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MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

INTRAMUROS ADMINISTRATION,
Petitioner,

-versus-

OFFSHORE CONSTRUCTION DEVELOPMENT COMPANY,
Respondent.

G.R. No. 196795

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:
March 7, 2018

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DECISION

LEONEN, *J.*:

The sole issue in ejectment proceedings is determining which of the parties has the better right to physical possession of a piece of property. The defendant's claims and allegations in its answer or motion to dismiss do not oust a trial court's jurisdiction to resolve this issue.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the April 14, 2011 Decision[2] of Branch 173, Regional Trial Court, Manila in Civil Case No. 10-124740. The Regional Trial Court affirmed *in toto* the October 19, 2010 Order[3] of Branch 24, Metropolitan Trial Court, Manila in Civil Case No. 186955-CV, dismissing Intramuros Administration's (Intramuros) Complaint for Ejectment against Offshore

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[1] *Rollo*, pp. 15–69.
[2] Id. at 70–73. The Decision was penned by Judge Armando A. Yanga.
[3] Id. at 74–80. The Order was penned by Presiding Judge Jesusa S. Prado-Maningas.

Construction and Development Company (Offshore Construction) on the grounds of forum shopping and lack of jurisdiction.

In 1998, Intramuros leased certain real properties of the national government, which it administered to Offshore Construction. Three (3) properties were subjects of Contracts of Lease: Baluarte De San Andres, with an area of 2,793 sq. m.;[4] Baluarte De San Francisco De Dilao, with an area of 1,880 sq. m.;[5] and Revellin De Recoletos, with an area of 1,036 sq. m.[6] All three (3) properties were leased for five (5) years, from September 1, 1998 to August 31, 2003. All their lease contracts also made reference to an August 20, 1998 memorandum of stipulations, which included a provision for lease renewals every five (5) years upon the parties' mutual agreement.[7]

Offshore Construction occupied and introduced improvements in the leased premises. However, Intramuros and the Department of Tourism halted the projects due to Offshore Construction's non-conformity with Presidential Decree No. 1616, which required 16th to 19th centuries' Philippine-Spanish architecture in the area.[8] Consequently, Offshore Construction filed a complaint with prayer for preliminary injunction and temporary restraining order against Intramuros and the Department of Tourism before the Manila Regional Trial Court,[9] which was docketed as Civil Case No. 98-91587.[10]

Eventually, the parties executed a Compromise Agreement on July 26, 1999,[11] which the Manila Regional Trial Court approved on February 8, 2000.[12] In the Compromise Agreement, the parties affirmed the validity of the two (2) lease contracts but terminated the one over Revellin de Recoletos.[13] The Compromise Agreement retained the five (5)-year period of the existing lease contracts and stated the areas that may be occupied by Offshore Construction:

> FROM:
>
> (1) Baluarte de San Andres
>
> TO:
>
> (1) Only the stable house, the gun powder room and two (2)

[4] Id. at 96–106.
[5] Id. at 107–116.
[6] Id. at 117–126.
[7] Id. at 128, 132, and 136.
[8] Id. at 22.
[9] Id.
[10] Id. at 147.
[11] Id. at 139–146.
[12] Id. at 147–152.
[13] Id. at 142.

> Chambers with comfort rooms, will be utilized for restaurants. All other structures built and introduced including trellises shall be transferred/relocated to:
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> (a) Two (2) restaurants as Asean Garden. Each will have an aggregate area of two hundred square meters (200 sq. mtrs.);
>
> (b) One (1) kiosk at Puerta Isabel Garden fronting Terraza de la Reyna with an aggregate area of twenty (20) square meters;
>
> (c) Three (3) restaurants at the chambers of Puerta Isabel II with an aggregate area of 1,180.5 sq.m.;
>
> (d) One (1) restaurant at Fort Santiago American Barracks. Subject to IA Guidelines, the maximum floor area will be the perimeter walls of the old existing building;
>
> FROM:
>
> (2) Baluarte De San Francisco Dilao
>
> TO:
>
> (2) All seven (7) structures including the [Offshore Construction] Administration Building and Trellises shall be transferred [t]o Cuartel de Sta. Lucia, [O]therwise known as the PC Barracks[.][14]

During the lease period, Offshore Construction failed to pay its utility bills and rental fees, despite several demand letters.[15] Intramuros tolerated the continuing occupation, hoping that Offshore Construction would pay its arrears. As of July 31, 2004, these arrears allegedly totaled ₱6,762,153.70.[16]

