Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
2016

THIRD DIVISION

HEIRS OF GAMALIEL ALBANO, represented by ALEXANDER ALBANO and all other person living with them in the subject premises,
Petitioners,

-versus-

SPS. MENA C. RAVANES and ROBERTO RAVANES,
Respondents.

G.R. No. 183645

Present:

VELASCO, JR., *J.*, *Chairperson,*
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

July 20, 2016

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DECISION

JARDELEZA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul the August 29, 2007 Decision[2] (CA Decision) and July 7, 2008 Resolution[3] of the Court of Appeals (CA) in CA G.R. SP No. 96111. The CA Decision reversed the May 29, 2006 Decision[4] of Branch 68, Regional Trial Court (RTC) of Pasig City and reinstated the January 19, 2004 Decision[5] of Branch 69, Metropolitan Trial Court (MeTC) of Pasig City. The MeTC ordered petitioners to: (a) vacate the lot owned by respondent-spouses; and (b) pay the monthly back rentals from the month of default until the leased premises are vacated.[6]

The Facts

Respondent Mena Ravanes (Mena), married to Roberto Ravanes (Roberto) (collectively, the respondent-spouses), is the registered owner of a parcel of land covered by Transfer Certificate of Title No. 57414 located in

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1 *Rollo*, pp. 7-23.
2 Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso. *Id.* at 25-33.
3 Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso. *Id.* at pp. 42-43.
4 *Id.* at 44-46.
5 *Id.* at 48-51.
6 *Id.* at 51.

Caniogan, Pasig City.[7] On about thirty-five (35) square meters of the property stands the two-storey residential house of petitioners.[8] Petitioners' father, Gamaliel Albano, purchased the house in 1986 from a certain Mary Ong Dee.[9] Petitioners leased the property from Mena with the agreement that they will vacate it, regardless of their rental payments, when the latter and her family would need to use it.[10]

In March 2000, respondent-spouses informed petitioners that their daughter, Rowena, is getting married and would need the property to build her house.[11] However, petitioners refused to vacate the property. Thus, respondent-spouses filed a complaint in the Office of the *Barangay* Captain of Caniogan against petitioners.[12] Having failed to reach an amicable settlement, however, the *Barangay* issued a certificate to file action on June 22, 2000.[13]

On September 14, 2000, respondent-spouses filed a Complaint for Ejectment[14] against petitioners in the MeTC of Pasig City. Respondent-spouses cited Section 5 (c) of *Batas Pambansa Blg.* 877 (BP 877)[15] as a ground for ejectment:

> Section 5. *Grounds for Judicial Ejectment.* - Ejectment shall be allowed on the following grounds:
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> x x x
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> (c) Legitimate need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family as a residential unit, such owner or immediate member not being the owner of any other available residential unit within the same city or municipality: Provided, however, That the lease for a definite period has expired: Provided, further, That the lessor has given the lessee formal notice three (3) months in advance of the lessor's intention to repossess the property: and Provided, finally, That the owner/lessor is prohibited from leasing the residential unit or allowing its use by a third party for at least one year.
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> x x x

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7 CA Decision, *rollo*, p. 26.
8 Answer, records, p. 13.
9 *Id.* at 12.
10 Complaint, records, p. 2.
11 *Id.*
12 Titled "*Pagpapaalis sa paupahang lupa, dahil gagamitin ng anak.*" *Rollo*, p. 153.
13 *Katibayan Upang Makadulog sa Hukuman*, Attached as Annex B to the Complaint, records, p. 6.
14 Records, pp. 1-4.
15 An Act Providing for the Stabilization and Regulation of, Rentals of Certain Residential Units for Other Purposes (1985). The effectivity of BP 877 was extended by Republic Act No. 6828 (from January 1, 1990 to December 31, 1992), Republic Act No. 7644 (from January 1, 1993 to December 31, 1997) and Republic Act No. 8437 (from January 1, 1998 to December 31, 2001).

Respondent-spouses stated that their daughter needs the property to build her conjugal home.[16] They pleaded that they do not own any other available residential units within Pasig City or anywhere else. They also stated that the lease between them and petitioners had already lapsed as of December 31, 1999. Respondent-spouses claimed they notified petitioners of their intent to repossess the property at least three (3) months in advance. They prayed for the MeTC to order petitioners to vacate the property and remove the improvements in it. They also sought payment of petitioners' rent for July 2000 and attorney's fees.[17]

In their Answer dated October 4, 2000,[18] petitioners countered that respondent-spouses and their predecessors-in-interest assured them that they can stay in the property for as long as they are paying the agreed monthly rentals.[19] Petitioners claimed that their harmonious relationship with respondent-spouses changed in February 2000 when the latter suddenly refused to accept the rental payments for January to June 2000.[20] They belied the claim that respondent-spouses do not own other lots in Pasig City, asserting that respondent-spouses have other suitable residential houses and apartment units in Pasig City as evidenced by photocopies of land titles attached to their Answer.[21] Consequently, petitioners argued that the Complaint should be dismissed because respondent-spouses do not need the property for their personal use.[22]

Further, petitioners alleged respondent-spouses handed them the notice to vacate only on June 15, 2000. The notice demanded petitioners to vacate the premises on or before July 13, 2000. Thus, they were given only a 28-day notice, which was short of the 3-month notice requirement under BP 877.[23]

By way of counterclaim, petitioners prayed that respondent-spouses be ordered to pay moral and exemplary damages and attorney's fees.[24] Petitioners also asked that, in the event the MeTC ruled in favor of respondent-spouses, they be ordered to reimburse petitioners the amount the latter incurred for the repair of their house.[25]

In their Position Paper dated December 26, 2000,[26] respondent-spouses admitted ownership of several properties in Pasig City, but insisted that these properties were not available for their daughter because they were

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16 Complaint, records, pp. 2-3.
17 *Id.* at 3-4.
18 *Id.* at 10-20.
19 Answer, records, pp. 10 & 13.
20 *Id.* at 13-14.
21 *Id.* at 15-16.
22 *Id.* at 17.
23 *Id.* at 16-17.
24 *Id.* at 19.
25 *Id.* at 18-19.
26 Records, pp. 71-77.

on lease.[27] Respondent-spouses explained that they chose to eject petitioners rather than their other lessees because petitioners are delinquent in their rental payments.[28] Respondent-spouses also alleged that they complied with the 3-month notice requirement because they waited for 91 days—from June 15, the date when petitioners received the notice to vacate, until September 14, 2000—to file the case for ejectment.[29]

In their Position Paper dated January 2, 2001,[30] petitioners reiterated that respondent-spouses have no legal ground to eject them on the basis of an alleged legitimate need for personal use of the property because respondent-spouses own other available lots in Pasig City, and because the 3-month notice requirement was not complied with.

Both parties raised the issue of whether petitioners can be legally ejected from the property under Section 5 (c) of BP 877.

The Ruling of the MeTC

In its Decision dated January 19, 2004,[31] the MeTC found for respondent-spouses. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant[s] who are hereby ordered to vacate immediately the leased premises located at No. 19-A, A. Flores St., Caniogan, Pasig City, and to pay plaintiffs the monthly [back rentals] of PHP2,131.00 from the month of default until the premises are vacated. Attorney's fees are additionally awarded in favor of plaintiffs in the amount of PHP10,000.00 the same being deemed just and equitable under the circumstances. No pronouncement as to costs.
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> SO ORDERED.[32]

The MeTC held that the lease between respondent-spouses and petitioners is one in which no period of lease has actually been fixed. Thus, under Article 1687 of the New Civil Code, the lease is deemed to be on a month to month basis since rentals were paid monthly. Accordingly, the lease expires every end of the month which gives respondent-spouses a ground for judicial ejectment.[33] The MeTC declared as void and against public policy the interpretation of petitioners of their contract that they were assured of a lifetime lease for as long as they are paying monthly rent. It also explained that respondent-spouses' ownership of other properties is

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27 *Id.* at 73-75.
28 *Id.* at 74.
29 *Id.* at 73.
30 *Id.* at 162-176.
31 Penned by Judge Julia A. Reyes, *rollo*, pp. 48-51.
32 *Id.* at 51.
33 *Id.* at 50.

immaterial because as owners of the property, respondent-spouses have the right to repossess it after the monthly expiration of the lease between the parties.[34]

The MeTC also denied petitioners' counterclaim on the ground that they do not have the right to be paid the value of their house's improvements since they built it at their own risk. Petitioners, however, may remove the improvements if respondent-spouses refuse to reimburse one-half of its total value.[35]

The Ruling of the RTC

On appeal before the RTC of Pasig City, petitioners took issue with the MeTC's judgment that respondent-spouses can eject petitioners on the ground of expiration of the lease contract. They contended that the issue about the expiration of the lease was neither invoked by the respondent-spouses in their Complaint nor raised as an issue in the pleadings. Thus, the MeTC should not have departed from the sole issue defined by the parties during the preliminary conference in the MeTC. Petitioners claimed they were denied due process because they were not given the opportunity to meet the issue regarding the alleged expiration of lease.[36]

