

SECOND DIVISION

[G.R. No. 115763, May 29, 1997]

**PIO Q. PATERNO, PETITIONER, VS. COURT OF APPEALS AND
ANGELINA REYES, RESPONDENTS.**

DECISION

ROMERO, J.:

The instant petition for review presents issues relative to a forcible entry suit filed by petitioner against private respondent.

The background facts of the case are as follows:

Petitioner Pio Q. Paterno owns the apartment unit subject of this case, located at 1640-A J.P. Laurel Street, San Miguel, Manila. In 1964, petitioner and one Lydia Lim entered into a written contract of lease of said apartment unit for one year, from August 1, 1964 to August 2, 1965. The contract expressly provided:

"That the lease shall be for a period of one year, commencing from 1st August 1964 and may be renewable and extended by mutual agreement of both parties. Should the LESSEE be not desirous to continue the lease the LESSEE is required to notify the LESSOR of his/her intention to terminate the lease 30 days in advance of the termination of the lease."

Upon expiration of the contract, Lydia Lim opted to continue staying in the leased premises, paying on a monthly basis. Sometime in 1969, Lim left for the United States as an immigrant, leaving her sister, private respondent Angelina Reyes, to stay in the apartment.

According to petitioner, he was unaware of Lim's migration and was of the belief that Lim herself was in continuous occupation of the leased premises. Petitioner also alleged that it was only in December 1991 that he discovered Lim's absence, and that private respondent currently occupied the apartment. On January 6, 1992, petitioner sent Angelina Reyes a notice to vacate. Private respondent's refusal to leave the apartment prompted petitioner to sue her for forcible entry in March 1992 before the Metropolitan Trial Court of Manila, Branch III.^[1]

On the other hand, private respondent contended that Lim entrusted the care of the leased premises to her and promised to send money for its monthly rental; hence, she continued to stay in the subject apartment even as she regularly paid the rent. The rental for the entire year 1990 was even paid in advance on January 15, 1990 with a yearly ten percent increase. Receipts were made out in the name of Lydia Lim.

Private respondent added that petitioner could not have been unaware of Lim's absence and the fact that she (Reyes) had been occupying the leased premises

since 1969. At times, whenever petitioner was here in the Philippines and not in the United States where he is a permanent resident, he used to collect the rents personally. In December 1991, private respondent refused to agree to the rental increase demanded by petitioner.^[2] Not long after, or on January 6, 1992, she received a letter from petitioner demanding that she vacate the premises. Upon her refusal to accede to said demand, the ejectment case was brought against her.

The case was tried through Summary Procedure. After position papers and affidavits were filed by the parties, the Metropolitan Trial Court found private respondent guilty of forcible entry in its Decision dated June 15, 1992.^[3] The lower court considered private respondent's concealment of the fact that Lim had already taken up permanent residence in the United States, as "strategy or stealth" and thus found sufficient cause for eviction. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered, ordering defendant and all persons claiming rights under her to vacate the premises described in the complaint and restore possession thereof to plaintiff; to pay the plaintiff the sum of P4,000.00 which amount is not put in issue, representing the reasonable rental value of the premises presently being occupied by defendant beginning January 1992 and each month thereafter until defendant and all persons claiming rights under her finally vacate the premises, plus costs of suit."

On appeal, the Regional Trial Court reversed the Metropolitan Trial Court's decision. The appellate court held that an implied new lease was created every month after August 1965, the expiry date of the lease contract. Said lease remains effective because it has not been terminated, there being no notice to vacate which was served on Lim. The court also held that Lim did not abandon the leased premises because she continued paying the rent, as proved by the receipts in her name and she intends to return to the Philippines and reside in the leased apartment.^[4] The court did not give credence to petitioner's claim that from 1969 up to 1991, he was under the impression that Lim personally stayed in the leased premises. It ruled that Lim continued as lessee and Angelina Reyes was merely the caretaker.^[5] The dispositive portion of its decision, promulgated September 8, 1992, reads:

"WHEREFORE, the judgment of the Metropolitan Trial Court of Manila dated June 15, 1992 is REVERSED and another judgment is hereby entered dismissing the Complaint, with costs against the plaintiff.

For filing a baseless suit and compelling the defendant to hire the services of a lawyer to protect her rights, the plaintiff is ordered to pay the defendant the sum of TEN THOUSAND (P10,000.00) PESOS as expenses of litigation and attorney's fees."

The Court of Appeals found no merit in the petition for review filed by Pio Paterno but modified the Regional Trial Court's decision by deleting the award of attorney's fees for lack of basis.^[6] It upheld the trial court's conclusion that there is no abandonment in the case at bar. Petitioner's evidence is to the effect that he terminated private respondent's (Angelina Reyes) alleged possession of the apartment although the latter does not have a contractual relationship with him. Since private respondent does not possess and occupy the apartment in her own right, she cannot be said to have employed force, strategy, stealth or intimidation in

occupying it.

Hence, the instant petition for review where it is alleged that the lease with a definite period was terminated the moment the lease contract expired on August 2, 1965; that the fact of abandonment by Lydia Lim is evident; and that private respondent occupied the premises by means of strategy and stealth, i.e. by concealing Lydia Lim's absence. Petitioner prays for the reversal of the Court of Appeal's decision and the reinstatement of the Metropolitan Trial Court's decision.

There is no dispute that Lydia Lim's initial occupancy of the apartment unit in question was lawful as it was pursuant to a written lease contract. The contract expired in August 1965, but Lim's lease continued because she stayed on in the premises without any objection from the lessor. An implied new lease was thus created pursuant to Article 1670 of the Civil Code which expressly provides:

"If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either part has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in articles 1682 and 1687. The other terms of the original contract shall be revived."

An implied new lease or *tacita reconduccion* will set in when the following requisites are found to exist: a) the term of the original contract of lease has expired; b) the lessor has not given the lessee a notice to vacate; and c) the lessee continued enjoying the thing leased for fifteen days with the acquiescence of the lessor.^[7] In the case at bar, all the requisites have been fulfilled. Petitioner did not give Lim a notice to vacate upon expiration of their contract in August 1965 and Lim continued enjoying the apartment unit leased for more than fifteen days without objection from lessor Pio Paterno.

The implied new lease had a definite period because rents were paid on a monthly basis. Under Article 1687:

"If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. xxx'

A lease from month-to-month is with a definite period and expires at the end of each month upon the demand to vacate by the lessor.^[8]

The situation however, changed after Lim's migration to a foreign country. Did Lim abandon thereby her monthly lease? The Regional Trial Court and Court of Appeals replied in the negative. This Court thinks otherwise.

Abandonment constitutes the actual, absolute and irreversible desertion of one's right or property. Abandonment requires the concurrence of two elements, the first being the intent to abandon a right or claim and the second, an external act by