

## THIRD DIVISION

[ G.R. No. 205539, October 04, 2017 ]

**VELIA J. CRUZ, PETITIONER, V. SPOUSES MAXIMO AND SUSAN CHRISTENSEN, RESPONDENTS.**

### D E C I S I O N

**LEONEN, J.:**

The prior service and receipt of a demand letter is unnecessary in a case for unlawful detainer if the demand to vacate is premised on the expiration of the lease, not on the non-payment of rentals or non-compliance of the terms and conditions of the lease.

This is a Petition for Review on Certiorari<sup>[1]</sup> assailing the October 11, 2012 Decision<sup>[2]</sup> and January 21, 2013 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 117773. The assailed Decision reversed the Regional Trial Court Decision<sup>[4]</sup> dated December 29, 2010, which ordered respondents Maximo and Susan Christensen (the Spouses Christensen) to pay unpaid rentals and to vacate petitioner Velia J. Cruz's (Cruz) property. The Court of Appeals instead reinstated the Metropolitan Trial Court Decision<sup>[5]</sup> dated June 3, 2010, dismissing the complaint for unlawful detainer for Cruz's failure to prove that a demand letter was validly served on the Spouses Christensen.

Cruz alleged that she was the owner of a parcel of land located at A. Santos Street, Balong Bato, San Juan City, which she acquired through inheritance from her late mother Ruperta D. Javier (Javier). She further alleged that Susan Christensen (Susan) had been occupying the property during Javier's lifetime, as they had a verbal lease agreement.<sup>[6]</sup>

Cruz claimed that ever since she inherited the property, she tolerated Susan's occupancy of the property. However, due to Susan's failure and refusal to pay rentals of P1,000.00 per month, she was constrained to demand that Susan vacate the property and pay all unpaid rentals.<sup>[7]</sup>

The matter was referred to barangay conciliation in Barangay Balong Bato, San Juan, despite the parties being residents of different cities. The parties, however, were unable to settle into a compromise. As a result, the Punong Barangay issued a Certificate to File Action<sup>[8]</sup> on August 11, 2005.<sup>[9]</sup>

Three (3) years later, or on August 5, 2008, Cruz, through counsel, sent Susan a final demand letter,<sup>[10]</sup> demanding that she pay the unpaid rentals and vacate the property within 15 days from receipt.<sup>[11]</sup>

Cruz alleged that despite receipt of the demand letter, Susan refused to vacate and pay the accrued rentals from June 1989 to February 2009 in the amount of

P237,000.00, computed at P1,000.00 per month. Thus, Cruz was constrained to file a Complaint<sup>[12]</sup> for unlawful detainer<sup>[13]</sup> on April 27, 2009.

In her Answer,<sup>[14]</sup> Susan admitted to occupying a portion of the property since 1969 on a month-to-month lease agreement. However, she denied that she failed to pay her rentals since 1989 or that she refused to pay them, attaching receipts of her rental payments as evidence. She alleged that Cruz refused to receive her rental payments sometime in 2002. Susan likewise denied receiving any demand letter from Cruz and claims that the signature appearing on the registry return card of the demand letter<sup>[15]</sup> was not her signature.<sup>[16]</sup>

On June 3, 2010, Branch 58, Metropolitan Trial Court, San Juan City rendered a Decision<sup>[17]</sup> dismissing Cruz's Complaint. It found that for the registry receipts and registry return cards to serve as proof that the demand letter was received, it must first be authenticated through an affidavit of service by the person mailing the letter, It also found that Cruz failed to prove who received the demand letter and signed the registry return receipt, considering that Susan denied it.<sup>[18]</sup>

Cruz appealed to the Regional Trial Court.<sup>[19]</sup> On December 29, 2010, Branch 160, Regional Trial Court, Pasig City rendered a Decision<sup>[20]</sup> reversing the Metropolitan Trial Court Decision. It found that the bare denial of receipt would not prevail over the registry return card showing actual receipt of the demand letter.<sup>[21]</sup> The dispositive portion of this Decision read:

WHEREFORE, premises considered, the lower court's decision is hereby REVERSED.

