Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 10, 2021** *which reads as follows:*

"G.R. No. 232108 – (METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner* v. FRANCISCO MENDOZA, as substituted by his son, ALLAN M. MENDOZA, *respondent*). – Subject to review under Rule 45 of the Rules of Court at the instance of petitioner Metropolitan Waterworks and Sewerage System (MWSS) is the Decision[1] dated May 30, 2017 in CA-G.R. SP No. 142312, whereby the Court of Appeals (CA) reversed the Regional Trial Court's (RTC) Order dated August 3, 2015 and dismissed the Complaint for Unlawful Detainer.

The Antecedents

On September 25, 1998, a Complaint for Unlawful Detainer docketed as Civil Case No. 20963 (First Case) was filed by MWSS against respondent Francisco Mendoza (Francisco), a former MWSS employee, for unlawfully residing in MWSS's living quarters (subject property) designated for its current employees despite his retirement.[2] On January 24, 2000, the Metropolitan Trial Court (MeTC) issued an Order granting the complaint and ordering Francisco to vacate the premises and surrender possession thereof to MWSS. The Decision in the First Case, thereafter, became final and executory. A *Writ* of Execution was issued but left unenforced.[3]

Despite Francisco's death sometime in 2008, his family continued occupying the quarters.[4]

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1 *Rollo*, pp. 13-23; penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.
2 Id. at 62.
3 Id. at 14.
4 Id. at 15.

On July 18, 2011, MWSS sent a letter[5] to Francisco reminding him that he had been living in its quarters even after his retirement and that he had yet to turn over possession of the property. In the same letter, MWSS demanded that Francisco vacate the property within 15 days from receipt of the letter.[6] Francisco's family, however, did not give heed to the demand.[7]

On October 6, 2011, MWSS filed another complaint for Unlawful Detainer docketed as Civil Case No. 37-41049 (Second Case) against Francisco (and all other persons claiming rights under him) seeking for the return of the possession of the subject property, as well as payment of rental fees and damages.[8]

In his Answer to the Complaint, Allan M. Mendoza (Allan), representing Francisco averred, among others, that they are occupying the subject property since 1972 and under *bona fide* claim of ownership pursuant to Republic Act No. 10023 (An Act Authorizing the Issuance of Free Patents to Residential Lands); and MWSS is already barred by prescription from reviving the First Case.[9]

The MeTC Ruling

On August 14, 2013, the MeTC dismissed the complaint for lack of jurisdiction. It ratiocinated that MWSS can no longer revive the case for unlawful detainer pursuant to Section 6, Rule 39 of the Rules of Court. The trial court likewise explained that MWSS is already barred by Statute of Limitations from refiling the case. Accordingly, the trial court disposed the case in this wise:

> WHEREFORE, [i]n view of the foregoing, this Court orders the dismissal of this case for lack of jurisdiction.
>
> SO ORDERED.[10]

Aggrieved, MWSS filed an appeal before the RTC.

The RTC Ruling

On November 24, 2014, the RTC rendered a Decision affirming the MeTC's dismissal of the complaint. On reconsideration, however,

5 Id. at 142.
6 Id.
7 Id. at 15.
8 Id. at 15-16.
9 Id. at 16.
10 Id. at 16-17.

the RTC reversed its earlier ruling and remanded the case to MeTC for further proceedings. The RTC explained that the First and Second Cases are different and distinct considering that the withdrawal of tolerance in the First Case did not extend to the Second Case. The RTC further ruled that a new cause of action for unlawful detainer accrued at the time a new demand letter was served upon Francisco in 2011.[11] The *fallo* of the RTC's Resolution granting the MWSS's Motion for Reconsideration reads:

> WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby GRANTED. The Decision of this Court Affirming the Decision of Branch 37, Metropolitan Trial Court of Quezon City in Civil Case No. 41019 is hereby SET ASIDE. Said case is hereby REMANDED to the said court for further proceedings.
>
> SO ORDERED.[12]

Aggrieved, Allan appealed to the CA.

The CA Ruling

In a Decision[13] promulgated on May 30, 2017, the CA set aside the RTC's Order and ordered the dismissal of the second complaint for unlawful detainer on the ground of *res judicata*. The CA concluded that the filing of the Second Case has already been barred by prior judgment in the First Case. In other words, *res judicata* has already set in.[14] The *fallo* of the assailed Decision reads:

> WHEREFORE, in view of the foregoing premises, the Court SETS ASIDE the Regional Trial Court's August 3, 2015 Order and REINSTATES its November 24, 2014 Decision which, in turn, upheld the Metropolitan Trial Court's August 14, 2013 Order.
>
> No pronouncement as to costs.
>
> SO ORDERED.[15]

Hence, the instant petition for review[16] interposing the following errors:

11 Id. at 17.
12 Id. at 18.
13 Id. at 13-23.
14 Id. at 19-21.
15 Id. at 23.
16 Id. at 60-72.

Issues

I.

