

FIRST DIVISION

[G.R. NO. 143331, October 05, 2007]

**FIVE STAR MARKETING CO., INC., REPRESENTED BY ITS
PRESIDENT SALVADOR BOOC, PETITIONER, VS. JAMES L. BOOC,
RESPONDENT.**

D E C I S I O N

AZCUNA, J.:

Before the Court is a petition for review on *certiorari* assailing the Decision^[1] of the Regional Trial Court (RTC), Branch 4, Iligan City dated April 25, 2000 in Civil Case No. 5023 which set aside the Decision^[2] of the Municipal Trial Court in Cities (MTCC), Branch 1, Iligan City dated November 10, 1999 in Civil Case No. (10808-AF) I-1201; and the RTC's Order^[3] dated May 30, 2000 denying petitioner's motion for reconsideration.

The antecedents are as follows:

Petitioner is a corporation duly organized and existing under Philippine laws,^[4] the incorporators of which include the children of the late Antonio Booc and Ong Chuy Tiok, namely, Sheikding, Rufino, Felisa, Salvador, Jose, and Roque.^[5] Said corporation came into existence in 1979, when the heirs of the late Nicolas Abarca offered to sell to the heirs of the late Antonio Booc Lot 69-A located in Quezon Avenue, Iligan City.^[6] Considering that the siblings were to contribute unequal shares of the purchase price, they decided to create a corporation, Five Star Marketing Company, Inc., the petitioner herein, whose shares of stock reflected the amount of their contribution in purchasing the subject property.^[7] On December 12, 1979, the heirs of Nicolas Abarca and petitioner executed a Deed of Sale^[8] where the former sold Lot 69-A to petitioner for the sum of P50,000. Consequently, Transfer Certificate of Title No. T-19209 (a.f.)^[9] was issued in the name of petitioner.

In 1982, when the existing structure in the subject property was completely razed by fire, petitioner constructed thereon a four-storey building financed mainly by a loan secured from Northern Mindanao Development Bank using the subject property as collateral.^[10] The entire ground floor and the fourth floor were allotted to Rufino, the second floor to the family matriarch, Ong Chuy Tiok, and the third floor to Sheikding, all of whom occupied the same rent-free.^[11]

Sometime in the late 1980, on the insistence of Ong Chuy Tiok, James Booc, the son of Sheikding and respondent herein, was allowed to use one-half of the ground floor for his business rent-free. In 1993, petitioner and respondent entered into an Agreement^[12] wherein the latter became the lessee of the space formerly occupied

by Rufino and that of De Leon Gun Store.

Several years later, the board of directors of petitioner passed and approved a resolution^[13] terminating the free-rental privilege given to all the occupants of the building. It stressed that the privileges shall be good only up to March 31, 1999, after which, the building will be open for lease with the following rates.

Ground floor door 1	P 50,000
Ground floor door 2	40,000
2 nd floor	50,000
3 rd floor	40,000
4 th floor	30,000
Roof deck	15,000 ^[14]

On March 15, 1999, petitioner notified all the occupants that it had withdrawn all privileges granted to them. It likewise notified them of the rental rates of the units concerned and further required any interested occupant to negotiate and enter into a lease agreement with petitioner.^[15] Respondent was informed that the rental rate for ground floor, door 2, is P40,000.00 per month effective April 1, 1999.^[16] However, respondent did not enter into a lease contract with petitioner and, despite repeated demands, failed to vacate the premises.^[17]

Thus, on May 25, 1999, petitioner filed an action for unlawful detainer against respondent before the MTCC, Iligan City. The same was docketed as Civil Case No. (10808-AF) I-1201 and raffled to Branch 1.

Petitioner prayed, thus:

WHEREFORE, premises considered, the plaintiff most respectfully prays of this Honorable Court, after due hearing, judgment be rendered in favor of the plaintiff and against the defendant by:

- a) Ordering the defendant to vacate the above-described premises, and return the possession thereof to the plaintiff;
- b) Ordering the defendant to pay the monthly rentals of P40,000.00 of said premises from April 1999 until the defendant delivers possession of the premises to the plaintiff, as and by way of actual and compensatory damages;
- c) Ordering the defendant to pay the amount of P20,000.00, as and by way of attorney's fees plus P2,000.00 per court appearance;
- d) To pay costs of suit.

Other relief and remedies as may be just and equitable under the premises are likewise prayed for.^[18]

In his answer, respondent raised several defenses among which being that petitioner has no cause of action for ejectment against respondent; that petitioner has no legal personality to sue; that the court has no jurisdiction over the subject matter; and that the premises in question have been occupied by the respondent for free since the erection of the building, they being the share of his father Sheikding; and that respondent and his father filed a case in the Securities and Exchange Commission against petitioner and against the president of petitioner corporation.^[19]

During the preliminary conference on July 13, 1999, the MTCC directed the parties to explore the possibility of an amicable settlement. Consequently, the preliminary conference was reset to August 3, 1999.

On July 24, 1999, respondent, through counsel, sent petitioner a telegram asking for a postponement of the preliminary conference set on August 3, 1999.^[20] On July 26, 1999, respondent's counsel filed a Motion to Reset^[21] the preliminary conference set for August 3, 1999 to August 24, 1999, allegedly due to an unpostponable personal engagement.

Petitioner, through counsel, opposed the motion arguing that the motion violated the provision of Sec. 11, Rule 13 of the 1997 Rules of Civil Procedure,^[22] hence, it is considered as not filed; that it is a dilatory motion, a prohibited pleading pursuant to Sec. 19 of the Revised Rule on Summary Procedure;^[23] and that no motion for postponement of the preliminary conference shall be allowed except on meritorious grounds.^[24]

On August 3, 1999, the scheduled preliminary conference pushed through. Petitioner and its counsel appeared but respondent and his counsel failed to appear despite due notice.