To settle its arrears, Offshore Construction proposed to pay the Department of Tourism's monthly operational expenses for lights and sound equipment, electricity, and performers at the Baluarte Plano Luneta de Sta. Isabel. Intramuros and the Department of Tourism accepted the offer, and the parties executed a Memorandum of Agreement covering the period of August 15, 2004 to August 25, 2005.[17]

However, Offshore Construction continued to fail to pay its arrears, which amounted to ₱13,448,867.45 as of December 31, 2009. On March 26, 2010, Offshore Construction received Intramuros' latest demand letter.[18]

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[14] Id. at 141.
[15] Id. at 24.
[16] Id. at 25.
[17] Id. at 161–167.
[18] Id. at 178.

Intramuros filed a Complaint for Ejectment before the Manila Metropolitan Trial Court on April 28, 2010.[19] Offshore Construction filed its Answer with Special and Affirmative Defenses and Compulsory Counterclaim.[20]

On July 12, 2010, Offshore Construction filed a Very Urgent Motion,[21] praying that Intramuros' complaint be dismissed on the grounds of violation of the rule on non-forum shopping, lack of jurisdiction over the case, and *litis pendentia*. First, it claimed that Intramuros failed to inform the Metropolitan Trial Court that there were two (2) pending cases with the Manila Regional Trial Court over Puerta de Isabel II.[22] Second, it argued that the Metropolitan Trial Court did not acquire jurisdiction over the case since the relationship between the parties was not one of lessor-lessee but governed by a concession agreement.[23] Finally, it contended that Intramuros' cause of action was barred by *litis pendentia*, since the pending Regional Trial Court cases were over the same rights, claims, and interests of the parties.[24]

In its October 19, 2010 Order,[25] the Metropolitan Trial Court granted the motion and dismissed the case. Preliminarily, it found that while a motion to dismiss is a prohibited pleading under the Rule on Summary Procedure, Offshore Construction's motion was grounded on the lack of jurisdiction over the subject matter.[26]

The Metropolitan Trial Court found that Intramuros committed forum shopping and that it had no jurisdiction over the case.[27]

First, it pointed out that there were two (2) pending cases at the time Intramuros filed its complaint: Civil Case No. 08-119138 for specific performance filed by Offshore Construction against Intramuros, and SP CA No. 10-123257 for interpleader against Offshore Construction and Intramuros filed by 4H Intramuros, Inc. (4H Intramuros),[28] which claimed to be a group of respondent's tenants.[29]

The Metropolitan Trial Court found that the specific performance case was anchored on Offshore Construction's rights under the Compromise Agreement. In that case, Offshore Construction claimed that it complied

[19] Id. at 81–95.
[20] Id. at 27.
[21] Id. at 180–183.
[22] Id. at 180.
[23] Id. at 181.
[24] Id.
[25] Id. at 74–80.
[26] Id. at 76.
[27] Id. at 78–79.
[28] Id. at 76.
[29] Id. at 285–286.

with its undertakings, but Intramuros failed to perform its obligations when it refused to offset Offshore Construction's expenses with the alleged unpaid rentals. The interpleader case, on the other hand, dealt with Offshore Construction's threats to evict the tenants of Puerta de Isabel II. 4H Intramuros prayed that the Regional Trial Court determine which between Offshore Construction and Intramuros was the rightful lessor of Puerta de Isabel II.[30]

The Metropolitan Trial Court found that the cause of action in Intramuros' complaint was similar with those in the specific performance and interpleader cases. Any judgment in any of those cases would affect the resolution or outcome in the ejectment case, since they would involve Offshore Construction's right to have its expenses offset from the rentals it owed Intramuros, and the determination of the rightful lessor of Puerta de Isabel II. The Metropolitan Trial Court pointed to the arrears in rentals that Intramuros prayed for as part of its complaint. Further, Intramuros failed to disclose the specific performance and interpleader cases in its certification against forum shopping.[31]

Second, the Metropolitan Trial Court held that it had no jurisdiction over the complaint. While there were lease contracts between the parties, the existence of the other contracts between them made Intramuros and Offshore Construction's relationship as one of concession. Under this concession agreement, Offshore Construction undertook to develop several areas of the Intramuros District, for which it incurred expenses. The trial court found that the issues could not be mere possession and rentals only.[32]

Intramuros appealed the October 19, 2010 Order with the Regional Trial Court. On April 14, 2011, the Regional Trial Court affirmed the Municipal Trial Court October 19, 2010 Order *in toto*.[33]

On May 25, 2011, Intramuros, through the Office of the Solicitor General, filed a Motion for Extension of Time to File Petition for Review on Certiorari (Motion for Extension) before this Court. It prayed for an additional 30 days, or until June 16, 2011, within which to file its petition for review on solely on questions of law.[34]

On June 16, 2011, Intramuros filed its Petition for Review on Certiorari,[35] assailing the April 14, 2011 Decision of the Regional Trial Court.

