

SECOND DIVISION

[G.R. NO. 148759, June 08, 2006]

**GERMELINA TORRES RACAZA AND BERNALDITA TORRES PARAS,
PETITIONERS, VS. ERNESTO GOZUM, RESPONDENT.**

DECISION

AZCUNA, J.:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioners Germalina Torres Racaza and Bernaldita Torres Paras seek the nullification of the decision^[2] dated July 12, 2000 as well as the resolution^[3] dated June 28, 2001 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 61227 which reversed and set aside the decision^[4] dated September 30, 1998 of the Regional Trial Court (RTC), Branch 158 of Pasig City, consequently dismissing the complaint for *accion publiciana* filed by petitioners against respondent Ernesto Gozum.

The antecedents of this case are as follows:

The plaintiffs are the registered co-owners of a parcel of land under Transfer Certificate of Title No. PT-92411 situated at Amang Rodriguez Avenue, Santolan, Pasig City. Standing on this lot is a 2-storey, 3-door apartment. The property was formerly owned by the father of the plaintiffs, the late Carlos Torres.

In 1981, defendant Ernesto Gozum occupied the back portion of the property on a P3,500.00 monthly rental and continued to occupy the same even after the death of Carlos Torres on December 26, 1993.

On July 1, 1995, plaintiffs sent Gozum a letter of demand to vacate [the] premises (*Annex G, Complaint*). After a failed barangay conciliation, on November 24, 1995, plaintiffs commenced an ejectment case [with the Metropolitan Trial Court] against Gozum. The case was, however, dismissed due to [a] technicality.

Almost two (2) years thereafter, on May 27, 1997, plaintiffs sent anew a formal demand letter to vacate on the ground that the verbal contract of lease over the property had already expired sometime in July 1995, and the same has not been renewed and since then, defendant had discontinued paying the monthly rentals of P3,500.00. When this latter demand was not heeded, on June 4, 1997, the present complaint for recovery of possession or *accion publiciana* was initiated before the Regional Trial Court of Pasig City.

The initial reaction of the defendant was to file a motion to dismiss based

on lack of jurisdiction claiming that the cause of action should have been for unlawful detainer falling within the jurisdiction of the municipal trial courts and that the provision of P.D. No. 1508 was not complied with.

In the Order dated September 30, 1997, the court *a quo* denied the motion to dismiss on the ground that an unlawful detainer must be filed within one (1) year from the notice to vacate [given] as early as July 1, 1995 and since over two (2) years had passed when the case was filed, the proper action is *accion publiciana* and no longer unlawful detainer.

Defendant thereafter filed his answer asseverating that he has a 10-year contract of lease (*Annex 1, Complaint*) over the premises executed between him and plaintiffs' late father on October 1, 1989 to expire on September 30, 1999 and so, the notice to vacate and the present case were all prematurely done. Defendant likewise denied the allegation that he has not been paying rentals. The truth is that it was the plaintiffs who refused to receive payments so that the same were deposited with the bank. In the same answer, defendant asserted that the contract of lease gave him the right of first refusal to buy the property and in violation thereof, plaintiffs have already sold the property to a certain Ernesto Brana.

After due proceedings on September 30, 1998, the appealed decision was promulgated with the following dispositive portion:

"WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiffs and against the defendant, ordering the latter and all persons claiming rights under him to vacate the premises covered by Transfer Certificate of Title No. PT-92411 of the Register of Deeds of Pasig City and turn it over to the plaintiffs. Defendant is also ordered to pay plaintiffs the amount of P3,500.00 effective July 1, 1995 until such time he shall have vacated the premises. In addition, he shall pay attorney's fees in the amount of P30,000.00 plus P1,500.00 per court appearance and the cost of suit.

SO ORDERED.

Pasig City, September 30, 1998." (*pp. 4-5, RTC Decision; pp. 76-77, Rollo*).^[5]

Aggrieved, respondent seasonably appealed the decision to the CA, ascribing to the lower court the following errors:

- I. THE COURT A *QUO* ERRED IN HOLDING THAT THE PLAINTIFFS HAVE A LEGAL RIGHT TO RECOVER POSSESSION OF THE SUBJECT PROPERTY FROM THE DEFENDANT.
- II. THE LOWER COURT ERRED IN NOT RECOGNIZING THE VALIDITY OF THE CONTRACT OF LEASE DATED OCTOBER 5, 1989, WHICH WAS PREVIOUSLY EXECUTED BY THE PLAINTIFFS' FATHER,

ATTORNEY CARLOS P. TORRES, AND HEREIN DEFENDANT.

III. THE COURT A *QUO* ERRED IN DECLARING THAT THE ABOVEMENTIONED CONTRACT IS FRAUDULENT, FABRICATED AND FICTITIOUS AND THAT THE SIGNATURE OF ATTY. TORRES AFFIXED THEREON IS NOT GENUINE.

IV. THE TRIAL COURT COMMITTED ERROR IN AWARDING DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PLAINTIFFS.^[6]

After the submission by the parties of their respective briefs but prior to the resolution of the appeal, petitioners filed with the CA a Motion to Dismiss or for Execution Pending Appeal^[7] dated December 6, 1999 on the ground that the lease contract relied upon by respondent to justify his continued possession of the subject property had, by its own terms and respondent's own admission, expired on September 30, 1999.

Thereafter, without acting upon petitioners' motion to dismiss, the CA reversed the decision of the RTC and dismissed the case, holding that the lower court had no jurisdiction over the complaint for *accion publiciana* considering that it had been filed before the lapse of one (1) year from the date the last letter of demand to respondent had been made. The CA ruled that the proper remedy of petitioners should have been an action for unlawful detainer filed with the first level court, or the municipal or metropolitan trial court.