On August 18, 1999, the MTCC issued an Order^[25] denying respondent's motion to reset on the grounds that it failed to comply with the required explanation why service was not done personally pursuant to Sec. 11, Rule 13 of the Rules^[26] and that counsel failed to establish that his motion is meritorious. Consequently, the court ruled on the basis of the facts alleged in the complaint. The dispositive portion of the order reads as follows:

WHEREFORE, finding the defendant's motion to reset the preliminary conference not sufficiently impressed with merit, the same is hereby denied. The court shall now render judgment as may be warranted by the facts alleged in the complaint pursuant to Sec. 7 & 8, Rule 70 of the Revised Rules of Court of Appeals.

SO ORDERED.

A Verified Motion for Reconsideration,^[27] dated September 13, 1999, was filed by respondent, followed by a Supplement to the Motion for Reconsideration,^[28] dated September 15, 1999, which the MTCC denied in its Order^[29] dated October 12, 1999.

On November 10, 1999, the MTCC rendered a Decision^[30] in favor of petitioner and against respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against defendant, ordering that:

1. Defendant vacate the premises in question, and return possession thereof to the plaintiff;
2. Defendant to pay plaintiff monthly rental of P40,000.00 for the said premises from April 1999 until possession thereof is restored to the plaintiff;
3. Defendant to pay plaintiff the sum of P3,000.00 as and for attorney's fees;
4. Defendant to pay the cost of suit.

SO ORDERED.

The MTCC reasoned that respondent's stay on the property is merely by tolerance of petitioner. Since there is no lease agreement between the parties and respondent is not paying any rental for the subject premises, respondent's occupancy on the subject premises is entirely dependent upon the will of petitioner. As such, respondent is liable to surrender the premises and to pay reasonable compensation for their use.

Respondent appealed the decision to the RTC, assigning the following errors:

[1]THE LOWER COURT GRIEVOUSLY ERRED IN DECIDING EX-PARTE THE UNLAWFUL DETAINER SUIT IN FAVOR OF THE APPELLEE BASED SOLELY ON THE ALLEGATIONS IN THE COMPLAINT – ALLEGATIONS WHICH MISERABLY FAILED TO SHOW COMPLIANCE WITH THE TWIN JURISDICTIONAL REQUIREMENTS OF A DEMAND TO PAY RENTALS IN ARREARS AND A DEMAND TO VACATE

[2]THE LOWER COURT GRIEVOUSLY ERRED IN DENYING APPELLANT'S FIRST MOTION FOR CONTINUANCE OF THE PRE-TRIAL AND IN DENYING APPLANT'S MOTION FOR RECONSIDERATION

On January 14, 2000, the RTC issued an Order^[31] setting aside the decision appealed from, as well as the order denying respondent's motion for reconsideration and consequently remanding the case to the court of origin. The RTC opined that in denying respondent's motion to reset the preliminary conference, the MTCC gave more weight to procedural technicalities than in hearing and deciding the case on the merits. The RTC reiterated that judgment by default is frowned upon because it is something which is only a little less than a denial of due process. Also, the RTC added that the MTCC should have passed upon the issue of ownership considering that ownership is indispensable to the resolution of the issue of possession. The *fallo* reads:

WHEREFORE, premises considered, the default judgment appealed from is hereby set aside, and the Order of the Court a quo, dated October 12, 1999 denying the appellant's motion for reconsideration is also set aside.

Let the records of the above-entitled complaint be remanded to the court of origin, MTCC Branch 01, for further proceeding.

SO ORDERED.

Petitioner then filed a Motion to Set Aside Order^[32] assailing the order of the RTC for being contrary to law, insisting that it was not given the opportunity to submit its own memorandum as required by the rules. On February 4, 2000, the RTC issued a Resolution^[33] in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, the Court finds the motion to be impressed with merit and hereby sets aside the questioned order of the Court dated January 14, 2000 and in its stead, allows the plaintiff appellee to submit its memorandum within fifteen (15) days from receipt hereof.

SO ORDERED.^[34]

Petitioner subsequently filed a motion for the issuance of a writ of execution pending appeal, which motion was denied by the RTC in its Order^[35] dated March 29, 2000. Petitioner then filed a petition for mandamus^[36] before the Court of Appeals (CA) questioning the said order, but the petition was later dismissed by the appellate court.

On March 31, 2000, petitioner filed its appeal memorandum.^[37]

On April 25, 2000, the RTC rendered a Decision^[38] reiterating its January 14, 2000 order. The dispositive portion of which reads:

WHEREFORE, premises considered, the default judgment appealed from is hereby set aside, and the Order of the Court a quo, dated October 12, 1999 denying the appellant's motion for reconsideration is also set aside.

Let the record of the above-entitled complaint be remanded to the court of origin, MTCC Branch 01, for further proceeding.

SO ORDERED.

The RTC opined that respondent had been in effect denied his day in court; that procedural laws are technicalities which are adopted not as ends in themselves but means conducive to the realization of law and justice.^[39]

Petitioner filed a Motion for Reconsideration^[40] which was denied in the assailed Order^[41] dated May 30, 2000.

Hence, this petition, raising the following issues:

(A) WHETHER OR NOT THE LOWER COURT GRIEVOUSLY ERRED IN HOLDING THAT RESPONDENT WAS DENIED HIS DAY IN