

THIRD DIVISION

[G.R. No. 176324, April 16, 2008]

ABAYA INVESTMENTS CORPORATION, Petitioner, vs. MERIT PHILIPPINES and SERVULO C. DOMINISE, Respondents.

DECISION

YNARES-SATIAGO, J.:

This Petition for Review on Certiorari assails the August 24, 2006 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 79495 which reversed and set aside the Decision of the Regional Trial Court of Manila, Branch 36 affirming with modification the Decision of the Metropolitan Trial Court of Manila, Branch 12, as well as the January 17, 2007 Resolution^[2] denying the motion for reconsideration.

Petitioner leased a commercial building known as "Carmen Building" located at Sampaloc, Manila to respondents for the period September 1, 2000 to August 31, 2005. The contract contained a stipulation prohibiting respondents from subleasing any portion of the building.

Thereafter, respondents failed to pay the rentals for the months of January, February, March and April 2001 totaling P450,000.00. After several demands, respondents paid petitioner P150,000.00 in April 2001, P150,000.00 on May 7, 2001 and P150,000.00 on May 9, 2001.

However, respondents again failed to pay the rentals for the succeeding months. Petitioner also discovered that respondents subleased a portion of the building to a computer gaming entity without its consent. Hence, on July 30, 2001, petitioner sent a letter demanding respondents to pay the arrearages, electricity and water bills in the amount of P531,069.50 and to terminate the sublease.

Respondents made payments in August and September, 2001. However, they again reneged on their obligation to pay the rents due and to terminate the sublease contract which compelled petitioner to send another demand letter dated October 22, 2001. Petitioner categorically demanded payment of the balance due and for respondents to vacate the premises.

Respondents made partial payments in November and December, 2001. However, with the accrual of rentals, interest, and electricity bill, respondents' obligation amounted to P352,232.70. Finally, on January 2, 2002, petitioner filed a Complaint for Unlawful Detainer against respondents for non-payment of rentals and illegal subleasing before the Metropolitan Trial Court of Manila, docketed as Civil Case No. 171849-CV.

Respondents admitted that as of December 10, 2001, it owed petitioner P352,232.70 but denied subleasing a portion of the premises to another entity and

repudiated petitioner's right to damages. It also assailed petitioner's personality to file the Complaint for ejectment stating that Ms. Abaya was not duly authorized to file the same.

During the pendency of the case, respondents paid petitioner P300,000.00 and vacated the premises in May, 2002. Petitioner however claimed that respondents left the premises stealthily sometime in June 2002 without paying the rentals due for the period January to May 2002.

On December 10, 2002, the Metropolitan Trial Court of Manila, Branch 12, rendered a Decision^[3] in favor of petitioner the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff and against the defendants and all persons claiming rights under them, ordering them to immediately vacate the premises located at Carmen Building, 886 Espana corner Cataluna Street, Sampaloc Manila and to solidarily pay herein plaintiff:

1. Php 482,885.02 - As earlier indicated; and
2. Php 20,000.00 - Representing reasonable reimbursement of attorney's fees and litigation expenses.

SO ORDERED.^[4]

Respondents appealed before the Regional Trial Court of Manila arguing that petitioner is not properly clothed with authority to file the ejectment case; that the case was considered moot since it vacated the premises; and that the award of damages is not proper.

On July 28, 2003, the Regional Trial Court of Manila, Branch 36, rendered a Decision^[5] sustaining the ruling of the Metropolitan Trial Court but deleted the award of damages.

Thus, respondents filed a Petition for Review before the Court of Appeals which rendered the assailed Decision reversing the decisions of the Regional Trial Court and the Metropolitan Trial Court. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant petition for review is hereby GRANTED. ACCORDINGLY, the decision of the Regional Trial Court of Manila, Branch 36, dated July 28, 2003, affirming with modification the decision of the Metropolitan Trial Court of Manila is hereby SET ASIDE.

SO ORDERED.^[6]

The Court of Appeals ruled that the trial court was without jurisdiction when it took cognizance of the complaint filed before it. It held that the issue was not one of possession but rather rescission of contracts over which the Metropolitan Trial Court is without jurisdiction, thus:

Evidently, under those circumstances, ejectment is not the proper remedy. This is because proof of any violation is a condition precedent to resolution or rescission of the contract. It is only when the violation has

been established that the contract can be declared rescinded. Hence, it is only upon such rescission that there can be a pronouncement that possession of the realty has become unlawful. *Thus, the basic issue is not possession but one of rescission of a contract, which is beyond the jurisdiction of the trial court to hear and determine.*

In the case of Nera vs. Vacante, the Supreme Court said that:

"A violation by a party of any of the stipulations of a contract on agreement to sell real property would entitle the other party to resolve or rescind it. An allegation of such violation in a detainer suit may be proved by competent evidence. And if proved a justice of the peace court might make a finding to that effect, but it certainly cannot declare and hold that the contract is resolved or rescinded. It is beyond its power so to do. And as the illegality of the possession of realty by a party to a contract to sell is premised upon the resolution of the contract, it follows that an allegation and proof of such violation, a condition precedent to such resolution or rescission, to render unlawful the possession of the land or building erected thereon by the party who has violated the contract, cannot be taken cognizance of by a justice of the peace court..."

Hence, where the unlawful possession of the property by a party to a contract is premised upon the rescission of the contract, an allegation and proof of such violation is a condition precedent to such rescission to render unlawful the possession of the property by the party who has violated the contract which cannot be taken cognizance of by a Metropolitan Trial Court.

The rescission of the contract is the basis of, and therefore a condition precedent for, the illegality of a party's possession of a piece of realty. Without judicial intervention and determination, even a stipulation entitling one party to take possession of the land and building in case the other party violates the contract cannot confer upon the former the right to take possession thereof, if that move is objected to.

In the instant case, the ejectment case filed by respondent before the trial court will not prosper. This is because the proof of violation is a condition precedent to rescission of the contract. Since violation has not been established, the pronouncement by the trial court that the possession by the petitioners of the building has become unlawful is premature.

While it is true that the contract between the parties provided for extrajudicial rescission, nevertheless, a judicial determination is necessary where it is objected to by the other party. As said by the Supreme Court in the case of JOSE ZULUETA vs. HON. HERMINIANO MARIANO, *"A stipulation entitling one party to take possession of the land and building if the other party violates the contract does not ex proprio vigore confer upon the former the right to take possession*