The RTC agreed with petitioner. In its Decision dated May 29, 2006,[37] the RTC vacated the decision of the MeTC and ordered the dismissal of the complaint for insufficiency of evidence. The RTC opined that the issue in the case is whether respondent-spouses had satisfied the requisites for ejectment under Section 5 (c) of BP 877. It then answered the question in the negative, thus:

> Accordingly, the assailed decision is hereby ***RECONSIDERED*** and ***SET ASIDE*** on the ground of denial of due process, and this Court is now tasked to look into the issue of whether or not the plaintiffs have met the following requirements of Section 5, par (c) of the Rental Law as amended:
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> a). A legitimate need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family;
> b). The need to repossess is for residential [purpose];
> c). Such owner or immediate family member does not own any other available residential unit within the city or municipality;
> d). The lease agreement should be for a definite period;
> e). The period of lease has expired;

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34 *Id.*
35 *Rollo*, p. 51.
36 Appellant's Memorandum in the RTC, records, p. 283.
37 Penned by Judge Santiago G. Estrella, *rollo*, pp. 44-46.

> f). The lessor has given the lessee a formal notice three (3) months in advance of the lessor's intention to repossess the property.
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> The assailed decision is unequivocal. It stated that ***"Clearly, this is a lease for which no period of lease has actually been fixed x x x."*** On this score alone, this case necessarily has to fail for the lease covered under this provision of the Rental Law should be one with a definite period, and the lease at bar as held by the lower court is not one with a definite period. But aside from this the defendants also were able to show that the plaintiffs own other available residential units in Pasig City, although the lower court alleged that it is of no moment. Similarly, the defendants were also able to show that the three (3) months requirement notice was not complied with. The assailed decision kept silent on this requirement but the very letter of demand dated June 9, 2000 of the plaintiffs required the defendants to vacate the premises on or before July 13, 2000 or just about a month and three (3) days from the date of the letter.[38] (Emphasis in the original.)

The Ruling of the CA

Respondent-spouses appealed to the CA, reiterating that they have complied with Section 5 (c) of BP 877.[39]

In its Decision dated August 29, 2007, the CA set aside the Decision of the RTC and reinstated the Decision of the MeTC.[40] The CA ruled that, contrary to the findings of the RTC, the lease between respondent-spouses and petitioners is one with a period. Citing *Dula v. Maravilla*[41] and *Rivera v. Florendo,*[42] the CA explained that a lease agreement without a fixed period is deemed to be from month to month if the rentals are paid monthly. Thus, there is a definite period to speak of, and as such, respondent-spouses can eject petitioners from the property on the ground of expiration of their lease under Section 5 (f) of BP 877. The CA thus stated:

> In the instant case, it is undisputed that the rental on the lot was paid monthly. And based on the previous rulings of the Court, it is clearly one with a definite period, which expires every month, upon proper notice to the respondents [herein petitioners]. **Thus, when petitioners** [herein respondent-spouses] **sent a letter of demand dated June 9, 2000 for respondents to vacate the leased premises on July 13, 2000, the lease contract is deemed to have expired as of the end of that month. Upon the expiration of said period, the contract of lease would expire, giving**

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38 RTC Decision, *id.* at 46.
39 See Petition for Review before the CA, *CA rollo*, pp. 2-13.
40 *Rollo*, p. 33.
41 G.R. No. 134267, May 9, 2005, 458 SCRA 249.
42 G.R. No. L-60066, July 31, 1986, 143 SCRA 278.

> **rise to the lessor's right to file an action for ejectment against respondent.**
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> Based on the foregoing, a legal ground for ejectment would still exist against respondents which is the expiration of the lease, under paragraph (f) of Section 5.[43] (Emphasis supplied.)

The CA also held that petitioners failed to present concrete evidence that respondent-spouses have other available properties in Pasig City. Further, the CA found that the respondent-spouses substantially met the 3-month notice requirement since as early as March 2000, respondent-spouses notified petitioners to vacate the property because their daughter needs it. The CA stressed that petitioners participated in a *barangay* hearing regarding the matter.[44]

On September 19, 2007, petitioners filed a Manifestation and Motion to Stay the Execution of Judgment dated August 29, 2007.[45] They manifested that respondent Roberto entered into a lease contract with petitioner Alexander Albano (Alexander) on September 10, 2007,[46] which meant that petitioners are now in lawful occupation of the property. The execution of the CA's Decision is no longer necessary because the judgment was mooted by a supervening event. Petitioners averred that with the renewal of the expired lease contract, the ground for judicial ejectment relied upon by the CA no longer exists.[47]

