

## **SECOND DIVISION**

**[ G.R. No. 172577, January 19, 2011 ]**

**SOLEDAD DALTON, PETITIONER, VS. FGR REALTY AND  
DEVELOPMENT CORPORATION, FELIX NG, NENITA NG, AND  
FLORA R. DAYRIT OR FLORA REGNER, RESPONDENTS.**

### **R E S O L U T I O N**

#### **The Case**

This is a petition<sup>[1]</sup> for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 9 November 2005 Decision<sup>[2]</sup> and 10 April 2006 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CV No. 76536. The Court of Appeals affirmed the 26 February 2002 Decision<sup>[4]</sup> of the Regional Trial Court (RTC), Judicial Region 7, Branch 13, Cebu City, in Civil Case No. CEB 4218.

#### **The Facts**

Flora R. Dayrit (Dayrit) owned a 1,811-square meter parcel of land located at the corner of Rama Avenue and Velez Street in Cebu City. Petitioner Soledad Dalton (Dalton), Clemente Sasam, Romulo Villalonga, Miguela Villarente, Aniceta Fuentes, Perla Pormento, Bonifacio Cabajar, Carmencita Yuson, Angel Ponce, Pedro Regudo, Pedro Quebedo, Mary Cabanlit, Marciana Encabo and Dolores Lim (Sasam, et al.) leased portions of the property.

In June 1985, Dayrit sold the property to respondent FGR Realty and Development Corporation (FGR). In August 1985, Dayrit and FGR stopped accepting rental payments because they wanted to terminate the lease agreements with Dalton and Sasam, et al.

In a complaint<sup>[5]</sup> dated 11 September 1985, Dalton and Sasam, et al. consigned the rental payments with the RTC. They failed to notify Dayrit and FGR about the consignment. In motions dated 27 March 1987,<sup>[6]</sup> 10 November 1987,<sup>[7]</sup> 8 July 1988,<sup>[8]</sup> and 28 November 1994,<sup>[9]</sup> Dayrit and FGR withdrew the rental payments. In their motions, Dayrit and FGR reserved the right to question the validity of the consignment.

Dayrit, FGR and Sasam, et al. entered into compromise agreements dated 25 March 1997<sup>[10]</sup> and 20 June 1997.<sup>[11]</sup> In the compromise agreements, they agreed to abandon all claims against each other. Dalton did not enter into a compromise agreement with Dayrit and FGR.

#### **The RTC's Ruling**

In its 26 February 2002 Decision, the RTC dismissed the 11 September 1985 complaint and ordered Dalton to vacate the property. The RTC held that:

Soledad Dalton built a house which she initially used as a dwelling and store space. She vacated the premises when her children got married. She transferred her residence near F. Ramos Public Market, Cebu City.

She constructed the 20 feet by 20 feet floor area house sometime in 1973. The last monthly rental was P69.00. When defendants refused to accept rental and demanded vacation of the premises, she consigned [sic] her monthly rentals in court.

x x x x

It is very clear from the facts that there was no valid consignment made.

The requisites of consignment are as follows:

1. The existence of a valid debt.
2. Valid prior tender, unless tender is excuse [sic];
3. Prior notice of consignment (before deposit)
4. Actual consignment (deposit);
5. Subsequent notice of consignment;

Requisite Nos. 3 and 5 are absent or were not complied with. It is very clear that there were no prior notices of consignment (before deposit) and subsequent notices of consignment (after deposit)

Besides, the last deposit was made on December 21, 1988. At the time Dalton testified on December 22, 1999, she did not present evidence of payment in 1999. She had not, therefore, religiously paid her monthly obligation.

By clear preponderance of evidence, defendants have established that plaintiff was no longer residing at Eskina Banawa at the time she testified in court. She vacated her house and converted it into a store or business establishment. This is buttressed by the testimony of Rogelio Capacio, the court's appointed commissioner, who submitted a report, the full text of which reads as follows:

**REPORT AND/OR OBSERVATION**

"The store and/or dwelling subject to ocular inspection is situated [sic] on the left portion of the road which is about fifty-five (55) meters from the corner of Banawa-Guadalupe Streets, when turning right heading towards the direction of Guadalupe Church, if travelling from the Capitol Building.