The [CA] erred when it ruled that the First Ejectment Case already barred the Second Ejectment Case by Res Judicata;

II.

The [CA] erred when it ruled that the remedy (Second Unlawful Detainer Case) pursued by [MWSS] is already barred by the Statute of Limitations; and

III.

The [CA] erred when it ruled that [MWSS] course of action is either an accion publiciana or an accion reinvidicatoria and not unlawful detainer.[17]

The Court's Ruling

The petition is bereft of merit.

MWSS, in the instant petition, insists that the Second Case is entirely different and distinct from the First Case considering that the Second Case is predicated on a new demand letter to vacate after it waived its right to execute the decision in the First Case.

Allan, on the other hand, avers that the decision in the First Case has already barred the filing of the Second Case by reason of *res judicata*.

This Court rules in favor of Francisco, as substituted by Allan.

Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession thereof after the expiration or termination of his/her right to hold possession under any contract, express or implied. In other words, the possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[18]

Under Section 1, Rule 70 of the Rules of Court, a complaint for unlawful detainer must be filed "within one (1) year after such unlawful deprivation or withholding of possession" and must allege that: (a) the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff; (b) eventually, the defendant's possession of the property became illegal or unlawful upon notice by the plaintiff to defendant of the expiration or the termination

17 Id. at 65-66.

18 *Piedad v. Sps. Gurieza*, 736 Phil. 709, 715 (2014).

of the defendant's right of possession; (c) thereafter, the defendant remained in possession of the property and deprived the plaintiff the enjoyment thereof; and (d) within one (1) year from the unlawful deprivation or withholding of possession, the plaintiff instituted the complaint for ejectment.[19]

In the instant case, it is established that in 1998, a Complaint for Unlawful Detainer (First Case) was filed by MWSS against Francisco. It complied with the jurisdictional requirements set forth by pertinent law and jurisprudence. In fact, in 2000, the MeTC granted the complaint, ruled in favor of MWSS and ordered Francisco to vacate the premises. This ruling attained finality and a *writ* of execution was issued to enforce the ruling. Interestingly, the *writ* was not enforced.[20] Eleven years after the MeTC's ruling, MWSS again sent a demand letter seeking the same relief. For failure of Allan, Francisco's predecessor-in-interest, to comply, another complaint for unlawful detainer was filed.

An important question now arises. May MWSS institute another complaint for unlawful detainer within one year after service of the second and final demand letter in 2011?

The answer lies in the case of *Reyes v. Heirs of Deogracias Forlales*[21] (*Reyes Case*). Therein respondents, Heirs of Deogracias Forlales (Forlales), on May 28, 1993, sent a demand letter to therein petitioners Emmanuel Reyes, Sr. and Mutya M. Reyes (Reyes) requiring them to vacate a certain parcel of land. For their failure to comply, Forlales, in 1997, filed a complaint for unlawful detainer against Reyes. This complaint was dismissed on September 29, 1997, because Forlales filed it more than one-year beyond May 28, 1993, the date of the demand for Reyes to vacate the premises. This decision became final and executory on October 15, 1997. No action followed until another demand letter was served to Reyes by Horlales on May 27, 2005, or eight years after the dismissal of the first unlawful detainer case, demanding that they vacate the subject property, cease and desist from constructing their house, and remove what had already been constructed. Again, the demand fell on deaf ears. Thus, Horlales filed on October 27, 2005, another complaint for unlawful detainer against Reyes.[22]

In dismissing the October 27, 2005 complaint for unlawful detainer, this Court ratiocinated that the second complaint for unlawful

19 *Union Bank of the Phils. v. Maunlad Homes, Inc.*, 692 Phil. 667, 676 (2012).
20 *Rollo*, p. 14.
21 787 Phil. 541 (2016).
22 Id. at 545-546.

detainer was filed way beyond the one-year period from the first demand to vacate which was served on May 28, 1993, and that Reyes's possession after said date started becoming illegal because they no longer had a right to occupy the portion of the lot, to wit:

> x x x x
>
> On its face, the allegations in the complaint make out a case for unlawful detainer as it would seem that the respondents allowed the petitioners to occupy the disputed portion up until they sent their final demand to vacate on May 27, 2005. But, as correctly raised by the petitioners right from the very start, the respondents had already considered the occupancy unlawful as early as 1993. In other words, contrary to how the CA and the trial courts appreciated the petitioners' occupancy from 1993 to 2005, we find that their possession during this period was not by mere tolerance.
>
> In *Sarona v. Villegas*, we explained that a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can hide behind an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry:
>
> > A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: First. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before a suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. Second. If a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action for forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer

> are summary in nature, and that the one year time bar to suit is but in pursuance of the summary nature of the action.

