

THIRD DIVISION

[G.R. NO. 134267, May 09, 2005]

**DAVID G. DULA, PETITIONER, VS. DR. RESTITUTO MARAVILLA
AND TERESITA MARAVILLA, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Under consideration is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals in **CA-G.R. SP No. 46736**, to wit:

- 1) **Decision^[1] dated May 14, 1998**, affirming, with modification, an earlier decision of the Regional Trial Court at Makati City in an appealed ejectment case commenced by the herein respondents against the petitioner before the Metropolitan Trial Court (MeTC) of Makati City; and
- 2) **Resolution^[2] dated June 29, 1998**, denying petitioner's motion for reconsideration.

The factual milieu.

Sometime in November, 1993, herein respondents – the spouses Restituto Maravilla and Teresita Maravilla – purchased a 5-door apartment building at No. 1849 Eureka Street, Makati City, Unit A of which is occupied by herein petitioner, David G. Dula, since 1968 at a monthly rental of P2,112.00 under an oral month-to-month contract of lease with the former owner.

On January 10, 1994, respondents addressed a notice to petitioner formally informing the latter of the termination of his lease and giving him three (3) months from January 31, 1994 within which to vacate the unit occupied by him and to surrender the possession thereof. Petitioner refused. Hence, on September 29, 1994 in the Metropolitan Trial Court (MeTC) of Makati City, a complaint for ejectment was filed against him by the respondents.

Resolving the case under the Rules on Summary Procedure, the MeTC, in a **decision dated May 24, 1995^[3]** rendered judgment for the respondents, thus:

There having been a substantial compliance with the requirements provided by law, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:

- (a) Ordering the defendant DAVID DULA and all persons claiming right or interest under him to vacate the leased premises in question and to turn

over the peaceful possession thereof to plaintiff or to its duly authorized representative;

- (b) Ordering the defendant to pay plaintiff the sum of P2,112.00 a month from September 1994 and every month thereafter until possession thereof should have been peacefully surrendered to plaintiff;
- (c) Ordering defendant to pay plaintiff the sum of TWENTY THOUSAND PESOS (P20,000.00) as and for attorney's fees; and,
- (d) to pay the costs of suit.

SO ORDERED

In time, petitioner went on appeal to the Regional Trial Court (RTC) at Makati City, contending, in the main, that the complaint filed against him failed to state a cause of action, and, therefore, should have been dismissed outright by the MeTC.

After the parties have submitted their respective memoranda, the RTC came out with its **decision of August 27, 1997**,^[4] affirming *in toto* the appealed decision of the MeTC.

With his motion for reconsideration having been denied by the same court in its order of January 26, 1998,^[5] petitioner elevated the case to the Court of Appeals whereat his recourse was docketed as **CA-G.R. SP No. 46736**, therein raising the following arguments: (1) the ejectment complaint is fatally flawed as it failed to state a cause of action because while it is based on the need of the leased premises for the personal use of the respondents, the same complaint failed to allege that respondents do not own any other residential unit in the same municipality, as required by Section 5 (c) of Batas Pambansa (B.P.) Blg. 877; (2) both the MeTC and the RTC erred in ordering petitioner's ejectment on ground of expiration of the lease despite the fact that such a ground is not pleaded in the complaint; and (3) even if alleged, the expiration of petitioner's month-to-month contract of lease cannot be a basis for ejectment because Section 6 of B.P. Blg. 877 suspended the application of Article 1687 of the Civil Code.

In the herein assailed **decision dated May 14, 1998**, the Court of Appeals affirmed the appealed May 24, 1995 decision of the RTC minus the award of attorney's fees, thus:

WHEREFORE, with the exception of the deletion of the award for attorney's fees, the decision herein appealed from is hereby **AFFIRMED**, without pronouncement as to costs.

SO ORDERED.

Undaunted, petitioner is now with us via the instant recourse raising the same issues already passed upon by the three (3) courts below.

We **DENY**.

