

SECOND DIVISION

[G.R. No. 205951, July 04, 2016]

**UNION BANK OF THE PHILIPPINES, PETITIONER. VS.
PHILIPPINE RABBIT BUS LINES, INC., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

An ejectment case is not limited to lease agreements or deprivations of possession by force, intimidation, threat, strategy, or stealth, It is as well an available remedy against one who withholds possession after the expiration or termination of his right of possession under an express or implied contract, such as a contract to sell

This Petition for Review on *Certiorari*^[1] assails the July 31, 2012 Decision^[2] of the Court of Appeals (CA) dismissing the Petition for Review^[3] in CA-G.R. SP No. 102065, and its January 25, 2013 Resolution^[4] denying reconsideration of the assailed Decision.

Factual Antecedents

Petitioner Union Bank of the Philippines is the owner of two parcels of land totaling 1,181 square meters, with improvements (subject property), in Poblacion, Alaminos, Pangasinan, covered by Transfer Certificates of Title Nos. 21895 and 21896.^[5] Respondent Philippine Rabbit Bus Lines, Inc. was the former owner of the lots but it lost the same by foreclosure to petitioner; nonetheless, respondent continued to occupy the same.

On November 8, 2001, petitioner and respondent executed a Contract to Sell^[6] covering the subject property for P12,208,633.57, payable within seven years in quarterly installments (principal and interest) of P824,757,97. The contract to sell stipulated, among others, that "[a]ll payments required under this Contract to Sell shall be made by the [buyer] without need of notice, demand, or any other act or deed, at the principal office address of the [seller];"^[7] and that should respondent fail to fully comply with the agreement or in case the contract is canceled or rescinded, all its installment payments "shall also be forfeited by way of penalty and liquidated damages"^[8] and "applied as rentals for [its] use and possession of the property without need for any judicial action or notice to or demand upon the [buyer] and without prejudice to such other rights as may be available to and at the option of the [seller] such as, but not limited to bringing an action in court to enforce payment of the Purchase Price or the balance thereof and/or for damages, or for any causes of action allowed by law."^[9]

Respondent failed to fully pay the stipulated price in the contract to sell. Petitioner thus sent a December 10, 2003 notarized demand letter entitled "Demand to Pay

with Rescission of Three (3) Contracts to Sell dated November 8, 2001,"^[10] which stated among others that -

Our records show that you have failed to pay your past due quarterly installment payments for August 31, 2003 and November 30, 2003 as per attached Statement of Account as of December 16, 2003 in the total amount of PESOS: NINE MILLION NINE HUNDRED FORTY THOUSAND ONE HUNDRED NINETY SEVEN & 36/100 (59,940,197.36) x x x:

xxxx

Correspondingly, you are hereby given a period of thirty (30) days from receipt hereof within which to pay your aforesaid past due installment payments, otherwise, your three (3) Contracts to Sell with UNION BANK OF THE PHILIPPINES over the properties x x x are deemed automatically rescinded effective thirty (30) days from the expiration of the 30-day period to update your past due installment payments without further notice.^[11]

Petitioner sent another letter-demand to vacate^[12] dated May 24, 2004 to respondent, stating as follows:

We write in connection with your proposal to purchase back the properties that are the subject of the three (3) Contracts to Sell executed on November 8, 2003^[13] and were rescinded effective February 28, 2004. x x x

As you are aware, we deferred the sending of the Demand to Vacate over the said properties because of the three (3) postdated checks (PDC's) with an aggregate amount of P1.5 Million which you have tendered to the bank, as well as your proposal to purchase again the said properties after the Rescission of the Contracts to Sell last February 28, 2004. Unfortunately, out of the three (3) PDC's submitted to the bank, only one (1) check had cleared amounting to P500,000.00 which shall be applied as rental payment as mentioned in our letter dated March 17, 2004.

Moreover, we wish to inform you that your proposal to purchase again the said properties as contained in your letter dated April 16, 2004 was never finalized nor presented for approval given that you failed to make good your promised payment of P1.5 Million. We have given you more than enough time but there is still no relief in sight.

For this reason, the bank has decided to exercise its right to take physical possession of the above-mentioned properties. As such, we are giving you fifteen (15) days upon receipt of this letter within which to vacate the said properties and surrender possession of the premises to the bank, otherwise, we will be constrained to refer your account for proper legal action.^[14]

Thus, it appears that after petitioner sent its December 10, 2003 letter-demand to pay the amount of P9,940,197.36, respondent was unable to pay and petitioner rescinded the contract to sell on February 28, 2004. Despite the fact that the contract to sell has been rescinded, respondent proposed to continue with the same and issued and tendered to the petitioner three postdated checks in the amount of P1.5 million as payment. However, only one check in the amount of P500,000.00 cleared. Petitioner thus sent another March 17, 2004 letter to respondent stating that the said P500,000.00 has been applied as rental payment; respondent replied in an April 16, 2004 letter proposing to proceed with the sale. Petitioner thereafter sent the above May 24, 2004 letter-demand to vacate, which respondent received on May 26, 2004.

Ruling of the Municipal Trial Court in Cities (MTCC)

On May 26, 2005, petitioner filed an ejectment case against respondent before the MTCC of Alaminos, Pangasinan, which was docketed as Civil Case No. 2171. The Complaint^[15] for "Ejectment with Prayer for Fixation of Rentals" prayed that respondent be evicted from the subject property, and that it be ordered to pay petitioner rental in arrears in the amount of P1.5 million, P125,000.00 monthly rent from May 27, 2004 until respondent completely vacates the premises, attorney's fees, and costs.

In its Answer^[16] and Supplemental Answer,^[17] respondent prayed for dismissal, claiming that petitioner had no cause of action for ejectment and the MTCC had no jurisdiction over the case because it involved breach of contract and rescission of the contract to sell, which are cognizable by the Regional Trial Courts (RTC); that since the case is one for rescission, there should be mutual restitution, but the amounts involved - payments, interests and penalties - should be properly computed; that the demand to vacate was not unequivocal and was improperly served; and that the verification and certification on non-forum shopping in the Complaint were defective for lack of proper authority.

After proceedings in due course, the MTCC issued on October 25, 2006 a Decision^[18] dismissing Civil Case No. 2171 for lack of jurisdiction. It held that petitioner's case is one for rescission and enforcement of the stipulations in the contract to sell; that the demand to vacate and fixing of rentals prayed for are consequences of petitioner's unilateral cancellation of the contract and are thus inextricably connected with rescission; and that there is "no definite expiration or termination of the [respondent's] right to possess"^[19] the subject property, and such right depended "upon its fulfillment of the stipulations in the contract."^[20]

Ruling of the Regional Trial Court

Petitioner appealed before the RTC,^[21] which rendered a Decision^[22] on August 6, 2007, stating as follows:

The demand required and contemplated in Sec. 2 of Rule 70 of the Revised Rules of Court is a demand for the defendant to pay the rentals due or to comply with the conditions of the lease and not only a demand

to vacate the premises; and where the defendant does not comply with the said demand within the period provided by Sec. 2 then his possession becomes unlawful. Consequently, both demands to pay and to vacate are necessary to make the defendant a deforciant in order that Ejectment suit may be filed and the fact of such demands must be alleged in the complaint, otherwise the Inferior Court cannot acquire jurisdiction over the case.

Analyzing the above letter of demand sent by the plaintiff-appellant to the defendant-appellee, the same did not demand for the payment of the defendant-appellee's obligation. It was merely a demand to vacate without the demand to pay.

Hence, the Court is of the considered opinion that such demand is not sufficient compliance with Sec. 2 of Rule 70 of the Rules of Court. Furthermore, a Notice of Demand giving the lessee the alternative whether to pay the rental or vacate the premises does not comply with the above rule (*Vda. de Murga vs. Chan*, L-24-680, October 7, 1968). In the said letter of demand itself, it says: "As such, we are giving you fifteen (15) days upon receipt of this letter within which to vacate the said properties and surrender possession of the premises to the bank, otherwise we will be constrained to refer your account for proper legal action." To the mind of the Court, this is not the final demand contemplated under the same rule, because should the defendant fail to vacate, the plaintiff-appellant will still refer defendant-appellee's account for proper legal action which does not comply with the requirements of said Sec. 2 of Rule 70 of the Rules of Court.

Moreover, it was ruled in the case of *Penas Jr. vs. Court of Appeals*, G.R. 12734, July 7, 1994, that an alternative demand on either to renew the expired lease contract or vacate is not a definite demand to vacate and would be insufficient basis for the filing of an action for unlawful detainer. Hence, the Court rules that the demand letter x x x is not a definite demand to vacate because if it fails to vacate, the defendant-appellee's account would still be referred for proper legal action hence, insufficient basis for filing an action for unlawful detainer.

In such case, the jurisdictional requisite of demand to pay and to vacate was not complied with and the lower court did not acquire jurisdiction over the unlawful detainer case, hence, it was properly dismissed.

There is no more need to discuss the other issues raised as they are now moot and academic.

WHEREFORE, foregoing premises considered, the instant appeal is dismissed. Without cost.

SO ORDERED.^[23]

Petitioner filed a Motion for Reconsideration,^[24] claiming that there was a previous demand to pay, that is, its December 10, 2003 letter entitled "Demand to Pay with

Rescission of Three (3) Contract to Sell dated November 8, 2001;" that even then, demand to pay was not necessary because its cause of action for ejectment was not based on non-payment of rent, but rescission of the contract to sell for violation of its terms; and that the final and executory ruling in CA-G.R. SP No. 115438 - which involved the same parties but a different contract to sell over different properties, and where it was held that the inferior court has jurisdiction over the ejectment case notwithstanding respondent's claim that the case is one for rescission - should guide the trial court in resolving the case. However, the RTC denied the motion in a November 29, 2007 Order.^[25]

Ruling of the Court of Appeals

Petitioner filed before the CA a Petition for Review,^[26] docketed as CA-G.R. SP No. 102065, advancing the same arguments in its Motion for Reconsideration of the RTC Decision, adding that its demand to vacate was unequivocal as it contained a threat that if respondent does not heed the demand, appropriate legal action will be taken; and that all the requisite allegations in a complaint for ejectment were complied with. It prayed that the RTC's August 6, 2007 Decision be set aside, and that a new one be issued granting the reliefs prayed for in its Complaint.

On July 31, 2012, the CA rendered a Decision denying the Petition. It held that petitioner had a cause of action for ejectment based on non-payment of rentals and refusal to vacate since respondent's right to occupy the subject property terminated when it failed to honor the contract to sell by not paying the agreed amortizations, and thereafter their agreement was converted into a lease, but respondent failed to pay rent and did not vacate the premises; however, it failed to comply with the jurisdictional requirement of demand to pay and vacate under Section 2, Rule 70 of the 1997 Rules of Civil Procedure^[27] (1997 Rules). It found, as the RTC did, that while there was a demand to vacate upon respondent, there was no prior demand to *pay* made on the latter; that since both requisites - demand to pay and vacate - must concur, the absence of one strips the lower court of jurisdiction over petitioner's Complaint for ejectment.

Petitioner moved to reconsider, but in its January 25, 2013 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioner submits that -

SINCE THE CONTRACT TO SELL BETWEEN PETITIONER UBP AND RESPONDENT PRBL WAS ALREADY CANCELED DUE TO PRBL'S FAILURE TO PAY THE PURCHASE PRICE, IS IT STILL REQUIRED FOR THE PETITIONER UBP TO ISSUE A DEMAND TO PAY PRIOR TO THE FILING OF THE EJECTMENT CASE?

IF SUCH DEMAND TO PAY IS REQUIRED, WAS THE PETITIONER UBP ABLE TO COMPLY WITH THE SAME WHEN IT PREVIOUSLY MADE A DEMAND FOR THE RESPONDENT TO PAY THE AMOUNT DUE (EXHIBIT "B") BEFORE