While the foregoing enlightens us when the alleged tolerance must be present (to distinguish the action for unlawful detainer from a forcible entry suit), this explanation similarly applies when a plaintiff files different and successive complaints for unlawful detainer.

At present, we find it hard to believe that the respondents tolerated the occupancy after their attempts to dispossess the petitioners from the lot.

Professor Tolentino defines and characterizes "tolerance" in the following manner:

> x x x [a]cts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well. And even though this is continued for a long time, no right will be acquired by prescription. x x x

There is tacit consent of the possessor to the acts which are merely tolerated. Thus, not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission

In this light, the occupation from May 28, 1993 up to May 27, 2005 cannot be characterized as possession by mere tolerance. The filing of the first complaint for unlawful detainer four (4) years after May 28, 1993, affirms the fact that the respondents no longer wanted the petitioners to occupy the disputed portion as early as 1993. It was duly alleged in their first complaint that it was on May 28, 1993, when the respondents finally demanded the petitioners to vacate. **Thus, the possession of the petitioners after said date started becoming illegal because they no longer had a right to occupy the portion of the lot.**

We likewise cannot consider the possession after the dismissal on September 29, 1997, of the first case for unlawful

> detainer, until the final demand that triggered the present complaint was sent on May 27, 2005. The evidence for the respondents shows that they allowed the petitioners to remain on the disputed portion of the lot thereafter. As plaintiffs, it was incumbent upon the respondents to substantiate their allegation with proof that they continuously tolerated the petitioners occupying the disputed portion until May 27, 2005.
>
> **More importantly, we cannot allow the respondents' present suit to prosper because we would effectively allow circumvention of the one-year limitation. This period would be rendered useless if every plaintiff could simply make a new formal demand to vacate every time the Municipal Trial Courts dismisses their complaint on grounds that it was filed beyond the one-year limitation period.**
>
> While the rule is to start counting the one-year period from when the last demand was made, our ruling in *Desbarats v. Vda. De Laureano* (whose circumstances are similar to the present case) justifies that the period should be reckoned from the date of the first demand to vacate. In the Desbarats case, the lessor persistently made efforts to repossess the property after giving the first demand to vacate. The lessor also filed a complaint for unlawful detainer which was likewise subsequently dismissed. After the complaint was dismissed — as what happened to the respondents in this case — there was no action taken up by the lessor until the second demand to vacate was made.
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> x x x x[23] (Citations omitted and emphasis supplied)

Clearly, this Court, in the *Reyes Case,* considered the first demand letter (1993) as the starting point of the one-year period for the filing of a complaint for unlawful detainer not the second demand letter in 2005. The Court further explained that from 1993 until the filing of the second complaint for unlawful detainer, Reyes's possession of the subject property was no longer by mere tolerance but has already become illegal. Hence, this Court concluded that Forlales resorted to a wrong mode of remedy after the MCTC dismissed the first complaint because the period allowed to file a complaint for unlawful detainer already lapsed one year after May 28, 1993.[24]

Reyes Case finds applicability to the instant case. Like in the *Reyes Case*, the filing of the first complaint for unlawful detainer in 1998 affirms the fact that MWSS no longer wanted Francisco to occupy the disputed property as early as 1998. Thus, Francisco's possession of the property started to become illegal from that point on because they no longer had a right to occupy the subject property. The

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23 Id. at 553-556.
24 Id. at 556.

nature of his occupation did not change even after the finality and the non-execution of the order in 2000 requiring him and his family to vacate the property.

While there was no action on the part of MWSS after the finality of the January 24, 2000 Order of the MeTC granting the first complaint for unlawful detainer, it cannot be outrightly concluded that petitioner MWSS again tolerated Francisco's possession thereof. It bears stressing that tolerance does not simply mean mere silence or inaction of a lawful possessor when another occupies his land; tolerance entails permission from the owner by reason of familiarity or neighborliness.[25] Absent any proof from MWSS that it permitted Francisco and his family to occupy the subject property after the 2000 MeTC Order, the latter's possession thereof remained illegal until the service of the 2011 demand letter and the subsequent filing of the Second Case.

Furthermore, if MWSS will be allowed to pursue the Second Case, this Court will be effectively allowing the circumvention of the one-year limitation. This period would be rendered useless if every plaintiff could simply make a new formal demand to vacate every time the first complaint for unlawful detainer is dismissed, as in the *Reyes Case*, or granted but the plaintiff fails to execute and/or revive the case, as in this present case.

