

SECOND DIVISION

[G.R. NO. 137171, July 14, 2006]

**MARIA Z. KHO, PETITIONER, VS. FEDERICO BIRON, SR.,
RESPONDENT.**

DECISION

GARCIA, J.:

By this petition for review on certiorari, petitioner Maria Z. Kho seeks the reversal of the October 16, 1998 Decision^[1] of the Court of Appeals (CA) in *CA-G.R. CV No. 44614*, as reiterated in its Resolution^[2] of January 6, 1999, affirming an earlier decision of the Regional Trial Court (RTC) of Bacolod City in an action for *Specific Performance, Refund of Overpayment of Rentals and Damages* thereat commenced by the petitioner against the herein respondent, Federico Biron, Sr.

The facts:

On May 17, 1984, petitioner entered into a contract of lease with respondent over a 30-hectare portion of the latter's land, identified as **Lot No. 738-B-9**, situated at E.B. Magalona, Negros Occidental. The lease contract pertinently provides:

xxx xxx xxx

That the lessor offer (sic) to lease and the lessee agrees to lease a portion of the above-described parcel of land consisting of approximately THIRTY (30) hectares, as designated on the plan hereto attached and marked as Annex "A" and made an integral part of this contract;

That for and in consideration of the foregoing premises and of the terms conditions and covenants hereinbelow setforth, the lessor, by these presents, leases and demises unto and in favor of the lessee, the thirty (30) hectares portion of the above-described parcel of land, primarily consisting of fishponds, subject to the following -

TERMS AND CONDITIONS;

1. This lease shall cover the period of seven (7) years starting January 1, 1985 up to December 31, 1991;
2. The lessee shall pay to the lessor an annual rental of One Hundred Twenty Thousand Pesos (P120,000.00), Philippine Currency, to be paid as follows:
 - a) The rentals due for the first two (2) years of the lease period

from January 1, 1985 to December 31, amounting to Two Hundred Forty Thousand Pesos (P240,000.00), Philippine Currency, shall be paid as follows:

1. The sum of Sixty Thousand Pesos (P60,000.00) upon the signing of this contract of lease;
 2. The sum of Sixty Thousand Pesos only (P60,000.00) on or before September 15, 1984;
 3. The sum of One Hundred Twenty Thousand Pesos (P120,000.00) on or before March 15, 1985;
- b. The rental due for the third year of the lease period from January 1, 1987 to December 31, 1987, amounting to One Hundred Twenty Thousand Pesos (P120,000.00), Philippine Currency, shall be payable on or before January 31, 1987;
- c. Thereafter, the yearly rental of One Hundred Twenty Thousand Pesos (P120,000.00), Philippine Currency, shall be payable on or before the 31st day of January of every year thereafter beginning January 31, 1988; xxx.

On June 26, 1989, or after more than four years through the contract of lease, petitioner filed with the RTC of Bacolod City a complaint against respondent for *Specific Performance, Refund of Overpayment of Rentals and Damages*, therein alleging that sometime in May 1987, she (petitioner) discovered through a geodetic survey that respondent short-delivered the area of 30 hectares as provided in the lease agreement. She claimed that respondent turned over only approximately 23.26 hectares, not 30 hectares. She demanded the delivery to her of the remaining 6.74 hectares and the refund of the alleged overpaid amount of P106,240.00 for the undelivered 6.74 hectares, but respondent failed to heed her demands.

In his answer, respondent averred, among other matters, that petitioner had no cause of action against him; petitioner was guilty of laches; and there were other terms and conditions agreed upon by the parties after the execution of the lease contract on May 17, 1984. According to respondent, when petitioner signed the lease agreement, the latter agreed to lease a portion of Lot No. 738-B-9, consisting of approximately 30 hectares for a consideration of P120,000.00 annually, not for P4,000.00 per hectare, as claimed by petitioner. Respondent added that since the area of Lot No. 738-B-9, which was actually devoted to fishpond, was only 17 hectares, he gave petitioner sufficient time to improve and convert into fishpond the vacant portion of Lot No. 738-B-9, consisting of 11 hectares, into a fishpond, adding that although the contract of lease was entered on May 17, 1984, it took effect only on January 1, 1986 upon agreement of the parties. Explaining the change in the effective date of the agreement, respondent averred that sometime in November 1984, petitioner discovered his (respondent's) ownership of the adjoining lot, **Lot No. 298-B**, of which 9,566 hectares were already devoted to fishpond. According to respondent, petitioner suggested that instead of developing the undeveloped portion of Lot No. 738-B-9 into a fishpond, she (petitioner) would just exchange the undeveloped area thereof with the adjoining area already developed, to which respondent, out of his good relationship with the petitioner, agreed. Respondent