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30 Id. at 76–77.
31 Id. at 77–78.
32 Id. at 79.
33 Id. at 70–73.
34 Id. at 2–7.
35 Id. at 15–69.

In its Petition for Review, Intramuros argues that the Regional Trial Court erred in upholding the Metropolitan Trial Court findings that it had no jurisdiction over Intramuros' ejectment complaint[36] and that it committed forum shopping.[37]

First, Intramuros argues that Offshore Construction's Very Urgent Motion should not have been entertained by the Metropolitan Trial Court as it was a motion to dismiss, which was prohibited under the Rule on Summary Procedure.[38] It claims that the Metropolitan Trial Court could have determined the issue of jurisdiction based on the allegations in its complaint. It points out that "jurisdiction over the subject matter is determined by the allegations [in] the complaint" and that the trial court's jurisdiction is not lost "just because the defendant makes a contrary allegation" in its defense.[39] In ejectment cases, courts do not lose jurisdiction by a defendant's mere allegation that it has ownership over the litigated property. It holds that the Metropolitan Trial Court did not lose jurisdiction when Offshore Construction alleged that its relationship with Intramuros is one of concession, that the cause of action accrued in 2003, and that there was *litis pendentia* and forum shopping. It contends that the sole issue in an ejectment suit is the summary restoration of possession of a piece of land or building to the party that was deprived of it.[40] Thus, the Metropolitan Trial Court gravely erred in granting Offshore Construction's motion to dismiss despite having jurisdiction over the subject matter of Intramuros' complaint.[41]

Second, Intramuros avers that it did not commit forum shopping as to warrant the dismissal of its complaint. It claims that while there were pending specific performance and interpleader cases related to the ejectment case, Intramuros was not guilty of forum shopping since it instituted neither action and did not seek a favorable ruling as a result of an earlier adverse opinion in these cases.[42] Intramuros points out that it was Offshore Construction and 4H Intramuros which filed the specific performance and interpleader cases, respectively.[43] In both cases, Intramuros was the defendant and did not seek possession of Puerta de Isabel II as a relief in its answers to the complaints.[44] Moreover, the issues raised in these earlier cases were different from the issue of possession in the ejectment case. The issue in the specific performance case was whether or not Intramuros should offset the rentals in arrears from Offshore Construction's expenses in

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36 Id. at 32–37.
37 Id. at 37–52.
38 Id. at 33.
39 Id. at 34.
40 Id. at 35.
41 Id. at 37.
42 Id. at 39–40.
43 Id. at 41–42.
44 Id. at 45.

continuing the WOW Philippines Project.[45] Meanwhile, the issue in the interpleader case was to determine which between Intramuros and Offshore Construction was the rightful lessor of Puerta de Isabel II.[46]

Finally, Intramuros maintains that there is no concession agreement between the parties, only lease contracts that have already expired and are not renewed. It argues that there is no basis for alleging the existence of a concession agreement. It points out that in the Contracts of Lease and Memorandum of Agreement entered into by Intramuros and Offshore Construction, the expiry of the leases would be on August 31, 2003. Afterwards, Intramuros tolerated Offshore Construction's continued occupation of its properties in hopes that it would pay its arrears in due course.[47]

On July 20, 2011, this Court issued its Resolution[48] granting the Motion for Extension and requiring Offshore Construction to comment on the Petition for Review.

On October 10, 2011, Offshore Construction filed its Comment[49] to the Petition for Review. In its Comment, Offshore Construction argues that the Petition for Review should be dismissed because it violates the principle of hierarchy of courts and raises questions of fact.[50] It points out that Intramuros did not move for the reconsideration of the Regional Trial Court April 14, 2011 Decision. Instead of directly filing with this Court, Intramuros should have filed a Petition for Review with the Court of Appeals, in accordance with Rule 42 of the Rules of Court.[51] It claims that Intramuros raises questions of fact in its Petition for Review, namely, the expiration of the Contracts of Lease and the business concession in favor of Offshore Construction.[52]

In its November 21, 2011 Resolution, this Court noted the Comment and required Intramuros to file its Reply.[53]

On March 12, 2012, Intramuros filed its Reply[54] to the Comment. It argues that direct resort to this Court is proper because the issues it raises in its Petition for Review do not require review of evidence to resolve, and the facts of the case are undisputed.[55] It claims that the nature of Intramuros and

[45] Id. at 43–44.
[46] Id. at 45.
[47] Id. at 52–54.
[48] Id. at 569.
[49] Id. at 577–586.
[50] Id. at 577.
[51] Id. at 578.
[52] Id. at 581–582 and 584.
[53] Id. at 587–588.
[54] Id. at 599–610.
[55] Id. at 604.

Offshore Construction's relationship is never an issue because all the documents referenced and relied upon by the parties were lease agreements.[56]

On August 23, 2012, this Court gave due course to the Petition for Review and ordered both parties to submit their memoranda.[57]

On January 7, 2013, Intramuros filed its Memorandum,[58] while Offshore Construction filed its Memorandum[59] on August 16, 2013.

In its Memorandum, Offshore Construction claims that it occupies Puerta de Isabel II by virtue of a legal concession based not only on the parties' contracts but also on the contemporaneous and subsequent acts of Intramuros and Offshore Construction. It argues that under the Contracts of Lease, Offshore Construction was required to invest around ₱20,000,000.00 worth of investments in the leased properties and that it lost its initial investments, which were demolished due to adverse criticism by then-Intramuros Administrator Anna Maria L. Harper. Under the Compromise Agreement, Offshore Construction was again required to make new developments, again worth millions of pesos. Offshore Construction claims that these conditions make their relationship not one of mere lessor and lessee.[60]

Further, it attests that Intramuros committed illegal and inhuman acts, and injustice against it and its sublessees, allegedly because the Contracts of Lease had expired.[61] Moreover, it points out that Intramuros only filed the ejectment complaint in 2010, even though the Contracts of Lease expired on August 31, 2003. It argues that Intramuros was guilty of estoppel *in pais*, since it continued to accept rental payments as late as July 10, 2009.[62] Assuming that the lease contracts had expired, these contracts were impliedly renewed by the mutual and voluntary acts of the parties, in accordance with Article 1670 of the Civil Code.[63] Offshore Construction claims that there is now novation of the Contracts of Lease, and the courts may fix a period for them,[64] pursuant to Article 1687 of the Civil Code.[65] It

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[56] Id. at 605.
[57] Id. at 612–613.
[58] Id. at 619–662.
[59] Id. at 677–696.
[60] Id. at 685–686.
[61] Id. at 686–688.
[62] Id. at 688.
[63] CIVIL CODE, art. 1670 states:
Article 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.
[64] *Rollo*, p. 691.
[65] CIVIL CODE, art. 1687 states:
Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if

reiterates its prayer that the Petition for Review be dismissed, due to questions of fact more properly cognizable by the Court of Appeals.[66]

The issues to be resolved by this Court are:

First, whether or not direct resort to this Court is proper;

Second, whether or not the Metropolitan Trial Court had jurisdiction over the ejectment complaint filed by Intramuros Administration;

Third, whether or not Intramuros Administration committed forum shopping when it filed its ejectment complaint despite the pending cases for specific performance and interpleader; and

Finally, whether or not Intramuros Administration is entitled to possess the leased premises and to collect unpaid rentals.

I

At the outset, petitioner should have filed a petition for review under Rule 42 of the Rules of Court to assail the Regional Trial Court's ruling upholding the Metropolitan Trial Court October 19, 2010 Order instead of filing a petition for review on certiorari under Rule 45 with this Court.

Under Rule 42, Section 1 of the Rules of Court, the remedy from an adverse decision rendered by a Regional Trial Court exercising its appellate jurisdiction is to file a verified petition for review with the Court of Appeals:

> Section 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs

the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[66] *Rollo*, p. 693.

> before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Petitioner puts in issue before this Court the findings of the Metropolitan Trial Court that it has no jurisdiction over the ejectment complaint and that petitioner committed forum shopping when it failed to disclose two (2) pending cases, one filed by respondent Offshore Construction and the other filed by respondent's group of tenants, 4H Intramuros. Both of these cases raise questions of law, which are cognizable by the Court of Appeals in a petition for review under Rule 42.