I observed that when we arrived at the ocular inspection site, Mrs. Soledad Dalton with the use of a key opened the lock of a closed door.

She claimed that it was a part of the dwelling which she occupies and was utilized as a store. There were few saleable items inside said space."

Soledad Dalton did not take exception to the said report.

Two witnesses who were former sub-lessees testified and clearly established that Mrs. Dalton use the house for business purposes and not for dwelling.<sup>[12]</sup>

Dalton appealed to the Court of Appeals.

### **The Court of Appeals' Ruling**

In its 9 November 2005 Decision, the Court of Appeals affirmed the RTC's 26 February 2002 Decision. The Court of Appeals held that:

After a careful review of the facts and evidence in this case, we find no basis for overturning the decision of the lower court dismissing plaintiffs-appellants' complaint, as we find that no valid consignation was made by the plaintiff-appellant.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and generally requires a prior tender of payment. In order that consignation may be effective, the debtor must show that: (1) there was a debt due; (2) the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due or because the title to the obligation has been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made the person interested was notified thereof. Failure in any of these requirements is enough ground to render a consignation ineffective.

Consignation is made by depositing the proper amount to the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved. All interested parties are to be notified of the consignation. It had been consistently held that compliance with these requisites is mandatory.

No error, therefore, can be attributed to the lower court when it held that the consignation made by the plaintiff-appellant was invalid for failure to meet requisites 3 and 5 of a valid consignation (*i.e.*, previous notice of the consignation given to the person interested in the performance of the obligation and, after the consignation had been made, the person interested was notified thereof).

Plaintiff-appellant failed to notify defendants-appellees of her intention to consign the amount due to them as rentals. She, however, justifies such failure by claiming that there had been substantial compliance with the

said requirement of notice upon the service of the complaint on the defendants-appellees together with the summons.

We do not agree with such contention.

The prevailing rule is that substantial compliance with the requisites of a valid consignation is not enough. In *Licuanan vs. Diaz*, reiterating the ruling in *Soco vs. Militante*, the Supreme Court had the occasion to rule thus:

"In addition, it must be stated that in the case of *Soco v. Militante* (123 SCRA 160, 166-167 [1983]), this Court ruled that the codal provisions of the Civil Code dealing with consignation (Articles 1252-1261) should be accorded mandatory construction —

We do not agree with the questioned decision. We hold that the essential requisites of a valid consignation must be complied with fully and strictly in accordance with the law. Articles 1256-1261, New Civil Code. That these Articles must be accorded a mandatory construction is clearly evident and plain from the very language of the codal provisions themselves which require absolute compliance with the essential requisites therein provided. Substantial compliance is not enough for that would render only directory construction of the law. The use of the words "shall" and "must [sic] which are imperative, operating to impose a duty which may be enforced, positively indicated that all the essential requisites of a valid consignation must be complied with. The Civil Code Articles expressly and explicitly direct what must be essentially done in order that consignation shall be valid and effectual..."

Clearly then, no valid consignation was made by the plaintiff-appellant for she did not give notice to the defendants-appellees of her intention to so consign her rental payments. Without any announcement of the intention to resort to consignation first having been made to persons interested in the fulfillment of the obligation, the consignation as a means of payment is void.

As to the other issues raised by the plaintiff-appellant in her second and third assigned errors, we hold that the ruling of the lower court on such issues is supported by the evidence adduced in this case.

That plaintiff-appellant is not residing at the leased premises in Eskina Banawa and that she is using the same for business purposes, not as dwelling place, is amply supported by the testimony of two of plaintiff-appellant's sub-lessees. The Commissioner's Report submitted by Rogelio Capacio, who was commissioned by the lower court to conduct an ocular inspection of the leased premises, further lends support to the lower court's findings. On the other hand, plaintiff-appellant only has her self-serving claims that she is residing at the leased premises in Eskina