

SIXTH DIVISION

[CA-G.R. CV NO. 81465, August 30, 2006]

**IRENE CALIP^[1], PLAINTIFF-APPELLEE, VS. ELEUTERIO RILLERA,
DEFENDANT-APPELLANT.**

D E C I S I O N

COSICO, J.:

The Case

On appeal is the Decision, dated November 7, 2003, of the Regional Trial Court (RTC) of Baguio City, Branch 3, rendered in Civil Case No. 5155-R, entitled "Irene Calip, Plaintiff v. Eleuterio Rillera, Defendant".

In an action for Recovery of Possession of Real Property and Damages, filed by Irene Calip against defendant Eleuterio Rillera, the trial court found merit in the plaintiff's complaint, and accordingly awarded possession of the disputed parcel of land to her, and ordered the defendant to vacate the same, and to pay various damages to the plaintiff.

The dispositive portion of the appealed decision reads:

"WHEREFORE, the Court rules in favor of plaintiff Irene Calip dela Cruz. Defendant Eleuterio Rillera or his agents are hereby ordered to vacate the subject lot immediately and to cause the demolition of his illegal structure and other improvements on the same, unless plaintiff is willing to buy the said structure and other improvements. The right to possession over the said lot is given to the plaintiff. Defendant is hereby further ordered to pay Actual Damages in rentals from 1989 to present until defendant vacates the subject lot at Five Thousand Pesos (P5,000.00) Monthly rental; Moral Damages of One Hundred Thousand Pesos (P100,000.00), and Attorney's Fees of Forty Thousand Pesos (P40,000.00), plus costs of suit.

"IT IS SO ORDERED." (p. 507, Records)

The Facts

Records show that plaintiff Calip filed her Complaint with the lower court on February 5, 2002, alleging, *inter alia*, that she is the owner of a 283 square meter portion of residential land, situated at Engineer's Hill, Section C, Baguio City, specifically, Lot 24 SWO-1-01039. The same is covered by a Tax Declaration in her name, and was purchased by her from a certain Eduardo Acquien on January 9, 1990. Previously, the land was awarded to Acquien by the Building Services and Real Property Management, under RA No. 1361, as amended by RA No. 5941, pursuant to a letter of award, dated August 25, 1981. Plaintiff claims to have

enjoyed actual, open, continuous, adverse, exclusive and notorious possession of the said land, religiously paying realty taxes thereon. Sometime in 1998, plaintiff discovered a residential structure made of concrete hollow blocks and G.I. sheets built on the subject property, which upon investigation, was constructed by the defendant. She also discovered that the defendant neither obtained nor applied for a building permit for the said structure. Upon application with the Office of the City Mayor, plaintiff obtained a Notice of Demolition of the defendant's structure, but the same was not implemented, and defendant continues to maintain his illegal structure on the land. Thus, plaintiff is being deprived of beneficial use of the property, and of rentals amounting to P3,000.00 a month.

In his Answer, defendant Rillera denied the material allegations of plaintiff's complaint, and alleged that he is the real owner of the land in dispute, and that he purchased the same from the lawful owner/transferee of the same, and had always been in legal possession thereof. Defendant recounted that on July 16, 1985, Eduardo Acquien, the original owner of the property, executed a Deed of Transfer of the parcel of land and all improvements thereon to Eladio Cosalan. Acquien also issued a Special Power of Attorney in favor of Cosalan for the latter to introduce improvements on the land such as fences. Thus, Cosalan proceeded to take possession and improve the land. In 1987, Cosalan executed a Deed of Transfer of the land in favor of Juanito Rabanillo, but the transfer was eventually cancelled in 1991. At the time of the said cancellation of transfer, Cosalan executed another Deed of Transfer, this time in favor of Eufemia R. Tamo. In 1996, Tamo executed a Deed of Absolute Sale in favor of the defendant, who was already occupying the said property as caretaker thereof since 1990. Since the property was sold by Acquien to Cosalan, there has always been a building standing on the property, which building was occupied by Cosalan, and by the defendant as caretaker. Contrary to the plaintiff's claim, it was the defendant who has always been in possession of the property, even as early as 1982. Plaintiff is not the owner of the property, as the original owner, Acquien, had already sold the property to Cosalan in 1985, and therefore, had no authority to further sell the property to the plaintiff in 1990. Defendant also posed a counterclaim for damages against the plaintiff.

