

SECOND DIVISION

[G.R. No. 119337, June 17, 1997]

**BAYVIEW HOTEL, INC., PETITIONER, VS. COURT OF APPEALS
AND CLUB FILIPINO, INC. DE CEBU, RESPONDENTS.**

DECISION

PUNO, J.:

This is a petition for review under Rule 45 of the Rules of Court filed by Bayview Hotel, Inc. to set aside the decision of the Court of Appeals in CA-G.R. SP. No. 34800 entitled Bayview Hotel, Inc. v. Hon. Teodoro Lim and Club Filipino, Inc. de Cebu.^[1]

The facts are well established. On May 27, 1959, petitioner Bayview Hotel, Inc. entered into a contract of lease over a parcel of land located in Cebu City with its registered owner, private respondent Club Filipino, Inc. De Cebu. The lease agreement gave petitioner the right to construct and operate a hotel complex known as the Magellan International Hotel for a period of thirty (30) years. It also stipulated that ownership of the building and other permanent improvements on the land built by petitioner will transfer to private respondent upon the expiration of the lease. Under the agreement, petitioner was given the option to renew the lease for ten (10) more years, the amount of rent to be computed at five percent (5%) of the approved value of the land and improvements. Before the expiration of the lease contract on December 31, 1992, petitioner notified private respondent of its intention to extend the lease contract for a longer period and at a rate of rent different from the terms as originally agreed upon. There was no meeting of the minds between the parties as private respondent's Board of Directors insisted on adhering to the provisions of the original lease contract. Private respondent then sent to petitioner a notice to vacate the premises and to pay accrued rentals. Private respondent claimed ownership of the building and the improvements pursuant to the provisions of the original contract.^[2]

When petitioner failed to vacate the premises, private respondent, on May 18, 1993, filed with the Metropolitan Trial Court of Cebu a complaint for ejectment and recovery of accrued rentals amounting to P2,850,000.00 as of April 30, 1993 and P712,500.00 for every month thereafter.^[3] Before petitioner could be served with a copy of the complaint and summons, the building was destroyed by a fire of undetermined origin.

On June 1, 1993, petitioner filed its answer to the complaint for ejectment interposing the following affirmative defenses:

"(a) Summons having been improperly and defectively served, the Honorable Court has no jurisdiction over the person of the defendant.

"(b) Plaintiff has no cause of action against the defendant.

"(c) Plaintiff's claim has been extinguished by the loss of the premises, from which defendant has been sought to be ejected, in a fire on 21 May, 1993.

"(d) The fire has effectively ejected the defendant from the premises rendering the action for ejectment moot and academic.

"(e) Since the defendant has been effectively ejected from the premises by the fire, defendant cannot be said to have deprived plaintiff of its possession of the same, therefore, the complaint for ejectment should be dismissed and the case be considered as an ordinary claim for a sum of money.

"(f) Consequently, since the amount being claimed is beyond the jurisdiction of the Honorable Court, the suit should be dismissed for lack of jurisdiction.

"(g) Plaintiff's claim for a sum of money has been extinguished by compensation since under the lease contract with the defendant, plaintiff was bound to pay the latter the value of all its furnishings and equipment in the leased premises upon the termination of the lease."

Petitioner then moved for a preliminary hearing on its affirmative defenses which was denied by the trial judge on the ground that the Revised Rules on Summary Procedure prohibits the motion. Aggrieved by this Order, petitioner, on June 24, 1993, filed with the Regional Trial Court of Cebu, a petition for certiorari with a prayer for preliminary injunction against private respondent and Metropolitan Trial Court Judge Teodoro Lim.^[4] Allegedly, Judge Lim abused his discretion when he refused to dismiss the complaint for ejectment. In its answer to the petition for certiorari, private respondent admitted the destruction of the building but alleged that petitioner has not completely vacated the premises since its guards continue to remain in the premises and its cars are still parked thereat. As to the jurisdiction of the court, private respondent argued that jurisdiction once acquired by the court remains with it until the termination of the case. Private respondent also sought the dismissal of the petition on the ground that it is a prohibited pleading under the Revised Rules on Summary Procedure. On November 26, 1993, the Regional Trial Court of Cebu granted the petition for certiorari and ordered the Metropolitan Trial Court to dismiss the ejectment case.

Private respondent appealed to the public respondent Court of Appeals. On February 16, 1995, the appellate court reversed the decision of the RTC of Cebu. It ruled: (1) that petitioner submitted to the jurisdiction of the Metropolitan Court when it sought affirmative relief from the same court; (2) that despite the burning of the building, the trial court retained its jurisdiction to try the case for the nature of the action remained to be an ejectment case; (3) whether petitioner has vacated the premises and transferred its possession to Club Filipino is a question of fact that should be threshed out in the trial court; and (4) that the petition for certiorari should not have been given due course by the Regional Trial Court for its filing is proscribed by the Rules on Summary Procedure.