Further, petitioners claimed that the Contract of Lease operates as a novation of the previous month-to-month lease between petitioners and respondent-spouses, and which renders inutile the allegations that were passed upon in the trial courts below.[48]

Mena filed a Comment[49] to petitioners' manifestation and motion. Mena assailed the validity of the lease contract between her husband, Roberto, and Alexander. She claimed that Roberto has no personality to unilaterally enter into a lease contract with Alexander because the property is her paraphernal property.[50] She further questioned the wisdom of the lease because the monthly rental price of ₱2,131.00 is the same rent existing in 1986.[51]

In its Resolution dated February 20, 2008,[52] the CA denied petitioners' manifestation and motion. The CA held that its Decision dated

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43 CA Decision, *rollo*, p. 32.
44 *Id.* at 30.
45 *CA rollo*, pp. 198-205.
46 *Id.* at 199.
47 *Id.* at 200-202.
48 *Id.* at 201-202.
49 *Id.* at 218-222.
50 *Id.* at 220.
51 *Id.* at 218-219.
52 *Rollo*, pp. 34-38.

August 29, 2007 attained finality on September 19, 2007.[53] It found that the lease contract did not operate as a novation of its Decision because it was entered into without the express consent of Mena.[54]

On March 7, 2008, petitioners filed a Motion for Reconsideration of the Resolution dated February 20, 2008.[55] They contended that the Contract of Lease between Roberto and Alexander is valid and binding upon Mena considering the conjugal nature of the property.[56] The CA denied the Motion for Reconsideration in its Resolution[57] dated July 7, 2008. Hence, this petition for review.

Petitioners allege that the CA erred in reversing the RTC's Decision. They aver that under BP 877, the lessor should prove that he or his immediate family member is not the owner of any other available residential unit within the same city or municipality.[58] They also reiterate that the execution of the lease contract between Roberto and Alexander on September 10, 2007 is a supervening event that justifies the stay of execution of the CA Decision,[59] and that Mena cannot assert the paraphernal nature of the property for the first time in her Comment before the CA.[60]

In their Comment,[61] respondent-spouses argue that the CA Decision became final and executory on September 20, 2007 because petitioners neither filed a motion for reconsideration nor filed an appeal before us.[62] Accordingly, respondent-spouses plead that petitioners' right to file this petition before us had already lapsed.

The Issues

The issues before us are:

1. Whether the CA Decision is already final and executory;
2. Whether the execution of the lease contract is a supervening event that will justify the stay of execution of the CA Decision; and
3. Whether the respondent-spouses complied with Section 5 (c) of BP 877.

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53 *Id.* at. 36.
54 *Id.* at 37.
55 *CA rollo*, pp. 301-310.
56 *Id.* at 305.
57 *Rollo*, p. 42.
58 Petition, *rollo*, pp. 16-17.
59 *Id.* at 17-18.
60 *Id.* at 18-19.
61 *Id.* at 176-181.
62 *Id.* at 176-177.

Our Ruling

We deny the petition.

The CA Decision is already Final and Executory

The facts and material dates are undisputed. On September 4, 2007, petitioners received notice of the CA Decision. On September 19, 2007, they filed a Manifestation and Motion to Stay the Execution of Judgment, which the CA denied in its February 20, 2008 Resolution. The petitioners received a copy of this Resolution on February 22, 2008.

Thereafter, on March 7, 2008, petitioners filed a Motion for Reconsideration of the February 20, 2008 Resolution of the CA. The CA also denied this motion in its July 7, 2008 Resolution, a copy of which was received by the petitioners on July 14, 2008.

Subsequently, petitioners filed before us a Motion for Additional Period to File Petition for Review,[63] which we granted. They prayed that they be given additional 30 days within which to file their petition or from July 29, 2008 to August 28, 2008. Petitioners filed the petition for review on August 28, 2008.

The above narration of material dates gives a semblance that the present petition was seasonably filed. However, the records show that petitioners should have reckoned the 15-day period to appeal from the receipt of the denial of the Manifestation and Motion to Stay Execution of Judgment, and not from their receipt of the denial of the Motion for Reconsideration. Having failed to do so, petitioners' right to appeal by *certiorari* lapsed as early as March 9, 2008 when the assailed CA Decision became final and executory.

Petitioners' Manifestation and Motion to Stay Execution of Judgment is, in actuality, a motion for reconsideration of the CA Decision. The said manifestation and motion so alleged:

> 10. In light of the foregoing, **respondents are constrained to bring the matter of supervening event to the attention of this Honorable Court and likewise in the manner of a motion for reconsideration, by way of modification of the DECISION**, if the same maybe deemed proper and allowed and favorably considered, for the Honorable Court to so hold that the execution of the judgment dated August 29, 2007 no longer necessary, as there appears NO MORE VALID GROUND TO EJECT respondents from the leased premises or otherwise so hold

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[63] *Id.* at 3-5.

