

SECOND DIVISION

[G.R. No. 122806, June 19, 1997]

**TIMES BROADCASTING NETWORK, REPRESENTED BY ALEX SY,
PETITIONER, VS. COURT OF APPEALS AND FILOMENO AROCHA,
RESPONDENTS.**

D E C I S I O N

PUNO, J.:

This petition for review on *certiorari* was filed by Times Broadcasting Network, represented by its owner, Alex V. Sy, to reverse and set aside the Decision of the Court of Appeals dated August 24, 1995 in CA-G.R. SP No. 35450^[1] and its Resolution dated November 15, 1995 denying petitioner's motion for reconsideration.

The records show that petitioner Times Broadcasting Network leased a portion of Hotel Arocha in Ozamis City owned by private respondent Filomeno Arocha. The subject of the lease consisted of two rooms with a total area of 7 meters by 11 meters, a terrace with an area of 25 square meters, and the rooftop of the four-storey building. The premises were to be used by petitioner to operate a radio station.^[2]

In June 1993, petitioner began installing its equipment and apparatus in the leased premises. Petitioner, however, installed its radio antenna on the third floor rooftop of the hotel, instead of the fourth floor rooftop as stipulated in the contract.

On October 18, 1993, private respondent, through its counsel, Ferdinand S. Reyes, sent a letter to petitioner demanding payment of P2,500.00 as monthly rental for the use of the third floor rooftop, since the third floor rooftop is not covered by the lease.^[3] Petitioner refused to pay. It claimed that the installation of its radio antenna on the third floor rooftop was with the permission of private respondent. It also averred that it is impossible for it to mount its antenna on the fourth floor rooftop because it is already occupied by the hotel's TV antenna.^[4]

On January 10, 1994, private respondent Arocha filed before the Municipal Trial Court in Cities (MTCC) of Dipolog, Branch 1 a verified complaint for ejectment with payment of back rentals and damages against petitioner. The complaint prayed:

WHEREFORE, premised on the foregoing consideration, it is most respectfully prayed to this Honorable Court that, after hearing, judgment be rendered in favor of the plaintiff and against the defendant as follows:

- a. Ordering the defendant to vacate the 3rd storey rooftop and remove his FM and VHF antennas and other equipment, wirings and other peripherals, without

causing further damage, and transfer it to the premises or area covered by the existing lease contract;

b. Ordering the defendant to pay a monthly rental of P 2,500 a month from the time he/it occupied the 3rd storey roof top until such time that it shall be actually vacated.

c. Ordering the defendant to pay to the plaintiff the amount of:

Moral damages P 5,000 Exemplary damages P 5,000 Docket, Sheriff Fees and other Litigation expenses P 1,000 Actual expenses/ P 10,000 Damage and P 1,500 Attorney's Fee P 10,000 plus an appearance fee of P 500 everytime this case will be called to (sic) a hearing.^[5]

Petitioner moved to dismiss the complaint. It argued that the MTCC has no jurisdiction over the case because private respondent's cause of action is actually not for ejectment but for specific performance. Petitioner contended that private respondent's action was not simply for recovery of possession of the premises but was for compliance with the terms of the lease contract. Hence, petitioner asserted that it was the Regional Trial Court (RTC), not the MTCC, which had jurisdiction over the case.^[6]

The MTCC denied the motion.^[7] On May 23, 1994, it rendered a Decision^[8] in favor of private respondent. It ordered petitioner to vacate the third floor rooftop and to pay a monthly rental of P 1,500.00 from May 1993 up to the time it vacates the third floor rooftop plus P 5,000.00 attorney's fees, thus:

ACCORDINGLY, judgment is hereby rendered ordering Defendant (Times)

1 - To vacate the 3rd storey rooftop and remove its FM and VHF antennas and other equipment, wirings and other peripherals, without causing further damage, and transfer it to the premises or area covered by the existing lease contract;

2 - To pay Plaintiff (Arocha) a monthly rental of One Thousand Five Hundred Pesos (P 1,500.00) from May, 1993 (Annex 4, supra-Times) when it installed its antennas aforesaid up to such time that it shall have vacated said 3rd storey of Plaintiff's (Arocha's) Hotel; and

3 - To pay Plaintiff (Arocha) the sum of Five Thousand Pesos (P 5,000.00) as attorney's fees.

Costs against Defendant. (Times.)

SO ORDERED.^[9]

On appeal, the RTC reversed the Decision of the MTCC. It held that the issues raised in the parties' pleadings are not the proper subject of a summary action of forcible

entry.^[10] The dispositive portion of the Decision reads:

Wherefore and for all of the foregoing observations, the decision of the court a quo dated May 23, 1994, is reversed and another judgment hereby rendered dismissing the plaintiff's complaint dated January 7, 1994, with costs against the plaintiff.

