

## **SPECIAL FIFTEENTH DIVISION**

**[ CA-G.R. SP No. 132016, May 29, 2014 ]**

**FRANCISCO NANCA, JR. AND ALL PERSONS CLAIMING RIGHTS  
UNDER HIM, PETITIONER, VS. NORMITA M. LONTOC  
REPRESENTED BY HER ATTORNEY-IN-FACT, ELIZABETH M.  
MENDIOLA, RESPONDENT.**

### **D E C I S I O N**

**LAZARO-JAVIER, A.C., J.:**

This petition for review on certiorari seeks to reverse the Decision<sup>[1]</sup> dated September 13, 2013 of the Regional Trial Court of Pasig City (RTC-Branch 153), dismissing petitioner's appeal in SCA Case No. 3812-TG, for ejectment.

Respondent Normita M. Lontoc, represented by her attorney-in-fact Elizabeth Mendiola, filed the complaint<sup>[2]</sup> below against petitioner Francisco Nanca, Jr.. She averred:

(1) She was the owner of a parcel of land situated in Katwiran, Ibayo-Tipas, Taguig City covered by Tax Declaration No. FL-017-01791.

(2) Petitioner offered to buy the land from her for a consideration of P120,000.00, for which, petitioner made a downpayment of P15,000.00, and the remaining balance, to be paid in monthly installment of P1,750.00 for five years.

(3) Petitioner shall commence paying the monthly installment on March 2008 and every 30<sup>th</sup> day of each succeeding month.

(4) She and petitioner executed a contract to sell, embodying the foregoing terms.

(5) After paying the downpayment and signing their contract to sell, petitioner occupied the premises and erected a house thereon.

(6) Despite demand, however, petitioner failed to pay the agreed monthly installments, in violation of their contract to sell.

(7) Consequently, she served on petitioner a notice of cancellation of the contract to sell.

(8) The matter was referred to the Lupon Tagapamayapa of Barangay Napindan, Taguig, but the parties failed to amicably settle.

(9) By letter dated February 10, 2011, respondent demanded that petitioner pay his obligation and vacate the property, but to no avail.

(10) Petitioner must now be ordered to pay her reasonable compensation for the use and occupation of her property until respondent shall have vacated the premises.

In his answer<sup>[3]</sup>, petitioner countered:

(1) He had been in possession of the lot since 1988 when it was still vacant and being used as dump site.

(2) On May 21, 1993, he and the other residents of Napindan formed the Pinagkaisang Maralita ng Napindan Association, Inc. (PINAMANA), a non-stock, non-profit organization duly registered with the Securities and Exchange Commission (SEC).

(3) No claimant had ever appeared until sometime in 2005 when a certain Elizabeth Mendiola claimed that she was representing respondent, the alleged lot owner.

(4) Mendiola, accompanied by some hired "goons", threatened him and the other residents that their houses would be demolished if they refused to vacate the property.

(5) To prevent violence and escalating tension, he offered to execute with respondent a contract to sell subject lot.

(6) The contract to sell covered a 30-square meter lot to be sold at P1,750/ square meter, and the full purchase price, payable in five years.

(7) He, however, did not sign the contract to sell. His purported signature appearing on the contract may have been copied by respondent from the community tax certificate (cedula) she required him to submit. Notably, the contract to sell was not even notarized, and respondent never gave him copy of the contract.

(8) Respondent even spearheaded the re-organization of PINAMANA, renaming it Julianville Homeowners' Association.

(9) He had been paying the agreed monthly installments, failing only sometime in October 2006, and a few months thereafter, when he and his family were displaced by typhoon Milenyo. After he recovered from the calamity, he tried to resume paying the monthly installments, but respondent no longer accepted his payments.

(10) He learned of the ejectment case filed against him only upon receipt of the summons and copy of the complaint.

(11) The only basis for respondent's claim of ownership was Tax Declaration No. FL-017-01791 dated December 14, 2000, which was obtained long after their organization PINAMANA was created in 1993. In this jurisdiction, tax declarations were not *indicia* of ownership.

(12) Respondent also failed to properly identify that the lot covered by her tax declaration was the same lot he occupied.

(13) Since he did not start occupying the lot by virtue of a contract or by mere tolerance, he was deemed to have illegally entered it and the case filed against him should have been one for forcible entry, and not merely generically denominated as "ejectment". As such, the case should have been instituted within one year from the time respondent learned of the deprivation of property by means of force, intimidation, threat, strategy, or stealth. As it was, respondent filed the case way beyond the one year period, thus, the case must be dismissed for lack of cause of action.

(14) Respondent's unwarranted and malicious complaint caused him sleepless nights, mental anguish, and serious anxiety which entitled him to moral damages of P50,000.00, plus cost of suit.

The case was docketed Civil Case No. 3484 and raffled to Metropolitan Trial Court of Taguig City (METC-Branch 74).

By Decision<sup>[4]</sup> dated March 12, 2013, METC Branch-74 ruled in respondent's favor, viz:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Normita M. Lontoc, represented by its (sic) Attorney-in-Fact, Elizabeth M. Mendiola and against the defendant and all persons claiming rights under him, to:

1. Vacate and surrender the possession of the subject premises to the plaintiff;
2. Pay the plaintiff the amount of Five Hundred Pesos (P500.00) a month as reasonable compensation for the use and occupation of the above-mentioned premises from April 2006 until they fully vacate the same;
3. Pay the plaintiff the amount of Ten Thousand Pesos (P10,000.00) as attorney's fees; and
4. Pay the costs of suit.

SO ORDERED.

On appeal, RTC-Branch 153 affirmed, with modification, viz:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The Decision dated March 12, 2013, of the Metropolitan Trial Court, Branch 74, Taguig City, in Civil Case No. 3484, is AFFIRMED WITH MODIFICATION that the payment of Five Hundred (Php500.00) pesos a month as reasonable compensation for the use and occupation of the subject premises shall be reckoned from April 2008 until defendant-appellant and all persons claiming rights under him shall have vacated the premises.

SO ORDERED.<sup>[5]</sup>

The court ratiocinated:

The first ground relied upon by defendant-appellant cannot be sustained. As correctly pointed out in the assailed decision, the demand requirement has been sufficiently complied with. As borne by the evidence on record, plaintiff-appellee sent a demand letter to defendant-appellant which letter was served by "Leopoldo S. Bucasas" which was, in turn, received by a boarder who refused to sign on February 18, 2011. xxx

Moreover, it bears stressing that prior to the filing of the instant case, plaintiff-appellee already brought the matter before the barangay for conciliation proceedings.