> that respondents are at the present time in lawful occupation of leased premises;[64] (Emphasis supplied.)

Hence, contrary to the allegation of respondent-spouses and the finding of the CA, petitioners filed a motion for reconsideration of the CA Decision, albeit in the guise of a "Manifestation and Motion to Stay Execution of Judgment." In fact, the relief prayed for by petitioners in this manifestation and motion is the same relief obtained once a motion for reconsideration is filed on time. Rule 52, Section 4 of the Rules of Court provides that generally, a motion for reconsideration filed on time stays the execution of the judgment sought to be reconsidered. It thus baffles us why petitioners captioned their motion as a "Manifestation and Motion to Suspend Execution of Judgment" when the effect sought is one and the same —to stay the execution of judgment. This carelessness only brought confusion to respondent-spouses and the CA.

Since the Manifestation and Motion to Stay Execution of Judgment is a motion for reconsideration of the CA Decision, petitioners' receipt of the resolution denying it triggers the running of the 15-day period within which to file an appeal.[65] Petitioners received a copy of the February 20, 2008 Resolution on February 22, 2008. Thus, counting 15 days from receipt, petitioners had only until March 8, 2008[66] to file a petition for review.

On March 7, 2008, however, petitioners filed a Motion for Reconsideration of the February 20, 2008 Resolution instead. This motion for reconsideration partakes of the nature of a *second* motion for reconsideration. In *Tagaytay City v. Sps. De Los Reyes*,[67] we ruled that a motion for reconsideration, even if it was **not** designated as a second motion for reconsideration, is a disguised second motion for reconsideration if it is merely a reiteration of the movant's earlier arguments.[68] Here, petitioners' Motion for Reconsideration is just that—a mere rehash of the arguments raised in their earlier Manifestation and Motion to Stay Execution of Judgment, which we found previously to be their (first) motion for reconsideration.

The filing of a second motion for reconsideration is prohibited under Rule 52, Section 2 of the 1997 Rules of Civil Procedure, as amended[69] and the prevailing 1999 Internal Rules of the Procedure of the CA (IRCA).[70]

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[64] *CA rollo*, p. 202.

[65] Under Rule 45, Section 2 of the Rules of Court, the petition for review should be filed within 15 days from notice of judgment appealed from or from notice of the denial of petitioner's motion for new trial or reconsideration.

[66] 2008 is a leap year. Counting 15 days from February 22, 2008, the last day for filing a petition for review before the Court is March 8, 2008.

[67] Resolution, G.R. No. 166679, January 27, 2010.

[68] *Id.*

[69] Rule 52, Section 2. *Second Motion for Reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[70] Rule 13, Section 3. *Second Motion for Reconsideration.* — No second motion for reconsideration from the same party shall be entertained. However, if the decision or resolution is reconsidered or substantially

Being a prohibited pleading, a second motion for reconsideration does not have any legal effect and does not toll the running of the period to appeal.[71]

In *Securities and Exchange Commission v. PICOP Resources, Inc.*,[72] we explained why the period to appeal should not be reckoned from the denial of a second motion for reconsideration:

> To rule that finality of judgment shall be reckoned from the receipt of the resolution or order denying the second motion for reconsideration would result to an absurd situation whereby courts will be obliged to issue orders or resolutions denying what is a prohibited motion in the first place, in order that the period for the finality of judgments shall run, thereby, prolonging the disposition of cases. Moreover, such a ruling would allow a party to forestall the running of the period of finality of judgments by virtue of filing a prohibited pleading; such a situation is not only illogical but also unjust to the winning party.
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> **The same principle is likewise applicable by analogy in the determination of the correct period to appeal. Reckoning the period from the denial of the second motion for reconsideration will result in the same absurd situation where the courts will be obliged to issue orders or resolutions denying a prohibited pleading in the first place.**[73] (Emphasis supplied.)

An appeal is not a matter of right, but is one of sound judicial discretion. It may only be availed of in the manner provided by the law and the rules.[74] A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.[75]

Considering that petitioners reckoned the period to appeal on the date of notice of the denial of the second motion for reconsideration on July 7, 2008, instead of the date of notice of the denial of the first motion for reconsideration on February 22, 2008, the present petition filed only on August 28, 2008 is evidently filed out of time. The petition, being 173

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modified, the party adversely affected may file a motion for reconsideration within fifteen (15) days from notice.

