

FOURTEENTH DIVISION

[CA-G.R. SP NO. 93258, August 31, 2006]

**VICTORIA FERNANDO AND ALL PERSONS FOUND IN THE
PREMISES AND CLAIMING RIGHTS UNDER HER, PETITIONER,
VS. SPOUSES REGINALDO LIM AND ASUNCION LIM,
RESPONDENTS.**

D E C I S I O N

REYES, J.:

Before us is a petition for review under Rule 42 of the 1997 Rules of Court, which seeks to annul and set aside, the decision dated 16 December 2005 of the Regional Trial Court of Manila, Branch 20, (RTC) which affirmed with modification the decision dated 07 June 2005 of the Metropolitan Trial Court of Manila, Branch 16, (MTC) in Civil Case No. 05-113099, entitled Sps. Reginaldo Lim and Asuncion Lim, plaintiff-appellees vs. Victoria Fernando, defendant-appellant.

The antecedent facts of the case as aptly adopted by the RTC from the MTC's appealed decision and for which we likewise adopt as our own, viz:

"x x x

In their complaint, plaintiffs alleged, that: they are the absolute and registered owners of a land including improvements therein as evidenced by Transfer Certificate of Title No. 264835 of the Registry of Deeds of the City of Manila (Annex "A"); the aforesaid property was previously a part of a larger lot covered by TCT No. 263331, which was subdivided into four separate lots.

Plaintiff Reginaldo Lim, as a stockholder of Lim Kieh Tong and Sons, Inc. a corporation under dissolution, acquired the property described under TCT 263331 as his liquidating dividends as shown by the Deed of Assignment executed in his favor (Annex "B"). Erected in the said lot is a six unit commercial type building, the first unit designated as 1682 Blumetritt (sic) Street, Sta. Cruz Manila which is covered by TCT No. 268435 in the name of plaintiffs and was transferred in their name as of April 2, 2004 and at present is still being occupied by herein defendant Victoria Fernando by virtue of her lease contract with Lim Keih Tong and Sons, Inc. which is on month to month basis; plaintiffs, upon transfer of the subject property in their name, informed the occupants of the subject premises including herein defendant that they have no plans of having the subject premises leased; plaintiffs appealed and talked to the occupants to voluntarily vacate the premises and peacefully surrender possession thereof. Defendant instead of heeding their request refused and stubbornly remained in the premises forcing plaintiffs, in order to protect their rights, to secure services of counsel for a fee who in turn

wrote the defendant a letter informing her that her lease of the subject premises which is on a month-to-month basis ends on April 30, 2004 and will no longer be renewed (Annex "C"); notwithstanding oral and written demands to vacate the subject premises made by plaintiffs, defendant failed and refused and still fails and refuses without justifiable reason to vacate the subject premises and surrender possession thereof to plaintiffs.

On account of defendant's unjustified, unlawful and obstinate refusal to vacate the subject premises plaintiffs were constrained to secured (sic) services of counsel for a fee and prays that the same be adjudged against the defendant in the amount of P100,000.00 as attorney's fees and P3,000.00 as appearance fee.

Plaintiffs pray that the amount of P25,000.00 be adjudged against defendant as reasonable monthly rental computed from the time this instant suit was filed up to the time the subject premises is completely vacated.

By way of Special and Affirmative Defenses, defendant alleged that: the demand attached to plaintiffs' complaint is only a demand to vacate which does not conform to the jurisdictional requirement necessary in instituting an ejectment suit- in short plaintiff's demand is defective; there is no showing that plaintiffs had referred the matter to the Barangay for conciliation prior to the filing of this instant action which is a condition precedent hence, the instant case should be dismissed without prejudice and may be revived only upon compliance with such requirement.

Defendant further argued that an action for annulment of transfer of title filed before the Regional Trial Court of Manila wherein the defendant invoked her right of first refusal which was violated when Lim Kieh Tong offered for sale the subject premises without first offering the same to her, and the institution of such action abates the ejectment; the lease in this case is covered by the Rent Control Law.

By way of Counterclaim, defendant posited that the undue filing of the instant suit defendant was constrained to secure the services of counsel to protect her right and interest for a fee in the amount of P20,000.00 as attorney's fees and P3,000.00 as court appearance." (***Rollo, pp. 29 to 31***)

After the submission of both parties' position papers, affidavits of witnesses and other pertinent documents and exhibits, the MTC rendered a decision dated 07 June 2005, which ruled, among others, that the respondents (plaintiff-appellees below) are entitled to the possession of the disputed property. The dispositive portion of the said decision, reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant:

1. Ordering the defendant and all persons claiming right under her to vacate the subject premises and peacefully surrender possession of

the property located at 1682 Blumentritt Sta. Cruz, Manila to herein plaintiffs;

2. Ordering the defendant to pay a reasonable monthly rental of P25,000.00 to plaintiffs computed from the time the instant action was filed up to the time the subject premises is completely vacated and surrendered to plaintiffs;
3. Ordering the defendant to pay plaintiff the sum of P20,000.00 as attorney's fees.
4. Without costs.

SO ORDERED." (***Rollo, p. 126***)

On appeal to the RTC, the latter in its decision dated 16 December 2005, which is the subject of this petition, affirmed with modification the appealed decision of the MTC, the decretal text of which:

"WHEREFORE, the assailed Decision dated June 7, 2005 of the Metropolitan Trial Court Branch 20 is hereby MODIFIED as follows:

1. Ordering the defendant and all persons claiming right under her to vacate the subject premises and peacefully surrender possession of the property located 1682 Blumentritt, Sta. Cruz, Manila to herein plaintiffs;
2. Ordering the defendant to pay a reasonable monthly rental of P15,000 to plaintiffs computed from the time the instant action was filed up to the time the subject premises is completely vacated and surrendered to plaintiff;
3. Ordering the defendant to pay plaintiff the sum of P20,000.00 as attorney's fees.
4. Without cost.

SO ORDERED." (***Rollo, pp. 35 to 36***)

Upon the petitioner's (defendant-appellant below) motion for reconsideration to the RTC's decision dated 16 December 2005 (***Rollo, pp. 38 to 54***), the RTC issued an Order dated 20 January 2006, which denied the petitioner's motion for reconsideration. The decretal text thereof reads:

"When defendant's Motion for Reconsideration was called for hearing today at 8:30 o'clock in the morning, neither the defendant nor her counsel appeared despite the fact that the Motion for Reconsideration was requested to be heard today at 8:30 o'clock in the morning.

In view thereof, defendant's Motion for Reconsideration is hereby DENIED.

SO ORDERED." (***Rollo, p. 37***)