

NINETEENTH DIVISION

[CA-G.R. CEB SP NO. 07520, February 18, 2015]

**ARLINDA BONO, PETITIONER, VS. SPOUSES LEONARDO AND
GREGORIA ALFREDO, RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

Before us is a Petition for Review under Rule 42 of the Rules of Court assailing the Order^[1] dated January 22, 2013 of the Regional Trial Court, 6th Judicial Region, Branch 58, San Carlos City, Negros Occidental, reversing the Order^[2] dated August 15, 2012 of the Municipal Trial Court in Cities, City of San Carlos, Region VI in Civil Case No. 1568 for Unlawful Detainer with Damages.

The Facts

Respondents the spouses Leonardo and Gregoria Alfredo [spouses Alfredo] acquired a parcel of land located at San Carlos City, Negros Occidental described as Lot 10-U with an area of 776 square meters, registered as TCT No. T-8200 from Planters Product, Inc.^[3] After the sale, the spouses Alfredo were not placed in possession because herein petitioner Arlinda Bono [Bono] together with her successors-in-interest were occupying Lot 10-U.

This prompted the spouses Alfredo to file a case of unlawful detainer against Bono, Allan Braquil, Rogelio Vierneza, Alfredo Mahilum, Jr., Cesar Sayson, Elmira Apurado-Soria, Jubert Nanalabe, Victoriano Cortez, Martin Formoso, Hadji Reyes and Jovilito Camperoso before the Municipal Trial Court in Cities, Region VI, San Carlos City, Negros Occidental. The allegations in the complaint are hereto reproduced, thus:

"1. That plaintiffs are Filipinos, all of legal age, married to each other, and residents of Barangay VI (Catagalogan), San Carlos City, Negros Occidental, while defendants are likewise all Filipinos, all of legal age, and residents of the same barangay, and place, this city, where they may be served with summons and other court processes.

2. That the plaintiffs are the absolute registered owners of Lot No. 10-U, located Barangay VI (Catagalogan), this city, described under Transfer Certificate of Title No. 098-20111000034, a machine copy of which title is hereto attached and marked as Annex "A";

3. That all the defendants together with members of their immediate families are occupying portions of said property at the mere tolerance of plaintiffs;

4. That on March 23, 2012, plaintiffs, thru the undersigned counsel, sent

letters of demand upon the defendants, informing them of the need by the former of their property, asking them to vacate the occupied premises within a period of 15 days from receipt of said letters, xxxxx;

5. That plaintiffs likewise coursed their just claim upon the defendants thru the office of the Lupong Tagapamayapa of Barangay VI, this city, and due to the intransigence of defendants a "Certification to File Action", xxxxx

6. That defendants refused and failed, and still refuse and fail to vacate their occupied areas, to the prejudice and damage of the plaintiffs;

7. That the reasonable monthly rentals for the occupied premises is P500.00 per defendant;

8. That for the wanton and malicious refusal and failure of the defendants to heed the just and simple claim of plaintiffs, the latter were constrained to engage the professional services of counsel to whom they are obligated to pay the sum of P20,000.00, by way of attorney's fees, plus P1,000.00 by way of appearance fee per scheduled hearing.

xxxxx"^[4]

Without trial, the MTCC dismissed the complaint for lack of jurisdiction as contained in its Order^[5] dated August 15, 2012. A portion of its order, reads:

"The nature of defendants' entry into the land determines the cause of action, whether forcible entry or unlawful detainer. If the entry was illegal, then the action to be filed is forcible entry. If however, the entry was legal but the possession thereafter becomes illegal the case is unlawful detainer. Tolerance or permission must be present at the beginning of defendants' possession to justify an action for the unlawful detainer and this must appear on the face of the complaint. If the complaint does not aver the facts constitutive (of) unlawful detainer or forcible entry as where it does not state how the entry was effected or how and when the dispossession of defendants started the appropriate remedy is either accion publiciana or accion reivindicatoria in the proper regional trial court. In the instant case, the complaint merely states "3. That all the defendants together with the members of their immediate families are occupying portions of said property at the mere tolerance of plaintiffs;" In cases of unlawful detainer of this kind, it is essential that the supposed acts of tolerance of plaintiff is present right from the start of defendants' possession. Failure of plaintiffs' complaint to aver the key jurisdictional facts constitutive of unlawful detainer is fatal to their cause as the court cannot acquire jurisdiction over the case.

WHEREFORE, judgment is hereby rendered dismissing plaintiffs' complaint for lack of jurisdiction.

SO ORDERED."