for over one year."

In the case at bar, the lessee, the herein petitioner, had occupied the leased premises for more than ten (10) years. Thus, a complete application of said Art. 1687 involving the fixing of the period extending the petitioner's lease, is called for. While such matter was not raised specifically as an affirmative defense in the lower courts, yet there is nothing to show that the petitioner expressly waived the benefits of the law. In fact, petitioner manifested her willingness to continue the lease by paying the rent for August and September, 1989, long after she had been asked to go. Since the petitioner's position paper before the Metropolitan Trial Court stated that she had been continuously leasing the premises for about ten (10) years, the matter of fixing the period to extend the lease in question is a necessary consequence of the private respondent's disposition to terminate the monthly lease that had prevailed since the expiration of the lease contract on August 1, 1983.

Moreover, even if the petitioner failed to invoke the law regarding the fixing of a longer period of the lease as an affirmative defense in the lower courts, "in the presence of strong considerations of substantial justice" and recognizing "the compassionate spirit behind this rule", this Court on appeal may in its discretion "fix a longer term where equities come into play demanding an extension". [See *Divino vs. Marcos*, L-13924, 4 SCRA 186 (1962), cited in *F.S. Divinagracia Agro-Commercial, Inc. vs. Court of Appeals*, L-47350, 104 SCRA 180, 186 (1981)].

Concluding, this Court is of the view that equity warrants the fixing of the period of the lease in question. In its discretion to do so, this Court declares that the petitioner Elena Hocson shall have the right to continue with the lease in question at the same monthly rent of P2,200.00 until private respondent Alejandro Sy Jueco reimburses to her the exact amount she spent for the necessary and the major repairs she made on the leased premises. (pp. 29-30, Rollo)

In impugning the foregoing remarks, petitioner entertains the idea that respondent court should not have appreciated the right of private respondent to reimbursement for major and minor repairs including the so-called improvements in as much as the tenant did not adduce proof for entitlement thereto. Moreover, petitioner insists that respondent court seriously erred in extending the lease contract which had already expired since August 1, 1983.

For her part, private respondent asserts that the petition is devoid of substance and consequently prays for its dismissal since the observation of respondent court regarding reimbursement for the improvements and repairs is

sanctioned by jurisprudential axioms. Concerning the extension of the term of the lease, private respondent believes that the dissertation extracted by respondent court from Articles 1687 in conjunction with Article 1197 of the New Civil Code is cogent enough to entirely obliterate petitioner's contrary disquisition.

Before We address the propriety of reimbursement for the so-called improvements and repairs, it is imperative for us to ascertain whether respondent court properly applied Article 1687 of the New Civil Code to the predicament at hand. The proviso in point reads:

Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year...

and on the basis of the undisputed fact that private respondent had occupied the leased premises for more than ten years, respondent court thus concluded that Article 1687 will save the day for the tenant. However, this Court is not inclined to adopt the same solution formulated by respondent court on account of the legal caveat expressed by Article 1675 of the New Civil Code:

Except in cases stated in Article 1673 [where, judicial ejectment is proper if, among other causes, the period fixed has expired, or the rentals are not paid] the lessee shall have a right to make use of the periods established in Articles 1682 and 1687.