Their motion for reconsideration having been denied, petitioners filed this present petition arguing that:

1. The Court of Appeals decided a question of substance not in accord with jurisprudence and remedial law authorities when it declared as null and void the entire proceedings in the trial court despite the fact that:
 - i. petitioners correctly filed the *accion publiciana* with the trial court below;
 - ii. respondent actively participated in the trial proceeding, testified in person, and submitted to the trial court's authority to decide the case; and
 - iii. respondent did not raise any jurisdictional issue in his appeal where he raised only the substantive portions of the trial court's decision.
2. The Court of Appeals likewise departed from the accepted and usual course of judicial proceedings amounting to serious abuse of discretion when it chose to ignore the glaring fact that respondent's appeal had become moot and academic with the expiration of the lease contract upon which his appeal rested.^[8]

In due course, respondent filed his Comment^[9] dated October 10, 2001, asserting that the CA correctly set aside the decision of the RTC because the lower court had no jurisdiction over the subject matter of the case. In this regard, respondent pointed out that he had previously assailed the jurisdiction of the trial court in the proceedings below via his Motion to Dismiss^[10] dated July 8, 1997. Respondent likewise adopted the reasoning of the CA and argued that petitioners ran afoul of

Section 1, Rule 70^[11] of the Rules of Court considering that petitioners' Complaint^[12] dated June 4, 1997 for recovery of possession was filed only within months from the date the second demand letter to vacate dated May 27, 1997 was served upon him.

In their Reply^[13] dated October 20, 2001, petitioners countered that respondent is estopped from raising any jurisdictional issue in connection with the demand letter dated May 27, 1997 considering that respondent never argued during the trial or even in his appeal to the CA that the existence of the second letter divested the trial court of jurisdiction over the complaint.

The petition has merit.

The allegations of a complaint determine the nature of the action as well as which court will have jurisdiction over the case.^[14] The complaint would be deemed sufficient if, on its face, it shows that the court has jurisdiction without resorting to parol testimony.^[15] Precisely because ejectment proceedings are summary in nature, the complaint should contain a statement of facts which would bring the party clearly within the class of cases for which the statutes provide a remedy.

In the present case, petitioners made the following allegations in their complaint:

x x x

2. [Petitioners] are the duly registered co-owners of a parcel of land and its improvements, more particularly identified as a 3-door apartment, specifically located between Fumakilla Laboratories, Inc. and the Shell Gasoline Station along Amang Rodriguez, Sr. Avenue, Santolan, Pasig City, Metro Manila x x x.
3. Sometime in 1981, [respondent] entered into a verbal lease contract with the parents of herein [petitioners], who agreed to lease to the [respondent], on a month-to-month basis, the aforementioned property at the rental rate of Php3,500.00 per month.
4. On July 1, 1995, [petitioners] sent [respondent] a Notice to Vacate x x x informing the latter of the termination of the said verbal lease contract and demanding from him to vacate and peacefully surrender to the [petitioners] the aforesaid premises, the possession of which [respondent] has unlawfully withheld from the latter. Notwithstanding these written and oral demands, [respondent] has repeatedly failed and up to now still refuses to turn over the said premises peacefully to the [petitioners].

Since that time, [respondent] has failed to remit his monthly rentals of Php3,500.00 so that as of May 30, 1997, [respondent] has incurred rental arrears now totaling Php 80,500.00 x x x^[16]

To summarize, petitioners claim that (1) they are the owners of the property, being the successors-in-interest of the original owners; (2) their predecessors-in-interest entered into a verbal lease agreement with respondent on a month-to-month basis;

(3) they decided to terminate the verbal lease contract upon the expiration of the last monthly term sometime in 1995; and (4) on July 1, 1995, they demanded that respondent leave the property, but respondent refused to do so.

Undeniably, the foregoing averments constitute a cause of action that is based primarily on unlawful deprivation or withholding of possession. Petitioners seek the recovery of the possession of the leased premises following the lapse of the term of the verbal lease contract entered into by petitioners' predecessors-in-interest with respondent. The allegation that the contract is on a month-to-month basis becomes material in this sense because it signifies that the lease contract is terminable at the end of every month.^[17] Thus, petitioners may exercise their right to terminate the contract at the end of any month even if none of the conditions of the contract had been violated, and such right cannot be defeated by the lessee's timely payment of the rent or by his willingness to continue doing so. The lease contract expires at the end of every month unless there is an implied or tacit renewal thereof as when the lessee is allowed to continue enjoying the leased premises for fifteen (15) days after the end of every month with the acquiescence of the lessor. Such exception, however, cannot be invoked when notice to vacate is given to the lessee in which case the contract of lease expires at the end of the month.^[18]

Moreover, even if the month-to-month agreement is only on a verbal basis, if it is shown that the property is needed for the lessor's own use or for the use of an immediate member of the family or for any of the other statutory grounds to eject, then the lease is considered terminated as of the end of the month, after proper notice or demand to vacate has been given.^[19] At this juncture, it must be pointed out that notice or demand to vacate had been properly served upon respondent through the letter^[20] dated July 1, 1995, to wit: paul

July 1/95

Dear Ernesto Gozom,

I would like to reiterate my verbal demand upon you to vacate the premises you are presently occupying made sixty (60) days ago.

The said premises should be vacated within THIRTY (30)^[21] DAYS upon receipt hereof for I badly needed it and please take this notice as my final demand after I have verbally given you sixty (60) days already.

Hoping you will give this matter your preferential and utmost attention in order to avoid a costly litigation.

Very truly yours,

(sgd.)
GERMELINA T. RACAZA
and

(sgd.)