

## **SPECIAL SIXTEENTH DIVISION**

**[ CA G.R. SP NO. 119584, May 02, 2014 ]**

**MARILOU S. BANGGAO, PETITIONER, VS. SPOUSES LOPE L. NORCIO AND JULIE G. NORCIO, RESPONDENTS.**

### **D E C I S I O N**

**VILLON, J.:**

Before this Court is an appeal by way of a Petition for Review under *Rule 42 of the 1997 Rules of Civil Procedure, as amended*, which seeks to annul and set aside the decision dated April 27, 2011<sup>[1]</sup> rendered by the Regional Trial Court (RTC), Branch 33, Guimba, Nueva Ecija, in Civil Case No. 1612-G for *Forcible Entry with Damages*, reversing the decision of the Municipal Trial Court (MTC) of Cuyapo, Nueva Ecija in Civil Case No. 1890.

Records show that plaintiffs<sup>[2]</sup> spouses Lope L. Norcio and Julie G. Norcio filed a Complaint for *Forcible Entry with Damages*<sup>[3]</sup> against defendants Edwin Gines and Marilou Banggao<sup>[4]</sup> with the Municipal Trial Court (MTC) of Cuyapo, Nueva Ecija, which was docketed as Civil Case No. 1890.

Respondents claimed that since 2006 they were lessees of a lot situated in Brgy. District II, Cuyapo, Nueva Ecija, which was administered by a certain Lorie Manzano, paying an annual rental of One Thousand Two Hundred Pesos (P1,200.00); they had their house built thereon at the cost of Seventy Thousand Pesos (P70,000.00); and, that on March 6, 2010, petitioner and Edwin Gines, together with other persons, unlawfully entered the lot and demolished respondents' house with force, strategy and stealth and without notice or court order.

Petitioner and Edwin Gines denied the material allegations of the complaint.<sup>[5]</sup> By way of special and affirmative defenses, they claim that the real owner of the lot was the deceased Eustaquio Busine, whose legal heir, Mauro Busine, authorized Corazon Manzano Oliver (Corazon for brevity) to sell the lot; on April 29, 2009, Corazon executed in favor of petitioner a contract to sell; on May 18, 2009, respondent Julie Norcio and two other persons received the amount of P2,000.00 thereby executing a written promise to vacate the lot; respondents failed to comply with their promise though petitioner allowed them to stay in the premises until December 31, 2009; and that respondents' house was demolished on March 6, 2010 without force, intimidation, stealth, threat or strategy and was even with respondents' knowledge and consent.

After due proceedings, on February 28, 2011, the MTC rendered its decision<sup>[6]</sup>, the decretal portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. DISMISSING the complaint for lack of material allegation of *prior physical possession*.

This case is also DISMISSED finding that MARILOU BANGGAO *did not employ force, intimidation, stealth, threat or strategy* when a mini-dump truck dumped sand and soil in the premises and the house of LOPE NORCIO and JULIET NORCIO was demolished considering that there was an *apparent implied consent on their part*.

2. Declaring LOPE and JULIET NORCIO as unlawful *actual occupants of the subject property on the ground that there is no substantial evidence* to prove that they are lessees of the subject property; and
3. Resolving that MARILOU BANGGAO has the ownership *over the subject property by virtue of the contract to sell executed by Mauro Busine* the former owner through his legal representative Corazon Oliver in favor of Marilou Banggao and she has the right of possession over the same as an attribute of *ownership of the property*;
4. Ordering LOPE and JULIET NORCIO to pay attorney's fees *in the amount of P10,000.00*;
5. Ordering LOPE and JULIET NORCIO to pay the costs of this suit.

The counterclaim of MARILOU BANGGAO against LOPE and JULIET NORCIO should be set for hearing to prove her claim for damages.

SO ORDERED."

On appeal to the RTC, the assailed Decision was rendered, the dispositive portion of which reads:

"From the foregoing facts and premises the appealed decision is reversed, and considering that the plaintiffs prayed only for damages, the defendant Marilou Banggao is ordered to pay to the plaintiffs:

1. P70,000.00 representing costs of the house demolished;
2. P10,000.00 in moral damages;
3. P10,000.00 in attorney's fees payable to the Public Attorney's Office

SO ORDERED."

Hence, the present petition for review anchored on the following assigned errors:

I. THE REGIONAL TRIAL COURT ERRED IN RULING THAT THE COMPLAINT CONTAINS SUFFICIENT ALLEGATIONS CONTAINING AN ACTION FOR FORCIBLE ENTRY.

II. THE TRIAL COURT ERRED IN RULING THAT THE RESPONDENTS DID NOT CONSENT TO THE DEMOLITION OF THEIR HOUSE.

III. THE TRIAL COURT ERRED IN AWARDING DAMAGES TO HEREIN RESPONDENTS IN THE AMOUNT OF P70,000.00 REPRESENTING COSTS

OF THE HOUSE DEMOLISHED; P10,000.00 IN MORAL DAMAGES, AND P10,000.00 IN ATTORNEY'S FEES PAYABLE TO THE PUBLIC ATTORNEY'S OFFICE.

***The petition is meritorious.***

In ejectment cases (*i.e.*, forcible entry and unlawful detainer), the complaint should embody such statement of facts as to bring the party clearly within the class of cases under *Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended*, which states:

"SECTION 1. *Who may institute proceedings, and when.* —

Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs."

The Complaint materially alleges the following:

"2. That plaintiffs are lessees of a lot situated in Brgy. District II, Cuyapo, Nueva Ecija administered by a certain Lorie Manzano since year 2006 paying One thousand Two Hundred Pesos (P1,200.00) per annum to the latter.

3. That plaintiffs' spouses as lessees of the lot erected a house therein sometime in 2006 at the cost of Seventy Thousand Pesos (Php70,000.00) Philippine currency;

4. That plaintiffs are religiously paying the yearly rentals of P1,200.00 but failed to pay for two years, 2009 and 2010, because Lorie Manzano transferred to an unknown place without informing the plaintiffs;

5. That on or about March 6, 2010, the defendants together with other persons, by means of force, strategy and stealth, unlawfully entered the lot being rented by plaintiffs and demolished the house of the plaintiffs without notice or court order;

6. That upon knowing the unlawful acts of the defendants at about 9:00 o'clock of March 6, 2010, plaintiff Lope Norcio confronted defendants Engr. Edwin Gines and Marilou Banggao by asking them why they were demolishing their house and if they had a court order to show authorizing them to demolish their house but Marilou Banggao sarcastically answered that they do not need a court order because she owned the lot wherein the house of the plaintiffs was erected;