which ????? was even utilized by private respondent in her supplemental petition before respondent court (p. 155, Rollo). And considering that the termination of the lease contract was anchored on the expiration of the period thereof and probably also on the non-payment of rental for the month of May, 1989, any of which would justify judicial eviction under Article 1673 of the same Code, it ineluctably follows that a lessee may not be authorized to prolong his presence on the leased property by reason of Article 1687 due to the proscription under Article 1675. In short, where there are sufficient legal bases to dispossess the lessee, a tenant will not be permitted to avail himself of the statutory grace period granted by Article 1687 (*Syquia vs. Court of Appeals*, 151 SCRA 505 [1987]; 3 *Aquino*, *Civil Code of the Philippines*, 1990 ed., p. 231; *Susana Realty, Inc. vs. Hernandez, et al.*, (C.A.), 54 O.G. 2206; 5 *Padilla*, *Civil Code Annotated*, 1974 Sixth ed., p. 741; *Vitug*, *Compendium of Civil Law and Jurisprudence*, 1986 First ed., p. 454). Withal, Article 1687 should be appreciated only if the duration of the lease is not fixed unlike in the situation at bar where the instrument is very explicit and definite that the duration thereof will last only up to August 1, 1983 (*Galang vs. Court of Appeals*, 199 SCRA 683 [1991]; 5 *Paras*, *Civil Code of the Philippines Annotated*, 1990 Twelfth ed., p. 384; *Gonzales vs. Crisanto*, 2 Phil. 404 [1903]; 5 *Tolentino*, *Commentaries and Jurisprudence on the Civil Code*, 1959 ed., p. 228).

Even as respondent court acknowledged that private respondent failed to assert in her Answer the grace period provided for by Article 1687, the statutory provision in question was nonetheless appreciated following the doctrine announced in 1962 by this Court in *Divino vs. Marcos*, (4 SCRA 186 [1962]). But, a closer study of the *Divino* case unveils a radical discrepancy in factual backdrop because said case dealt with a verbal lease agreement with no period for the duration of the lease set forth constraining Justice Paredes to apply Article 1687 when he extended the lease for two years more. The case at bar presents a different scenario in that the instrument embodying the lease is definite as to the duration thereof and consequently, the grace period under Article 1687 is unavailing. And neither was it legally, feasible for respondent court to have relied upon the observations aired in *F.S. Divinagracia Agro--Commercial, Inc. vs. Court of Appeals* (104 SCRA 180 [1981]) because the lease involved therein was also indefinite which naturally justified the application of Article 1687.

In addition, the course pursued by respondent court in taking the cudgels for private respondent after the latter

omitted to interpose Article 1687 in her Answer is diametrically opposed to, and is in fact ruled out by *Imperial Insurance, Inc. vs. Simon* (14 SCRA 855 [1965]), Thusly:

Notwithstanding the provisions of the above-cited article, We are of the opinion and so hold, that the same cannot benefit the appellee. In the first place, he has not interposed the particular provision as a defense in his Answer to the complaint, and therefore, has been deemed waived. It is elementary that all defenses available but not interposed are deemed waived. Under this circumstance, the trial court should not have applied the provision *motu proprio*. In the second place, the article could not have contemplated the unwarranted extension of a period of lease by virtue of its mandate, thus making the terms of the contract indefinite until after judicial intervention (*Prieto v. Santos*; *Prieto v. Gaddi*, 52 O.G. 6899). (at page 861.)

The focus of our attention will now shift to the other issue of reimbursement. We are of the firm view that remanding the case to the court of origin for the sole purpose of receiving evidence on the alleged expenses for necessary and major repairs is ill-advised. As to necessary repairs, respondent court imposed upon petitioner the duty of keeping the place suitable for the intended use in accordance with Article 1654 of the New Civil Code. Yet, what respondent court overlooked was the explicit stipulation of Paragraph 5 of the Lease Contract that repairs of this nature should be shouldered by private respondent as lessee (p. 37, Rollo), an agreement which is specifically authorized as a saving clause under No. 2 of Article 1654. Obviously, reimbursement for necessary repairs in this situation where the lessor was expressly relieved of such burden is plainly uncalled for (*Gonzales vs. Mateo*, 74 Phil. 573 [1944]; cited by Paras, *supra* at p. 303; Article 1306, New Civil Code). On the alleged major repairs and improvements, all that need be said is that claims for reimbursement therefor, unaccompanied by concrete evidence of expenses incurred, are not synonymous to proof (Section 1, Rule 131, Revised Rules on Evidence).

WHEREFORE, the petition is hereby GRANTED. The decision of respondent court dated April 8, 1991 is hereby REVERSED and SET ASIDE, and the decision of the Metropolitan Trial Court, as affirmed in toto by the Regional Trial Court is hereby REINSTATED.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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