Susan Christensen and all persons claiming rights under her are hereby ordered:

1. To vacate the premises A. Santos Street, Balong Bato, San Juan City, Metro Manila, and to surrender possession thereof to plaintiff;
2. To pay the accrued unpaid rentals in the amount of One Thousand Pesos (P1,000.00) per month reckoned from April 2000 (based on the evidence presented) until such time defendant-appellee, and all persons claiming rights under her, actually vacated and surrendered peaceful possession of the subject real property in favor of the plaintiff-appellant;
3. To pay the sum of Twenty Thousand Pesos (P20,000.00) as and by way of attorney's fees; and
4. The costs of suit.

Costs against appellee.

So ordered.<sup>[22]</sup>

The Spouses Christensen appealed to the Court of Appeals,<sup>[23]</sup> arguing that Cruz was unable to prove Susan's actual receipt of the demand letter.<sup>[24]</sup> They likewise

alleged that Cruz's late filing of her memorandum before the Regional Trial Court should have been ground to dismiss her appeal.<sup>[25]</sup>

On October 11, 2012, the Court of Appeals rendered a Decision<sup>[26]</sup> reversing the Regional Trial Court Decision and reinstating the Metropolitan Trial Court Decision. According to the Court of Appeals, the filing of a memorandum of appeal within 15 days from the receipt of order is mandatory under Rule 40, Section 7(b) of the Rules of Court and the failure to comply will result in the dismissal of the appeal.<sup>[27]</sup> It likewise concurred with the Metropolitan Trial Court's finding that registry receipts and return cards are insufficient proof of receipt.<sup>[28]</sup> The dispositive portion of this Decision read:

IN VIEW OF THE FOREGOING[,] the instant Petition for Review is GRANTED. The assailed Decision dated 29 December 2010 of the Regional Trial Court, Branch 160, Pasig City is hereby REVERSED and SET ASIDE. The Decision rendered by the Municipal [sic] Trial Court, San Juan City dated 3 June 2010 is hereby ORDERED REINSTATED.

SO ORDERED.<sup>[29]</sup>

Cruz filed a Motion for Reconsideration<sup>[30]</sup> but it was denied by the Court of Appeals in a Resolution<sup>[31]</sup> dated January 21, 2013. Hence, this Petition<sup>[32]</sup> was filed.

Petitioner concedes that while the 15-day period for filing the memorandum of appeal is mandatory under the Rules of Court,<sup>[33]</sup> the Regional Trial Court nonetheless opted to resolve her appeal on its merits, showing that the issues and arguments raised in the appeal outweigh its procedural defect.<sup>[34]</sup>

Petitioner submits that other than respondent Susan's bare denial of signing the registry return card, respondents did not deny receipt of the demand letter at their known address or the authority of the signatory on the registry return card to receive registered mail.<sup>[35]</sup> She argues that notice by registered mail is considered service to the recipient, and this cannot be overcome simply by denying the signature appearing on the registry return card.<sup>[36]</sup> Petitioner points out that before receiving the demand letter, the matter was already the subject of a barangay conciliation proceeding, leading to the ejectment suit as the reasonable consequence of respondents' non-compliance with the demand to pay rentals and to vacate the property.<sup>[37]</sup>

Petitioner likewise submits that a prior demand is not required in an action for unlawful detainer since prior demand only applies if the grounds of the complaint are non-payment of rentals or non-compliance with the conditions of the lease. She points out that where the action is grounded on the expiration of the contract of lease, as in this instance where the lease was on a month-to-month basis, the failure to pay the rentals for the month terminates the lease. She argues that a notice or demand to vacate would be unnecessary<sup>[38]</sup> since "nothing in the law obligates ... [the] owner-lessor to allow (the lessees) to stay forever in the leased property without paying any reasonable compensation or rental."<sup>[39]</sup>