"A question of law exists when the law applicable to a particular set of facts is not settled, whereas a question of fact arises when the truth or falsehood of alleged facts is in doubt."[67] This Court has ruled that the jurisdiction of a court over the subject matter of a complaint[68] and the existence of forum shopping[69] are questions of law.

A petition for review under Rule 42 may include questions of fact, of law, or mixed questions of fact and law.[70] This Court has recognized that the power to hear cases on appeal in which only questions of law are raised is not vested exclusively in this Court.[71] As provided in Rule 42, Section 2, errors of fact or law, or both, allegedly committed by the Regional Trial Court in its decision must be specified in the petition for review:

> Section 2. Form and Contents. — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, *the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court*, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.
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> The petitioner shall also submit together with the petition a

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67 *Ronquillo, Jr. v. National Electrification Administration*, G.R. No. 172593, April 20, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/172593.pdf> 10 [Per J. Leonen, Second Division].

68 *Philippine Migrants Watch, Inc. v. Overseas Workers Welfare Administration*, 748 Phil. 349, 356 (2014) [Per J. Peralta, Third Division].

69 *Daswani v. Banco De Oro Universal Bank*, 765 Phil. 88, 97 (2015) [Per J. Brion, Second Division].

70 *Republic v. Malabanan*, 646 Phil. 631, 637 (2010) [Per J. Villarama, Jr., Third Division].

71 *Tan v. People*, 430 Phil. 685, 693 (2002) [Per J. Vitug, En Banc].

> certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (Emphasis supplied)

Petitioner's direct resort to this Court, instead of to the Court of Appeals for intermediate review as sanctioned by the rules, violates the principle of hierarchy of courts.[72] In *Diocese of Bacolod v. Commission on Elections*:[73]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.[74] (Citation omitted)

Nonetheless, the doctrine of hierarchy of courts is not inviolable, and this Court has provided several exceptions to the doctrine.[75] One of these exceptions is the exigency of the situation being litigated.[76] Here, the controversy between the parties has been dragging on since 2010, which should not be the case when the initial dispute—an ejectment case—is, by nature and design, a summary procedure and should have been resolved with expediency.

Moreover, this Court's rules of procedure permit the direct resort to this Court from a decision of the Regional Trial Court upon questions of law, such as those which petitioner raises in this case. In *Barcenas v.*

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[72] *Barcenas v. Spouses Tomas and Caliboso*, 494 Phil. 565 (2005) [Per J. Panganiban, Third Division].

[73] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[74] Id. at 329–330.

[75] Id.

[76] Id. at 331; *See also Dy v. Hon. Bibat-Palamos*, 717 Phil. 776 (2013) [Per J. Mendoza, Third Division].

Spouses Tomas and Caliboso:[77]

> Nonetheless, a direct recourse to this Court can be taken for a review of the decisions, final orders or resolutions of the RTC, but only on questions of law. Under Section 5 of Article VIII of the Constitution, the Supreme Court has the power to
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> > (2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
> >
> > ....
> >
> > (e) All cases in which only an error or question of law is involved.
>
> This kind of direct appeal to this Court of RTC judgments, final orders or resolutions is provided for in Section 2(c) of Rule 41, which reads:
>
> > SEC. 2. Modes of appeal. —
> >
> > ....
> >
> > (c) Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.
>
> Procedurally then, petitioners could have appealed the RTC Decision affirming the MTC (1) to this Court on questions of law only; or (2) if there are factual questions involved, to the CA — as they in fact did.[78]

Thus, petitioner's resort to this Court is proper and warranted under the circumstances.

II

In dismissing the complaint, the Metropolitan Trial Court found that "[t]he issues . . . between the parties cannot be limited to a simple determination of who has the better right of possession of the subject premises or whether or not [petitioner] is entitled [to] rentals in arrears."[79] It held that the relationship between the parties was a "more complicated situation where jurisdiction is better lodged with the regional trial court,"[80] upon a finding that there was a concession, rather than a lease relationship

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[77] 494 Phil. 565 (2005) [Per J. Panganiban, Third Division].
[78] Id. at 577.
[79] *Rollo*, p. 79.
[80] Id.

between the parties.[81]

It is settled that the only issue that must be settled in an ejectment proceeding is physical possession of the property involved.[82] Specifically, action for unlawful detainer is brought against a possessor who unlawfully withholds possession after the termination and expiration of the right to hold possession.[83]

To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint.[84] There is a case for unlawful detainer if the complaint states the following:

> (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
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> (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
>
> (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
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> (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[85] (Citation omitted)

A review of petitioner's Complaint for Ejectment shows that all of these allegations were made.