The ruling in the *Reyes Case* is in conjunction with the earlier case of *Torres Racaza v. Gozum*,[26] wherein this Court has ruled that subsequent demands which are merely in the nature of reminders or reiterations of the original demand do not operate to renew the one-year period within which to commence the ejectment suit considering that the period will still be reckoned from the date of the original demand.[27]

It is noteworthy that the cases of *Guiang v. Samano*[28] (*Guiang Case*) and *Limpan Investment Corp. v. Lim Sy*[29] (*Limpan Case*), which were heavily relied upon by MWSS in the instant petition to justify the filing of the Second Case involve a different factual milieu. Hence, inapplicable hereto.

In the *Limpan Case*, the first ejectment suit was filed against the lessee of the property for failure to pay rent. The case was dismissed

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25 *Jose v. Alfuerto, et. al.*, 699 Phil. 307, 314 (2012).
26 523 Phil. 694 (2006).
27 Id. at 710.
28 273 Phil. 323 (1991).
29 243 Phil. 15 (1988).

and the court ordered the lessee to pay the rent. The lessee complied but when the lessor increased the rent, the lessee paid only the rent prescribed by the court, not the rent increase. Hence, the lessor filed a second ejectment suit.[30]

Guiang Case likewise involves the non-payment of rent. A first ejectment case was also filed by the lessor on the ground of failure to pay rent. The parties then moved for the dismissal of the case after they had amicably settled. After a month, the lessee failed to comply with the agreement and again failed to pay rent. Hence, a second ejectment case was filed by the lessor.[31]

In sum, *Limpan* and *Guiang Cases* deal on non-payment of rent as a ground for ejectment. Therein, after the dismissal of the first ejectment cases, the lessors agreed to re-lease the premises to the lessees provided the latter pay the rent. Hence, the lessees' possession of the leased premises again became legal. It only became unlawful when they again failed to pay the rent. Thus, a new cause of action for ejectment accrued after a second written letter of demand to pay the rentals in arrears was served on them.

This rule enunciated in *Limpan* and *Guiang Cases* was synthesized and summarily explained in the case of *Agustin v. Sps. Delos Santos*,[32] *viz.*:

> x x x [A] judgment in a previous case of ejectment could not serve as a bar to a subsequent one if the latter is predicated on a new factual and juridical situation. As a consequence, even in cases where the dismissal of a suit brought for the ejectment of the lessee for non payment of rentals for a given period becomes final and executory, the lessor is still not precluded from making a new demand upon the tenant to vacate should the latter again fail to pay the rents due or should another ground for ejectment arise, in which case such subsequent demand and refusal of the tenant to vacate shall constitute a new cause of action.[33]

In contrast, the instant case does not involve any contract of lease, nor non-payment of rentals, but the unlawful occupation of living quarters. In both the First and Second Cases, MWSS sought to recover possession of the subject property from Francisco and his successors-in-interest after he was allowed, by mere tolerance, to occupy the living quarters despite his retirement. Clearly, the two cases are predicated on

30 Id. at 16-18.
31 *Guiang v. Samano*, supra at 326.
32 596 Phil. 630 (2009).
33 Id. at 647-648.

the same factual and juridical situation. Hence, MWSS has no cause of action to institute another complaint for unlawful detainer despite serving another demand letter to Francisco in 2011.

As things are, Section 6, Rule 39 of the Rules of Court provides that: a final and executory judgment or order may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

In the case at bench, petitioner MWSS had until 2005 to enforce by motion the Order granting its complaint for unlawful detainer and by a separate action until 2010. However, it failed to do so. MWSS can, therefore, no longer enforce the 2000 Order. Otherwise stated, it is already barred by Statute of Limitations.

All told, MWSS can no longer institute another complaint for unlawful detainer. Despite sending another demand letter to Francisco in 2011, no cause of action for unlawful detainer has accrued. As discussed above, the nature of Francisco's possession of the property from 1998, when MWSS filed the first complaint for unlawful detainer, until the filing of the second complaint for unlawful detainer in 2011, did not change. His possession of the subject property was no longer by mere tolerance but became illegal and unlawful from the moment MWSS served the first demand letter to vacate, and the subsequent filing of the first complaint for unlawful detainer in 1998. Hence, a second complaint for unlawful detainer was unavailing.

WHEREFORE, in view of the foregoing premises, the instant petition is **DISMISSED**. The assailed Decision dated May 30, 2017 of the Court of Appeals in CA-G.R. SP No. 142312, is **AFFIRMED *in toto*.**

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
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