After issues were joined, the parties attended the pre-trial conference, where the parties proffered their respective witnesses and documentary evidence, although no compromise settlement was reached. The Court also set the dates for the trial of the case. (*p. 143, Records*).

Trial of the case proceeded, with the plaintiff presenting her witnesses, including herself, (*TSN, November 14, 2002, March 26, 2003, March 27, 2003, April 2, 2003, April 15, 2003 and April 28, 2003*), Rosa Fonacier, (*TSN, April 28, 2003*) and Weddie Pacio Acquien, (*TSN, April 29, 2003*). Plaintiff offered documentary exhibits from Exhibits "A" to "N", with sub-markings.

According to plaintiff's evidence, there was a Memorandum of Agreement in 1989 between Eduardo Acquien and plaintiff Calip, under which the latter engaged to purchase the subject property at Engineer's Hill, Baguio city from Acquien. This was followed the next year by a Deed of sale between the spouses Eduardo and Lita Acquien and the plaintiff, documenting the sale of the subject property to plaintiff, who thus obtained ownership and right of possession over the subject property. At the time of the sale, the subject property was vacant, although it was fenced by the former owner Acquien. In 1996, plaintiff had delivered to the property 2 to 4 truck

loads of gravel and sand, apparently attempting to construct a building thereat. However, defendant removed the said building aggregates from the property and proceeded to build his own building thereon. Plaintiff, on the other hand, made no move to resist the defendant's encroachment, for fear that she may be shot, and for lack of resources to continue her plans.

Defendant, on the other hand, also testified for himself, (*TSN May 7, 2003, May 8, 2003, May 15, 2003, May 23, 2003, May 26, 2003 and May 27, 2003*). Defendant's other witnesses were Juanito Rabanillo, (*TSN June 4, 2003, June 5, 2003, June 6, 2003, June 10, 2003 and June 12, 2003*) and Daniel Caoili, (*TSN June 12, 2003*). Defendant also offered documentary exhibits from Exhibits "1" to "10", with sub-markings.

Defendant insisted that the property was sold by Eduardo Acquien to Eladio Cosalan in 1985, at which time, defendant was taken by the latter as a caretaker, together with Juanito Rabanillo. Juanito Rabanillo aspired to purchase the property from Cosalan under a Deed of Transfer, but the transaction was cancelled when Rabanillo failed to make complete payments. He gave way to Eufemia Tamo, who purchased the property from Cosalan. Although the property was sold by Cosalan to Eufemia Tamo, defendant Rillera was allowed to stay on the property. In 1996, Tamo sold the property to the defendant for P200,000.00, which the latter was able to raise with the help of his wife who worked abroad. Since the property was sold to Cosalan, there has always been a 3 x 3 meter building standing thereon, which building was owned by Cosalan, and occupied by defendant as caretaker of the property. Thus, it was the defendant who is the real owner and constant occupant of the property, and not the plaintiff.

A rebuttal witness in the person of Barangay Captain Cecilio Sales was supposed to appear for the plaintiff, but he failed to do so. Therefore, the case was submitted for decision based on the evidence already submitted.

The RTC's Decision

Eventually, the lower court rendered its Decision on November 7, 2003. Judge Fernando Vil Pamintuan, who heard and received all the evidence and arguments for both parties, ruled in favor of the plaintiff Irene Calip, who presented the more preponderant claim of ownership and rightful possession of the land in dispute.

The RTC found that evidence presented by the plaintiff sustained the claim that the property was validly sold by the spouses Eduardo and Lita Acquien to the former. The credible testimonies of the plaintiff herself and Weddie Acquien, son of the spouses Acquien who was present when the Memorandum of Agreement was executed, identified and supported the genuineness and binding force of the deeds in favor of the plaintiff. Also, Eduardo Acquien had previously sued Eladio Cosalan, defendant's predecessor, for forgery, although the case was dismissed on a technicality. The act of Acquien in suing Cosalan would indicate that he was repudiating the alleged transfer of the subject property to Cosalan. Furthermore, it was the plaintiff who continuously paid realty taxes on the subject property, while the defendant was not recognized by City Hall as owner or occupant. In fact, plaintiff was even able to secure a demolition order against the defendant, although for some reason, the same was not implemented.