[71] *Securities and Exchange Commission v. PICOP Resources, Inc.*, G.R. No. 164314, September 26, 2008, 566 SCRA 451, 468, citing *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 405.

[72] G.R. No. 164314, September 26, 2008, 566 SCRA 451.

[73] *Id.* at 467-468, citing *Dinglasan, Jr. v. Court of Appeals,* G.R. No. 145420, September 19, 2006, 502 SCRA 253, 265.

[74] *Indoyon, Jr. v. Court of Appeals,* G.R. No. 193706, March 12, 2013, 693 SCRA 201, 211-212, citing *Muñoz v. People*, G.R. No. 162772, March 14, 2008, 548 SCRA 473.

[75] *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corporation*, Resolution, G.R. No. 189618, January 15, 2014, 713 SCRA 618, 626, citing *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 650, also citing *Ocampo v. Court of Appeals (Former Second Division)*, G.R. No. 150334, March 20, 2009, 582 SCRA 43, 49.

days late, renders the CA Decision final and executory. Thus, we do not have jurisdiction to pass upon the petition.

Our ruling in *Tagle v. Equitable PCI Bank*[76] is illustrative:

> In the case at bar, the Court of Appeals dismissed the petition of petitioner Alfredo in CA-G.R. SP No. 90461 by virtue of a *Resolution* dated 6 September 2005. Petitioner Alfredo's Motion for Reconsideration of the dismissal of his petition was denied by the appellate court in its *Resolution* dated 16 February 2006. Petitioner Alfredo thus had 15 days from receipt of the *16 February 2006 Resolution* of the Court of Appeals within which to file a petition for review. The reckoning date from which the 15-day period to appeal shall be computed is the date of receipt by petitioner Alfredo of the *16 February 2006 Resolution* of the Court of Appeals, and not of its *11 April 2006 Resolution* denying petitioner Alfredo's second motion for reconsideration, since the second paragraph of Sec. 5, Rule 37 of the Revised Rules of Court is explicit that a second motion for reconsideration shall not be allowed. **And since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by *certiorari*. Petitioner Alfredo made a critical mistake in waiting for the Court of Appeals to resolve his second motion for reconsideration before pursuing an appeal.**
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> **Another elementary rule of procedure is that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. For this reason, petitioner Alfredo's failure to file this petition within 15 days from receipt of the 16 February 2006 Resolution of the Court of Appeals denying his first Motion for Reconsideration, rendered the same final and executory, and deprived us of jurisdiction to entertain an appeal thereof.**[77] (Emphasis supplied.)

While there are instances when we relax the application of procedural rules, the present petition is not one of them. Liberal application of the rules is an exception rather than the rule. In this case, petitioners failed to address the issue of finality of the CA Decision when it was raised in respondent Mena's Comment to the Manifestation and Motion to Stay Execution in the CA. Upon the denial of the manifestation and motion due to finality of the CA Decision, petitioners again ignored the issue of finality in their Motion for Reconsideration. Up until respondent-spouses' Comment before us, which again alleged the finality of the CA Decision, petitioners continued to be mum on the issue. Petitioners' silence as to the timeliness of their appeal is suspect. Thus, in the absence of exceptional circumstances and effort on

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[76] G.R. No. 172299, April 22, 2008, 552 SCRA 424.
[77] *Id.* at 445-446.

the part of petitioners to justify the liberal application of the rules, we are constrained to deny the petition.

Nevertheless, even discounting the above procedural defect, we still find the present petition unmeritorious.

The Execution of the Lease Contract is not a Supervening Event

The assailed CA Decision was promulgated on August 29, 2007, and petitioners received notice of it on September 4, 2007.[78] The CA Decision ordered petitioners to vacate the property on the ground of respondent-spouses' legitimate need of the premises and expiration of the lease. On September 10, 2007, petitioners entered into a 10-year lease contract with Roberto involving the property.[79]

Consequently, petitioners allege that the execution of the lease contract lent legitimacy to their occupation of the property, such that the CA Decision is now mooted and should no longer be enforced because to do so would be inequitable. Petitioners insist that the lease contract constitutes a supervening event justifying the stay of the CA Decision.[80]

Petitioners' contentions are untenable. A supervening event refers to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.[81] Here, the lease contract was executed after the CA Decision was promulgated but **before** it attained finality. In fact, petitioners executed the lease contract just six days after they received the adverse ruling of the CA.

To our mind, instead of a supervening event, the execution of the lease contract partakes of the nature of a compromise. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[82] It is an agreement between two or more persons, who, for the purpose of preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which each party prefers over the hope of gaining but balanced by the danger of losing.[83] In the case before us, petitioners claim that they executed the lease contract before notice of the CA Decision

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78 Petition, *rollo*, p. 11.

79 *Id.* at 17.

80 *Id.* at 18.

81 *Government Service Insurance System v. Group Management Corporation*, G.R. Nos. 167000 & 169771, June 8, 2011, 651 SCRA 279, 306, citing *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 387-388.

82 CIVIL CODE OF THE PHILIPPINES, Art. 2028.

83 *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, G.R. No. 126745, July 26, 1999, 311 SCRA 143, 154, citing *Rovero v. Amparo*, 91 Phil. 228 (1952).

as an "amicable settlement of the issues with reference to occupancy of the subject property."[84] Thus, petitioners' intention to end the litigation by virtue of a compromise is evident.

A compromise may be entered into at any stage of the case—pending trial, on appeal and even after finality of judgment.[85] Hence, petitioners may enter into a compromise with the respondent-spouses, even after the CA Decision was rendered. However, the validity of the agreement is determined by compliance with the requisites and the principles of contracts, not by when it was entered into.[86] Unfortunately for petitioners, the compromise that they effected is wanting of one of the essential requisites[87] of a valid and binding compromise—consent of all the parties in the case. We have consistently ruled that a compromise agreement cannot bind a party who did not voluntarily take part in the settlement itself and gave *specific individual consent.*[88]

It is undisputed that only Roberto entered into a lease contract with petitioners. Mena did not sign it, but on the contrary, denounces its execution as being done in evident bad faith and without authority from her as the sole owner of the property. Considering that Mena did not participate in the execution of the lease contract, the compromise is not binding on her.

In addition, the compromise is also not valid even between petitioners and Roberto because the records show that the land in question is indeed a paraphernal property of Mena. Petitioners themselves admitted in their Answer[89] and Position Paper[90] before the MeTC that only Mena is the registered owner of the property. Estoppel therefore lies against them. Petitioners cannot now argue before us that the property is a conjugal property of the respondent-spouses, such that only Roberto's consent is necessary for the effectivity of the lease. Without an authorization showing that Roberto is acting on behalf of Mena, he has no right and power to enter into a lease contract involving Mena's exclusive property.

Besides, even assuming that the property is conjugally owned by respondent-spouses, this does not bestow upon Roberto the power to enter into a lease contract without the consent of his wife. We have explained in

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84 Manifestation and Motion to Stay Execution of the Judgment dated August 29, 2007, *CA rollo*, p. 199.

85 See *Magbanua v. Uy*, G.R No. 161003, May 6, 2005, 458 SCRA 184, 193, citing *Jesalva v. Bautista and Premiere Productions, Inc.*, 105 Phil. 348 (1959).

86 *Magbanua v. Uy*, G.R No. 161003, May 6, 2005, 458 SCRA 184, 195.

87 The requisites of a valid compromise are as follows: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established. (*Magbanua v. Uy, supra*, citing Article 1318 of the Civil Code.)

88 *Philippine Journalists, Inc. v. National Labor Relations Commission*, G.R. No. 166421, September 5, 2006, 501 SCRA 75, 93, citing *Galicia v. NLRC (Second Division)*, G.R. No. 119649, July 28, 1997, 276 SCRA 381. See also *General Rubber and Footwear Corp. v. Drilon*, G.R. No. 76988, January 31, 1989, 169 SCRA 808 and *Republic v. National Labor Relations Commission*, G.R. No. 108544, May 31, 1995, 244 SCRA 564.

89 See paragraph 1, records, p. 10.

90 See Statement of Facts, records, p. 165.

Roxas v. Court of Appeals,[91] that consent of the wife is required for lease of a conjugal realty for a period of more than one year, such lease being considered a conveyance and encumbrance under the provisions of the Civil Code.[92]

Respondent-Spouses Complied with Section 5 (c) of BP 877

The controversy revolves on whether respondent-spouses' satisfied the requisites of Section 5 (c) of BP 877 as a ground for judicial ejectment. To recapitulate, the requisites are:

> *(1)* the owner's/lessor's legitimate need to repossess the leased property for his own personal use or for the use of any of his immediate family;
>
> *(2)* **the owner/lessor does not own any other available residential unit within the same city or municipality**;
>
> *(3)* **the lease for a definite period has expired;**
>
> *(4)* **there was formal notice at least three (3) months prior to the intended date to repossess the property**; and
>
> (5) the owner must not lease or allow the use of the property to a third party for at least one year.[93] (Emphasis supplied.)

The second, third and fourth requisites are the ones contested in this case. The RTC found that respondent-spouses have other residential units within Pasig City. It also adjudged that the verbal lease between the parties does not have a period and the 3-month notice requirement was not complied with.

We disagree with the RTC and affirm the CA.

First, while it is admitted by respondent-spouses that they have other residential units in Pasig City, they were not available because they were occupied by tenants who pay their rentals promptly.[94] The keyword in the second requisite of Section 5 (c) is the word "available." The right of respondent-spouses to eject petitioners cannot be negated by the fact alone that the former have other residential units in Pasig City. The said properties must be "available." Our ruling in *Roxas v. Intermediate Appellate Court*[95] is enlightening, thus:

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91 G.R. No. 92245, June 26, 1991, 198 SCRA 541.
92 *Id.* at 547.
93 *Dula v. Maravilla, supra* note 41 at 257.
94 Plaintiff's Position Paper, records, pp. 73-76.
95 G.R. Nos. L-74279 & 74801-03, January 20, 1988, 157 SCRA 166.

> It is important to stress that even assuming any of petitioners own other residential units, what the law requires is that the same is an *available residential unit*, for the use of such owner/lessor or the immediate member of his family. **Thus even if an owner/lessor owns another residential unit, if the same is not available as for example the same is occupied or it is not suitable for dwelling purposes, it is no obstacle to the ejectment of a tenant on the ground that the premises is needed for use of the owner or immediate member of his family.**[96] (Emphasis supplied.)

Respondent-spouses did not choose to eject petitioners arbitrarily and unreasonably. They asserted that among their tenants, petitioners are delinquent in their rental payments. We cannot fault respondent-spouses in choosing their other tenants, who are in good standing, over petitioners.

Second, the lease between respondent-spouses and petitioners, although merely verbal, is deemed to be one with a definite period which expires at the end of each month. The lease is on a month-to-month basis because the rentals are paid monthly. In this regard, we cite our ruling in *Arquelada v. Philippine Veterans Bank*,[97] to wit:

> The question now is, has the verbal contract of lease between petitioners and the Bank expired in order to call for the ejectment of the latter from the premises in question? The Court rules in the affirmative.
>
> It is admitted that no specific period for the duration of the lease was agreed upon between the parties. **Nonetheless, payment of the stipulated rents were made on a monthly basis and, as such, the period of lease is considered to be from month to month in accordance with Article 1687 of the Civil Code. Moreover, a lease from month-to-month is considered to be one with a definite period which expires at the end of each month upon a demand to vacate by the lessor.**[98] (Citations omitted, emphasis supplied.)

Third, respondent-spouses complied with the requirement of 3-month prior notice. Petitioners do not dispute that they were verbally informed of respondent-spouses' need of the property as early as March 2000. In fact, *barangay* conciliation meetings were held regarding the matter. Petitioners, however, insist that the reckoning period for the 3-month notice should be counted from their receipt on June 15, 2000 of the letter to vacate. Consequently, they argue that they were given only 28 days from June 15 to July 13, 2000 to vacate the property.

We reject petitioners' contention.

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96 *Id.* at 175.
97 G.R. No. 139137, March 31, 2000, 329 SCRA 536.
98 *Id.* at 553-554.

The "formal notice" requirement under BP 877 does not refer to a written notice only. In the case of *Garcia v. Court of Appeals*,[99] we reckoned compliance with the 3-month notice requirement from his verbal demand to vacate, *viz*:

> x x x [E]ven assuming *arguendo* that the appellate court's premise is correct, petitioner did give notice on his own behalf. The trial court found that soon after the sale of the property to petitioner, or on October 10, 1979, the latter wrote to private respondent that he vacate the premises. **After this and other subsequent demands were ignored, he again made a demand on August 7, 1982 informing private respondent that he wished to build his house on the property.** After this last demand was again ignored, he brought the matter before the Barangay Chairman who, on September 19, 1982, sent a summons to private respondent, who, not only ignored it but in addition, refused to accept it when served upon him. **Petitioner finally filed an ejectment suit before the MTC on December 7, 1982, or four months after his verbal demand on August 7, 1982. Thus, even disregarding the previous demands soon after the sale, petitioner had complied with the requirement of three-month notice.**[100] (Emphasis supplied.)

All told, the present petition is without merit both on technical and substantive grounds.

WHEREFORE, the Petition is **DENIED**. The Decision and Resolution of the Court of Appeals dated August 29, 2007 and July 7, 2008, respectively, are hereby **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[99] G.R. No. 88632, March 22, 1993, 220 SCRA 264.
[100] *Id.* at 272-273.

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 12 2016