Respondents counter that the Court of Appeals did not err in finding that the Regional Trial Court should have dismissed her appeal since petitioner admitted that

she belatedly filed her memorandum of appeal before the trial court. They maintain that petitioner has not shown any justifiable reason for the relaxation of technical rules.<sup>[40]</sup> They insist that the demand to pay or to vacate is a jurisdictional requirement that must be complied with before an ejectment suit may be brought.<sup>[41]</sup>

Respondents maintain that registry receipts and registry return cards are not sufficient to establish that respondents received the demand letter considering that they must first be authenticated to serve as proof of receipt. They argue that the denial of receipt is sufficient since petitioner had the burden of proving that respondents actually received the demand letter.<sup>[42]</sup> They further contend that petitioner's complaint was grounded on the non-payment of lease rentals and not, as petitioner belatedly claims, on the expiration lease; thus, petitioner must still comply with the jurisdictional requirement of prior demand.<sup>[43]</sup>

The issues for resolution before this Court are the following:

First, whether or not the Regional Trial Court should have dismissed the appeal considering that petitioner Velia J. Cruz's Memorandum of Appeals was not filed within the required period; and

Finally, whether or not petitioner Velia J. Cruz was able to prove Spouses Maximo and Susan Christensen's receipt of her demand letter before filing her Complaint for unlawful detainer. In order to resolve the second issue, however, this Court must first address whether or not a demand was necessary considering that Maximo and Susan Christensen had a month-to-month lease on the property.

The Petition is granted.

## I

Procedural rules of even the most mandatory character may be suspended upon a showing of circumstances warranting the exercise of liberality in its strict application.

Petitioner admits that her Memorandum of Appeal was filed nine (9) days beyond the 15-day period but that the Regional Trial Court opted to resolve her case on its merits in the interest of substantial justice.<sup>[44]</sup>

Rule 40, Section 7 of the Rules of Court states the procedure of appeal before the Regional Trial Court. It provides:

Section 7. Procedure in the Regional Trial Court.—

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) *Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum.*

*Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.*

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed. (Emphasis supplied)

The rule requiring the filing of the memorandum within the period provided is mandatory. Failure to comply will result in the dismissal of the appeal.<sup>[45]</sup> *Enriquez v. Court of Appeals*<sup>[46]</sup> explained:

Rule 40, Section 7 of the 1997 Rules of Civil Procedure is a new provision. Said section is based on Section 21 (c) and (d) of the Interim Rules Relative to the Implementation of the Judiciary Reorganization Act of 1980 (B.P. Blg. 129) with modifications. These include the following changes: (a) the appellant is required to submit a memorandum discussing the errors imputed to the lower court within fifteen (15) days from notice, and the appellee is given the same period counted from receipt of the appellant's memorandum to file his memorandum; (b) the failure of the appellant to file a memorandum is a ground for the dismissal of the appeal.

Rule 40, Section 7 (b) provides that, "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal." The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, under the express mandate of said Rule, the appellant is duty bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.<sup>[47]</sup>

Rule 40, Section 7 is likewise jurisdictional since the Regional Trial Court can only resolve errors that are specifically assigned and properly argued in the memorandum.<sup>[48]</sup> Thus, dismissals based on this rule are premised on the *non-filing* of the memorandum. A trial court does not acquire jurisdiction over an appeal where the errors have not been specifically assigned.

In this instance, a Memorandum of Appeal was filed late but was nonetheless given due course by the Regional Trial Court. Thus, the jurisdictional defect was cured since petitioner was able to specifically assign the Municipal Trial Court's errors, which the Regional Trial Court was able to address and resolve. This Court also notes that all substantial issues have already been fully litigated before the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals.

Procedural defects should not be relied on to defeat the substantive rights of litigants.<sup>[49]</sup> Even procedural rules of the most mandatory character may be suspended where "matters of life, liberty, honor or property"<sup>[50]</sup> warrant its liberal application. *Ginete v. Court of Appeals*<sup>[51]</sup> added that courts may also consider: