

## THIRD DIVISION

[ G.R. No. 189239, November 24, 2010 ]

**SPOUSES LETICIA & JOSE ERVIN ABAD, SPS. ROSARIO AND ERWIN COLLANTES, SPS. RICARDO AND FELITA ANN, SPS. ELSIE AND ROGER LAS PIÑAS, LINDA LAYDA, RESTITUTO MARIANO, SPS. ARNOLD AND MIRIAM MERCINES, SPS. LUCITA AND WENCESLAO A. RAPACON, SPS. ROMEO AND EMILYN HULLEZA, LUZ MIPANTAO, SPS. HELEN AND ANTHONY TEVES, MARLENE TUAZON, SPS. ZALDO AND MIA SALES, SPS. JOSEFINA AND JOEL YBERA, SPS. LINDA AND JESSIE CABATUAN, SPS. WILMA AND MARIO ANDRADA, SPS. RAYMUNDO AND ARSENIA LELIS, FREDY AND SUSANA PILONEO, PETITIONERS, VS. FIL-HOMES REALTY AND DEVELOPMENT CORPORATION AND MAGDIWANG REALTY CORPORATION, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

Fil-Homes Realty and Development Corporation and Magdiwang Realty Corporation (respondents), co-owners of two lots situated in Sucat, Parañaque City and covered by Transfer Certificates of Title Nos. 21712 and 21713, filed a complaint for unlawful detainer on May 7, 2003 against above-named petitioners before the Parañaque Metropolitan Trial Court (MeTC).

Respondents alleged that petitioners, through tolerance, had occupied the subject lots since 1980 but ignored their repeated demands to vacate them.

Petitioners countered that there is no possession by tolerance for they have been in adverse, continuous and uninterrupted possession of the lots for more than 30 years; and that respondent's predecessor-in-interest, Pilipinas Development Corporation, had no title to the lots. In any event, they contend that the question of ownership must first be settled before the issue of possession may be resolved.

During the pendency of the case or on June 30, 2004, the City of Parañaque filed expropriation proceedings covering the lots before the Regional Trial Court of Parañaque with the intention of establishing a socialized housing project therein for distribution to the occupants including petitioners. A writ of possession was consequently issued and a Certificate of Turn-over given to the City.

Branch 77 of the MeTC, by Decision of March 3, 2008, rendered judgment in the unlawful detainer case against petitioners, disposing as follows:

**WHEREFORE, judgment is hereby rendered in favor of the plaintiff** and against the defendants Leticia and Ervin Abad et. als. ordering the latter and all persons claiming rights under them to **VACATE** and

**SURRENDER** possession of the premises (Lots covered by TCT NOS. (71065) 21712 and (71066) 21713 otherwise known as Purok I Silverio Compound, Barangay San Isidro, Parañaque City to plaintiff and to PAY the said plaintiff as follows:

1. The reasonable compensation in the amount of P20,000.00 a month commencing November 20, 2002 and every month thereafter until the defendants shall have finally vacated the premises and surrender peaceful possession thereof to the plaintiff;
2. P20,000.00 as and for attorney's fees, and finally
3. Costs of suit.

SO ORDERED.<sup>[1]</sup> (emphasis in the original)

The MeTC held that as no payment had been made to respondents for the lots, they still maintain ownership thereon. It added that petitioners cannot claim a better right by virtue of the issuance of a Writ of Possession for the project beneficiaries have yet to be named.

On appeal, the Regional Trial Court (RTC), by Decision of September 4, 2008,<sup>[2]</sup> **reversed** the MeTC decision and **dismissed** respondents' complaint in this wise:

x x x The court a quo ruled that the case filed by plaintiffs (respondents herein) is unlawful detainer as shown by the allegations of the Complaint. The ruling of the court a quo is not accurate. **It is not the allegations of the Complaint that finally determine whether a case is unlawful detainer, rather it is the evidence in the case.**

Unlawful detainer requires the significant element of "tolerance". Tolerance of the occupation of the property must be present right from the start of the defendants' possession. The phrase "from the start of defendants' possession" is significant. **When there is no "tolerance" right from the start of the possession sought to be recovered, the case of unlawful detainer will not prosper.**<sup>[3]</sup> (emphasis in the original; underscoring supplied)

The RTC went on to rule that the issuance of a writ of possession in favor of the City bars the continuation of the unlawful detainer proceedings, and since the judgment had already been rendered in the expropriation proceedings which effectively turned over the lots to the City, the MeTC has no jurisdiction to "disregard the . . . final judgment and writ of possession" due to non-payment of just compensation:

The Writ of Possession shows that possession over the properties subject of this case had already been given to the City of Parañaque since January 19, 2006 after they were expropriated. **It is serious error for the court a quo to rule in the unlawful detainer case that Magdiwang Realty Corporation and Fil-Homes Realty and**

**Development Corporation could still be given possession of the properties which were already expropriated in favor of the City of Parañaque.**

There is also another serious lapse in the ruling of the court a quo that the case for expropriation in the Regional Trial Court would not bar, suspend or abate the ejectment proceedings. The court a quo had failed to consider the fact that the case for expropriation was already decided by the Regional Trial Court, Branch 196 way back in the year 2006 or 2 years before the court a quo rendered its judgment in the unlawful detainer case in the year 2008. In fact, there was already a Writ of Possession way back in the year 1996 (*sic*) issued in the expropriation case by the Regional Trial Court, Branch 196. **The court a quo has no valid reason to disregard the said final judgment and the writ of possession already issued by the Regional Trial Court in favor of the City of Parañaque and against Magdiwang Realty Corporation and Fil-Homes Realty Development Corporation and make another judgment concerning possession of the subject properties contrary to the final judgment of the Regional Trial Court, Branch 196.**<sup>[4]</sup> (emphasis in the original)

Before the Court of Appeals where respondents filed a petition for review, they maintained that respondents' "act of allowing several years to pass without requiring [them] to vacate nor filing an ejectment case against them amounts to acquiescence or tolerance of their possession."<sup>[5]</sup>

By Decision of May 27, 2009,<sup>[6]</sup> the appellate court, noting that petitioners did not present evidence to rebut respondents' allegation of possession by tolerance, and considering petitioners' admission that they commenced occupation of the property without the permission of the previous owner — Pilipinas Development Corporation — as indicium of tolerance by respondents' predecessor-in-interest, ruled in favor of respondents. Held the appellate court:

Where the defendant's entry upon the land was with plaintiff's tolerance from the date and fact of entry, unlawful detainer proceedings may be instituted within one year from the demand on him to vacate upon demand. The status of such defendant is analogous to that of a tenant or lessee, the term of whose lease, has expired but whose occupancy is continued by the tolerance of the lessor. The same rule applies where the defendant purchased the house of the former lessee, who was already in arrears in the payment of rentals, and thereafter occupied the premises without a new lease contract with the landowner.<sup>[7]</sup>

Respecting the issuance of a writ of possession in the expropriation proceedings, the appellate court, citing *Republic v. Gingoyn*,<sup>[8]</sup> held the same does not signify the completion of the expropriation proceedings. Thus it disposed: