May a Tenant's Failure To Pay His Agreed Rental Be Excused by Poverty or a Circumstance Beyond His Control?

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After liberation, due to the wholesale destruction of houses by the retreating Japanese, an emergency condition was created caused by the shortage of housing facilities. The conflicting rights of owners and lessors on the one hand, and lessees and occupants on the other, arose with the emergency. Amicable arrangement between the parties was difficult to attain, and in some cases, altogether impossible. Hence the Court dockets were clogged with ejectment cases. Some cases were motivated by the lessors' attempt to obtain higher rentals as a profiteering measure, while others were made necessary by the abuses of the lessees. Cases of ejectment after liberation consumed not only the time and attention of the inferior Justice of the Peace Courts or the Municipal Courts of Manila, but they were invariably appealed to the Courts of First Instance, and were also elevated to the Supreme Court with extraordinary petitions for certiorari or prohibition with injunction, to prevent execution of judgments that have become final, or to delay the restitution of the premises unlawfully withheld.

The Law on House Rentals

Commonwealth Act No. 689, entitled "An act to penalize speculation on rents of building for dwelling purposes" was approved on October 15, 1945, fixing the maximum reasonable rental at twenty per cent of the annual assessment value (Sec. 3). It allowed the suspension of execution of a final judgment within three months (Sec. 4), in the discretion of the Court, provided that all rents due and not paid be deposited including a reasonable amount to answer for damages (Sec. 6). Said act considered a lease of dwelling as of six months duration (Sec. 1), and recognized as a valid defense in a suit for ejectment that the rents are unjust and unreasonable (Sec. 2). It prohibited the lessee from subleasing the leased premises (Sec. 11).

Subsequently, Republic Act No. 66 was passed on October 18, 1946, amending the provisions of Commonwealth Act No. 689, which amendatory act considered a lease as of one year's duration (Sec. 1) instead of six months, and included within the

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meaning of dwelling a place of business for home industries intended for the support of the family (Sec. 1). The rate of rental remained at 20% of the annual assessment value (Sec. 3), and the fact that the rent is unjust and unreasonable continued to be a valid defense in ejectment (Sec. 2). It also provided for suspension of an executory judgment for a period within six months (Sec. 4) on condition that the requirements for suspension shall be complied with (Sec. 5). It prohibited sublease (Sec. 11).

GROUNDS FOR EJECTMENT

The grounds for ejectment under the Civil Code are provided in Article 1569—

> "ART. 1569. The lessor may dispossess the lessee by suit for any of the following causes:
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> 1. The expiration of the conventional period or the one fixed for the duration of leases by Articles 1577 and 1581;
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> 2. Default in the payment of the rent agreed upon;
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> 3. Breach of any of the conditions stipulated in the contract;
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> 4. The use of the thing leased for purposes or services not stipulated and which diminish its value, or the failure of the lessee to comply, with respect to its use, with the provisions of paragraph 2, of Article 1555."

Under Rule 72, Sec. 1, Rules of Court, a detainer case may be filed within one year against the person unlawfully withholding possession for restitution of such possession with damages and costs. Failure to pay the rent due after demand is a legal ground for ejectment (Sec. 2).

Under Commonwealth Act No. 689 as amended by Republic Act No. 66, the grounds for ejectment were limited to three, namely: (1) sub-lease by the lessee (Sec. 11); (2) Personal need by the lessor of the leased premises (Sec. 2); or (3) willful and deliberate non-payment of rents (Sec. 2 of Rep. Act No. 66).

Section 2 of Republic Act No. 66 provides that—

> "Except as provided in Section 12 of this act, no lessee or occupant shall be ejected in cases other than for willful and deliberate non-payment of rents or where the lessor has to occupy the building leased."

Interpreting the above provision of Republic Act No. 66, the Hon. Supreme Court in the case of Alejandro R. Santos v. Catalina de Alvarez et al., G. R. No. L-332, promulgated June 18, 1947, held that:

> "A lessee cannot be ejected even for non-payment of rents, where such non-payment is not willful and deliberate and the lessor does not need the property for himself and the lessee has never subleased it without authority. In other words, a lessee who is unable to pay on time the agreed rents *because of poverty or of any other circumstance beyond his control* cannot, under the present law, be ejected from the leased property, if the other two circumstances are not present."

It is the author's contention that for ejectment to prosper, it is not necessary that the three circumstances should concur, namely: failure to pay the rent, sublease by the tenant and personal need of the lessor. Anyone of said causes would be sufficient

EFFECT OF HOUSE RENTAL LAW ON ART. 1569, CIVIL CODE

Paragraph 1 of Art. 1569 has been modified by the emergency house rental law, for the legal period (Art. 1581) is considered six months under Commonwealth Act No. 689 and

one year under Republic Act No. 66. The second ground for ejectment under Art. 1569, and recognized in Rule 72, Sec. 2, Rules of Court, namely, default in the payment of the agreed rent, should not be deemed to be modified by the rental law unless the rental be found to be unjust and unreasonable. The other two grounds, namely, breach of any condition of the lease contract or improper use of the leased premises by the lessee have not been covered by the new law, and there are good reasons to hold that they should still be in force. For if sublease is a valid ground for ejectment, the other two causes in Art. 1569, which may be more serious than sublease, especially improper use of the leased property which diminishes its value, should be recognized as subsisting causes for ejectment. Implied repeals are not favored. (U. S. v. Palacio, 33 Phil. 208; Valdez v. Tuason, 40 Phil. 943; Smith Bell v. Maronilla, 41 Phil. 557; Lichauco v. Apostol, 44 Phil. 138; Ynchausti & Co. v. Stanley, 36 Phil. 178)

PAYMENT OF RENTAL IS ESSENTIAL

Where defendant tenant admittedly fails to pay the agreed or reasonable monthly rentals, can he be excused by the defense of poverty or a circumstance beyond his control? The payment of a certain price is an essential requisite of a lease contract (Art. 1543). Without consideration, the contract of lease is not only void, but not-existent (Art. 1261). In fact a verbal lease without an agreemnt as to price is no lease at all (Art. 1547). It is the primary obligation of the lessee to pay the price of the lease in the manner agreed upon (Art. 1555, par. 1), and his failure to comply with such obligation entitles the lessor to either sue for rescission or specific performance with damages in either case. (Art. 1556; Veloso v. Avila, 38 O. G. 3217; Avila v. Veloso, 40 O. G. [6S] No. 10, p. 58). It is obvious then that a contract of lease cannot exist without a stipulated rental and the payment thereof is of the essence of such contract.

RENTAL PAYMENT CANNOT BE EXCUSED BY CIRCUMSTANCE BEYOND TENANT'S CONTROL

Commonwealth Act No. 689 and the amendatory Republic Act No. 66, seek to penalize speculation on rents. They are emergency laws regulating leases of dwellings. The nature of a lease contract cannot in any way be impaired by such emergency laws, to the extent of depriving the lessor of his right to the agreed rental or excusing the lessee from his obligation to pay said rental. The obligation to pay rents is not an obligation to deliver a determinate thing, because money is generic and *"genus numquam perit."* Accordingly, the obligation to pay a certain sum of money cannot be excused by any circumstance beyond the control of the obligor. Thus, if a debtor has ₱100 in his pocketbook for the precise purpose of paying his creditor, but before effecting payment he is robbed, can he be relieved of his obligation to pay because of the robbery? Obviously not. Because, even if the obligor-tenant were the victim of a robbery by armed band, or by fire or other fortuitous event, which generally would

excuse the fulfillment of an obligation (Art. 1105), the loss by fortuitous event cannot extinguish an obligation to pay a sum of money, because the loss may only extinguish an obligation to deliver a *determinate thing*, provided that the obligor is not guilty of negligence (culpa), default (mora), or bad faith (dolo) (Art. 1182) Hence, an obligation to pay money can not be excused by the loss of the obligor's money, because money being generic it can always be replaced, and such loss can not excuse non-payment. The rule would be different if the obligation consists of a determinate, specific property which was lost by fortuitous event. Accordingly, a tenant can not be relieved of his obligation to pay the agreed rental, by what the Supreme Court mentions in the Santos v. Alvarez case. as "any other circumstance beyond his control."

WILLFUL AND DELIBERATE NON-PAYMENT OF RENTS

The House Rental Law mentions "willful and deliberate non-payment of rents" (Sec. 2). Does it mean that the non-payment of the rent may be excused because of poverty? Congress in enacting Commonwealth Act No. 689 and Republic Act No. 66, sought to curtail and penalize speculation on rents of dwelling, but it did not contemplate the grant of free houses to poor or indigent tenants. Obviously, private property cannot be taken or burdened by the state without just compensation and without due process of law. (Art. III, Sec. 1, Constitution). The state cannot deprive a rich man of his property to be given to a poor man, even for his temporary use. While the law sought to curtail unreasonable rates of rental, it never contemplated that poor tenants could continue their leases without paying any rental. That would be contrary to the very essence of a lease contract. Its effect would be to nullify the primary obligation of the lessee which is to pay the agreed rental. Such interpretation would be against the law, as it would leave the validity and fulfillment of the obligation arising from the lease contract to the exclusive will of the tenant (Art. 1256).

In the case of Encarnacion v. Baldomar, G. R. No. L-264, the Honorable Supreme Court overruled the defense that the tenant could continue occupying the house indefinitely provided he faithfully fulfills the obligation as regards the payment of rentals. Because if said defense were to be allowed, it would run counter to Article 1256—

> "Since the continuance and fulfillment of the contract would then depend solely and exclusively upon their free and untrolled choice between continuing paying the rentals or not, completely depriving the owner of all his say in the matter If this defense were to be allowed, so long as defendants elected to continue the lease by continuing the payment of the rentals, the owner would never be able to discontinue it; conversely, although the owner should desire the lease to continue, the lessees could effectively thwart his purpose if they should prefer to terminate the contract by the simple expedient of stopping payment of the rentals. This, of course, is prohibited by the aforesaid article of the Civil Code. (8 Manresa, 3rd. Ed., pp. 626-627; Cuyugan v. Santos, 34 Phil. 100)."

If a tenant, willing to pay the monthly rental cannot continue indefinitely his lease beyond the agreed period, and against the will of the owner, because the continuance and validity of the contract would depend upon his exclusive will, with more reason, a tenant cannot compel the owner to continue his possession by merely claiming that he cannot pay the rental because of his poverty. In that case, the validity and fulfillment of the contract would not only depend upon the tenant's will but in effect, there would be no contract at all, because the payment of the rental is a necessary and essential element of a lease contract.

The adjectives used in Republic Act No. 66, that the failure to pay rents should not be *willful or deliberate,* contemplated a situation where the parties lessor and lessee could not agree on the reasonable rental after liberation, which disagreement gave rise to a suit for ejectment. And even if defendant tenant were in default in the payment of the rentals demanded, but not agreed upon, or to be reasonably fixed, no ejectment suit will prosper, for there is no deliberate nonpayment of rents. What the tenant was not willing to pay was the rent *demanded* not the *agreed* rent or *any* rent whatsoever. This was in effect the ruling by the Honorable Supreme Court in the case of Belmonte v. Marin, 42 O. G. No. 10, p. 2416, and reiterated in the case of Gomez v. Ng Fat, 43 O. G. 102.—

> *Belmonte v. Marin, 42 O. G. No. 10, p. 2416.*—"The lessor may, under Article 1569 of the Civil Code, judicially dispossess the lessee for 'default in the payment of the price agreed upon.' But where such default is based on the fact that the rent sought to be collected, is not that agreed upon, an action for ejectment will not lie."
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> *Gomez v. Ng Fat et al., 43 O. G. 102.*—"The ejectment of the defendants is prayed for by the plaintiffs on the alleged ground that 'in view of defendants' breach of the contract of lease, the nonpayment of the aforesaid monthly rentals, the same has been terminated by the plaintiffs.' Defendants' answer is that their failure to pay the rentals from February, 1945, up to the date of the complaint, was due not only to plaintiffs' demand for increased rentals but to the fact that the latter had stopped sending their collector. Appellants hesitated and refused to pay, in view of plaintiff's demand for an amount greater than the agreed rental, namely: from Dee Choy Pio Dee, ₱50 instead of ₱32, and from Ng Fat, ₱80 instead of ₱37. Appellants' default, therefore, is not one which can serve as a ground for dispossessing them under Article 1569 of the Civil Code."

PROMPT AND PERIODICAL RENTAL DEPOSITS

It has been the uninterrupted rule in this jurisdiction that failure of the tenant to deposit promptly and periodically the rents fixed in a decision granting ejectment would entitle the plaintiff lessor to a writ of execution and would impose upon the court the mandatory duty to issue said writ of execution (Rule 72, Sec. 8, Rules of Court). This rule has not been modified by the emergency acts on house rental, because Commonwealth Act No. 689 cannot justify default in the payment of rents (Zamora v. Dinglasan, 43 O. G. No. 5, p. 1625). Even the extraordinary privilege of requesting for a suspension of the final writ of execution based on a final judgment, is premised on various conditions, one of which is the actual pay-

ment or deposit of "all rents due" and "a reasonable amount to answer for damages" (Sec. 6). Should the default in the payment of the rentals be excused and render nugatory a writ of execution by claiming that the defendant tenant cannot pay or deposit the rents due because of poverty? Chief Justice Moran, who penned the majority decision in the case of Santos v. Alvarez, G. R. No. L-332, rendered a dissenting opinion in the case of Cunanan v. Rodas, G. R. No. L-1400, promulgated on July 30, 1947, to the effect that no tenant should be ejected if the non-payment is not willful and deliberate.

> "It is my considered opinion that Section 8 of Rule 72 must be viewed in the light of Republic Act No. 66. As we held in the case of Santos v. Alvarez (L-332, June 18, 1947), under said Act, no tenant should be ejected for nonpayment of rents, if the nonpayment is not willful or deliberate. When the deposit is actually made prior to the hearing of the motion for execution, a delay of eight days certainly cannot be considered a willful nonpayment."

It is submitted that the above is erroneous—it is an incorrect interpretation of the legislative intent. It would overthrow the uniform and repeated decisions requiring the tenant in ejectment case to comply faithfully with his rental obligation. It would also destroy the very essence of a lease contract under the Civil Code.

Social Justice Cannot Nullify the Law

The construction given to the term "willful and deliberate nonpayment of rents" may be sought to be justified by liberal considerations of social justice. But social justice should not be invoked, if while dispensing so called justice to the tenants, it would mean injustice to the lessors—a positive detriment to their property rights. For social justice "means the promotion of the welfare of *all* the people" not that of the tenants alone, but that of the landlord as well. (Guzman v. Moreno, S. C.-G. R. No. L-257, promulgated October 2, 1946). "It means the adoption by the government of measures calculated to insure economic stability of *all* competent elements of society thru the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community." The protection that the government must afford "should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort and quiet of all persons, and bringing about 'the greatest good to the greatest number.'" (Calalang v. Williams, 40 O. G. [9S], No. 13, p. 239). Social justice may be invoked in doubtful cases, where equity may tip the balance of justice in favor of the tenant, but it cannot be extended in favor of the tenant class to the direct prejudice of the lessor class. And social justice cannot be against the law, because justice should not conflict with law, and the law as provided by the Civil Code, cannot be nullified to the extent of impairing or destroying one of its essential requisites, namely, a certain price in a lease contract, and the obligation of the lessee to pay the agreed rental.