In the complaint^[6] they filed against petitioner before the MeTC of Makati City, respondents, as plaintiffs therein, alleged, *inter alia*, thus:

6. That on January 10, 1994 plaintiffs through counsel made a written notice and demand that the former is terminating the lease over the premises effective January 31, 1994 for the reason of personal use and to pay rentals with three (3) months to vacate and surrender premises;

As may be gleaned from the foregoing allegations, two (2) grounds are relied upon by the respondents in seeking petitioner's ejectment from the premises in question, namely:

- (a) respondents' need of the leased premises for their own personal use; and
- (b) expiration of the lease contract with the termination of the month-to-month lease effective January 31, 1994.

Section 5. *Grounds for Judicial Ejectment.* – Ejectment shall be allowed on the following grounds:

xxx xxx xxx

- (c) Legitimate need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family as a residential unit, such owner or immediate member not being the owner of any other available residential unit within the same city or municipality: Provided, however, That the lease for a definite period has expired: Provided, further, That the lessor has given the lessee formal notice three (3) months in advance of lessor's intention to repossess the property: and Provided, finally, That the owner/lessor is prohibited from leasing the residential unit or allowing its use by a third party for at least one year.

xxx xxx xxx

- (f) Expiration of the period of the lease contract.

xxx xxx xxx

Anent the first ground under Section 5(c) above, which is the respondents' need of the property for their own use, petitioner contends that the complaint should be dismissed for lack of cause of action because it failed to allege that the respondents had no other available residential unit within the same city or municipality.

We agree with the Court of Appeals that there was here a substantial compliance with the requirement of Section 5 (c) of B.P. Blg. 877 when respondents specifically averred in their Supplemental to Position Paper that "plaintiffs has (sic) no other property in Makati except that property located at Eureka St., Makati, Metro Manila"^[7]. In much the same way that a complaint, which fails to state a cause of action, may be cured by evidence presented during the trial in regular procedure, a defective complaint in summary procedure may likewise be cured by the allegations in the position paper. Thus, the MeTC cannot be faulted for not dismissing the case for lack of cause of action.

The ground for judicial ejectment stated in Section 5 (c) of B.P. Blg. 877 may be reduced to the following essential requisites:

- (1) the owner's/lessor's legitimate need to repossess the leased property for his own personal use or for the use of any of his immediate family;
- (2) the owner/lessor does not own any other available residential unit within the same city or municipality;
- (3) the lease for a definite period has expired;
- (4) there was formal notice at least three (3) months prior to the intended date to repossess the property; and
- (5) the owner must not lease or allow the use of the property to a third party for at least one year.

Thus far, we have noted and discussed the first and second requisites. The fact that there was formal notice and that it was given at least three (3) months from intended date to repossess the property, which is the fourth requisite, is not disputed.

Our discussion now brings us to the third element, which is the alleged expiration of the period of lease.

It is acknowledged that there was neither any written nor verbal agreement as to a fixed period of lease between the respondents and the petitioner. There was, however, a verbal agreement for the payment of rental at P2,112.00 on a monthly basis. By express provision of Article 1687^[8] of the Civil Code, the term of the lease in the case at bar is from month-to-month. Admittedly, there was a written notice served by the respondents on January 10, 1994 upon petitioner for the termination of the lease effective January 31, 1994. Citing this Court's ruling in *De Vera vs. Court of Appeals*,^[9] the Court of Appeals held that the period of lease thereby expired by the end of the month of January, 1994.

Petitioner, however, contends otherwise. He argues that the operation of Article 1687 was suspended with the suspension of Article 1673 by Section 6 of B.P. Blg. 877, which states:

Section 6. *Application of the Civil Code and Rules of Court of the Philippines.* – Except when the lease is for a definite period, the provisions of paragraph (1) of Article 1673^[10] of the Civil Code of the Philippines, insofar as they refer to residential units covered by this Act, shall be suspended during the effectivity of this Act, but other provisions of the Civil Code and the Rules of Court on lease contracts, insofar as they are not in conflict with the provisions of this Act shall apply.

The Court disagrees.

The Court's pronouncement in *De Vera vs. Court of Appeals*,^[11] is enlightening:

x x x The issue in this case is whether the oral contract of lease was on a month-to-month basis which is terminated at the end of every month. We hold that it is. We have already ruled in a number of cases that a lease on a month-to-month basis is, under Art. 1687, a lease with a