

SECOND DIVISION

[G.R. No. 109887, February 10, 1997]

**CECILIA CARLOS, PETITIONER, VS. THE COURT OF APPEALS AND
EAST ASIA REALTY CORPORATION, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision, dated March 9, 1993 of the Court of Appeals and its resolution, dated April 26, 1993, affirming the decision of the Regional Trial Court, which reversed the contrary decision of the Metropolitan Trial Court of Parañaque, Branch 78, dismissing the ejectment case filed against petitioner.

The facts are as follows:

Petitioner Cecilia Carlos was the lessee of a portion of a house and lot owned by a certain Mrs. de Santos.^[1] The house and lot were subsequently sold by Mrs. de Santos to private respondent East Asia Realty Corporation (EARC).

Sometime in 1990, petitioner, together with Lourdes Villamor, filed a complaint in the Regional Trial Court of Makati for the enforcement of their "right of first refusal" or "redemption rights" against private respondent East Asia Realty Corporation. Petitioner and Villamor alleged that in 1987, Mrs. de Santos offered to sell the house and lot to them but despite demands by them, the offer was not put into writing and instead, they were made to sign a blank piece of paper by Mrs. Santos with assurance that their rights would be protected, and that sometime in 1988, they were made to sign an incomplete contract of lease, a copy of which had never been furnished to them.^[2] They claimed that the sale of the house and lot to EARC had been made without their consent and in violation of their right of first refusal.

On June 26, 1991, private respondent EARC filed a complaint for ejectment with the Municipal Trial Court against petitioner Cecilia Carlos. East Asia Realty alleged that it entered into a lease contract with petitioner Cecilia Carlos for a fixed term of two years and three months beginning November 1, 1986 and expiring on January 31, 1991; that by virtue of that contract, petitioner Cecilia Carlos took possession of the leased premises and used the same for business; that twice on September 19, 1990, it informed Cecilia Carlos in writing of its decision not to renew the contract of lease after January 31, 1991; that the ejectment case was filed as a result of Cecilia Carlos' refusal to vacate the premises and her non-payment of the rentals; that Cecilia Carlos

subleased the property without its written consent and in violation of the lease agreement; and that by way of mitigating its damages, EARC continued to accept rental payments from Cecilia Carlos even after the expiration of the lease until May, 1991, when petitioner stopped paying.

[3]

In due time, Cecilia Carlos filed her answer. With respect to the allegation that she and EARC had entered into a contract of lease for a period of two years and three months, expiring on January 31, 1991, she claimed that she had “no knowledge or information sufficient to form a belief as to the truth” of the allegation. She admitted that she used the premises for her business and that EARC had informed her of its decision not to renew the lease upon its expiry. She alleged that she refused to vacate the premises because she had a right of first refusal. She denied EARC’s allegation that she had subleased the property, the business carried on in the premises being her family business. She contended that the question raised by her complaint before the Regional Trial Court of Makati was a prejudicial question.^[4]

After summary proceedings, the MTC dismissed the ejectment case and ruled in favor of petitioner Cecilia Carlos. It held that an implied new lease was created as a result of EARC’s acceptance of rentals even after the expiration of the term of the lease agreement. It also cited the pending action, involving Cecilia Carlos’ claim to preference in acquiring the subject premises, as ground for the dismissal of EARC’s complaint for ejectment.

Private respondent EARC appealed to the RTC, which reversed the MTC, basing its decision mainly on its finding that petitioner Cecilia Carlos had signed a lease agreement^[5] the pertinent parts of which stated:

2. This lease contract shall be for a period of Two (2) years and Three (3) months commencing from November 1, 1988 to January 31, 1991.

. . . .

8. No implied renewal shall be understood under this contract, The LESSEE hereby agrees to vacate the said premises exactly at the expiration of the lease term without notice and demand. (underscoring supplied)

Since the agreement had already expired, the RTC held petitioner’s ejectment as proper. The RTC rejected Cecilia Carlos’ claim that said lease agreement had not been voluntarily entered into by her. Said the RTC:

After a careful evaluation of the evidence on record, the Court is of the conclusion that the court a quo committed error in dismissing the case at bar in favor of defendant-appellee.

The case at hand is a simple action for Ejectment predicated upon the expiry of the Lease Agreement purportedly entered into between plaintiff-appellant and defendant-appellee (Annex “A” of the Complaint). In her memorandum, it was the vehement contention of defendant-appellee that the subject lease agreement was not voluntarily entered into by her as her signature was procured thru fraud, undue influence or mistake. This is entirely unfounded. In the first place, the foregoing allegation was

not invoked as a defense in defendant-appellee's Answer, consequently, the same is deemed waived pursuant to Section 2, Rule 9 of the Revised Rules of Court which provides in part that "Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived x x x." In the second place, there was not even a shred of evidence adduced by defendant-appellee in the court below to buttress her allegation of fraud, undue influence or mistake in the procurement of her signature in the lease agreement. In the third place, the subject lease agreement is deemed to have been admitted by defendant-appellee for failure to specifically deny the same in accordance with Section 1, Rule 9 of the Revised Rules of Court.^[6]

Petitioner Cecilia Carlos appealed, but the Court of Appeals affirmed the RTC, in a decision rendered on March 9, 1993. A motion for reconsideration was thereafter filed by petitioner but it was denied on April 26, 1993.

Hence, this petition. Petitioner contends:

1. The COURT OF APPEALS erred when it decided this case in favor of private respondent and brushing aside issues of fraud, undue influence or mistake raised by petitioner in her answer;
2. The COURT OF APPEALS erred in not holding that there was an implied renewal of the lease agreement when private respondent continued collecting the monthly rental even after the expiration of the original period of lease;
3. The COURT OF APPEALS erred in not holding that there is indeed a prejudicial question brought about by the pendency of Civil Case No. 90-3444 entitled Cecilia Carlos and Lourdes Villamor vs. East Asia Realty Corporation etc., for first refusal or redemption right and damages.^[7]

The petition has no merit. Petitioner contends that contrary to the Court of Appeals' finding, her answer in the MTC alleged fraud, undue influence and mistake in the execution of the lease agreement. This is not true. All that petitioner alleged, so far as pertinent, was —

10. That the plaintiff has no valid cause of actions (sic) as against (sic) defendant for non-conformity of (sic) Rule 70, Rules of Court, and P.D. #1508; And a "prejudicial question" pending between them;
11. That as between the parties there's an ongoing litigation constituting between them a "prejudicial question" now filed with the Regional Trial Court, Branch 133-Makati. Please refer to Annex "2" (6-pages) parcel hereof.^[8]

As can be seen, the above-quoted portion of the answer did not allege fraud, undue influence or mistake but only made reference to the pending case between her and EARC and what it alleged was that there was a prejudicial question involved which should first be resolved before the ejectment case could proceed. As the Court of Appeals correctly observed: Msesm