SO ORDERED.^[11]

Private respondent elevated the case to respondent Court of Appeals on a Petition for Review. In its Decision dated August 24, 1995, respondent court reversed the Decision of the RTC and reinstated the Decision of the MTCC.^[12] Petitioner filed a Motion for Reconsideration but it was denied by respondent court in its Resolution dated November 15, 1995.^[13]

Petitioner filed the instant petition on the following grounds:

1. The court a quo gravely abused its discretion and seriously erred in not dismissing the case for want of jurisdiction by the original court (MTCC) over the nature and subject of the case and has thus rendered a decision not in accord with law or with the applicable decisions of this Honorable Supreme Court.
2. The court a quo seriously erred and disregarded the law and prevailing jurisprudence when it found that there has been sufficient compliance with the requirements for an action of forcible entry to prosper.^[14]

The issue to be resolved is whether the complaint filed by private respondent is one for ejectment or specific performance.

A reading of the allegations in the complaint shows that the action filed by private respondent was for ejectment and not for specific performance as asserted by petitioner. The complaint states:

1. Plaintiff is of legal age, Filipino, married, owner/proprietor of Hotel Arocha and a resident of Magsaysay Street, Miputak, Dipolog City where he may be served with court notices.
2. Defendant Alex Sy is likewise of legal age, Filipino, married and a (sic) the vice-president of the Times Broadcasting Network who is operating the radio station DXAQ-FM whose office, studio and transmitter are located at the 3rd floor of Hotel Arocha along Malvar corner Quezon Avenue, Dipolog City where it/he can be served with summons, notices and court processes.
3. The Plaintiff is the absolute owner of Hotel Arocha, a four-storey

hotel in Dipolog City made of concrete materials.

4. The defendant, by virtue of a lease contract it entered into with the plaintiff, leased two rooms of the fourth storey of the plaintiff's hotel. The terms, conditions and stipulations of the lease contract dated April 22, 1993 are as follow:

x x x

5. That sometime in June or July 1993, the defendant began installing its equipment and apparatus in the leased premises of Arocha Hotel.

6. That without the knowledge, information and consent of the plaintiff, thru stealth and strategy, defendant mounted, installed, utilized, planted and positioned its FM antenna and a VHF antenna on the 3rd floor rooftop of Hotel Arocha; not on the 4th storey rooftop as stipulated in the Contract of Lease.

7. That when the plaintiff came to know about the mounting and installation of the FM and VHF antenna in the 3rd storey rooftop, the antennas were already erected and used by the defendant in their broadcast operation.

8. That the plaintiff did not ask permission from the defendant when it/he used, occupy (sic) and utilized the rooftop of the hotel's 3rd storey.

9. That the rooftop of the 3rd storey of plaintiff's Hotel Arocha is not included among the leased premises to the defendant as evidenced by the lease contract itself.

10. That the installation, mounting, planting and positioning of the defendant's FM antenna on the rooftop of the hotel's 3rd storey is without a valid permit from the city engineering.

11. That on October 18, 1993, the plaintiff, thru his counsel, wrote the defendant a letter which says:

x x x

Dear Mr. Sy,

Our client, Hotel Arocha, thru our law office, wish to inform you that for utilizing their third storey rooftop as the mounting pad of your FM antenna and other radio equipment - they are charging you with a monthly rental of P 2,500.00 beginning the time you installed and mounted these antennas.

May we formally inform you also that the rooftop of the third floor of Hotel Arocha is not leased to you as of this moment. We would appreciate it very much if you can come to Dipolog City within this month so we can formulate the lease contract

covering your FM antennas.

Hotel Arocha is expecting to receive your full payment for the use of the third floor rooftop within ten days from receipt of this notice and subsequently a contract of lease has to be entered into between Hotel Arocha and your company.

Failure on your part to pay the full rental for the use of the rooftop of the third floor of the hotel will compel us to resort to actions which we deem fit, proper and necessary.

May you give this matter your preferential attention.

Truly yours,

(Sgd.) Ferdinand S. Reyes

x x x

12. That a copy of this letter quoted above was sent to Mr. Alex Sy by registered mail on October 18, 1993. Another similar copy was sent to Ms. Melody Bernardo, station manager of the defendant in Dipolog City, thru the security guard, on the same date.

13. Evidencing receipt of the plaintiff's 18 October 1993 letter, the defendant answered, thru counsel, by stating that:

x x x

Dear Compañero,

Your letter of October 18, 1993 addressed to Mr. Alex V. Sy, Vice-president of TIMES BROADCASTING NETWORK, was referred to us for appropriate reply.

Pending verification of the facts obtaining in the instant case, as well as the pertinent documents on hand, may we request that you defer whatever action you are contemplating to take in this what appears to be a mere misappreciation of the provisions of the Contract of Lease between our clients. For this purpose, we will be needing at least ten (10) days from your receipt hereof for us to be able to intelligently reply to you.

Thank you for your attention and kind consideration.

Very truly yours,

Jose Ramon R. Remollo

14. Granting the request of the defendant thru its/his counsel, plaintiff waited for ten days. After almost a month had lapsed and even up to now, defendant did not submit its reply as promised; nor did the defendant come (sic) to Dipolog City and met (sic) the plaintiff.