First, petitioner alleges that respondent is its lessee by virtue of three (3) Contracts of Lease. The validity of these contracts was later affirmed in a Compromise Agreement, which modified certain provisions of the previous leases but retained the original lease period. Respondent does not dispute these contracts' existence or their validity.

Second, following respondent's failure to pay rentals, petitioner alleges that it has demanded that respondent vacate the leased premises.

Third, respondent continues to occupy and possess the leased premises despite petitioner's demand. This is admitted by respondent, which

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[81] Id.

[82] *See Barrientos v. Rapal*, 669 Phil. 438 (2011) [Per J. Peralta, Third Division].

[83] *See Cruz v. Spouses Christensen*, G.R. No. 205539. October 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/205539.pdf> [Per J. Leonen, Third Division].

[84] *Spouses Valdez v. Court of Appeals*, 523 Phil. 39, 48 (2006) [Per J. Chico-Nazario, First Division].

[85] *Cabrera v. Getaruela*, 604 Phil. 59, 66 (2009) [Per J. Carpio, First Division].

seeks to retain possession and use of the properties to "recoup its multi-million pesos worth of investment."[86]

Fourth, petitioner filed its Complaint for Ejectment on April 28, 2010,[87] within one (1) year of its last written demand to respondent, made on March 18, 2010 and received by respondent on March 26, 2010.[88] Contrary to respondent's claim, the one (1)-year period to file the complaint must be reckoned from the date of last demand, in instances when there has been more than one (1) demand to vacate.[89]

The Metropolitan Trial Court seriously erred in finding that it did not have jurisdiction over petitioner's complaint because the parties' situation has allegedly become "more complicated"[90] than one of lease. Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction.[91] In *Morta v. Occidental*:[92]

> It is axiomatic that what determines the nature of an action as well as which court has jurisdiction over it, are the allegations in the complaint and the character of the relief sought. "Jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether the plaintiff is entitled to recover upon a claim asserted therein — a matter resolved only after and as a result of the trial. Neither can the jurisdiction of the court be made to depend upon the defenses made by the defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant."[93] (Citations omitted)

Not even the claim that there is an implied new lease or *tacita reconduccion* will remove the Metropolitan Trial Court's jurisdiction over the complaint.[94] To emphasize, physical possession, or *de facto* possession, is the sole issue to be resolved in ejectment proceedings. Regardless of the claims or defenses raised by a defendant, a Metropolitan Trial Court has jurisdiction over an ejectment complaint once it has been shown that the requisite jurisdictional facts have been alleged, such as in this case. Courts are reminded not to abdicate their jurisdiction to resolve the issue of physical possession, as there is a public need to prevent a breach of the peace by requiring parties to resort to legal means to recover possession of real

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86 *Rollo*, p. 686.
87 Id. at 81.
88 Id. at 178.
89 *Cañiza v. Court of Appeals*, 335 Phil. 1107, 1117 (1997) [Per C.J. Narvasa, Third Division].
90 *Rollo*, p. 79.
91 *Mendoza v. Germino*, 650 Phil. 74, 84 (2010) [Per J. Brion, Third Division].
92 367 Phil. 438 (1999) [Per J. Pardo, First Division].
93 Id. at 445.
94 *Yuki, Jr. v. Co*, 621 Phil. 194, 205 (2009) [Per J. Del Castillo, Second Division].

property.[95]

III

In its October 19, 2010 Order, the Metropolitan Trial Court found that petitioner committed forum shopping when it failed to disclose that there were two (2) pending cases in other trial courts concerning the same parties and similar causes of action. These two (2) cases were Civil Case No. 08-119138 for specific performance filed by respondent against petitioner; and SP CA Case No. 10-123257 for interpleader filed by 4H Intramuros. Both cases were pending with the Manila Regional Trial Court. The Metropolitan Trial Court found that if it decides petitioner's Complaint for Ejectment, its ruling would conflict with any resolution in the specific performance and interpleader cases, since the same contracts were involved in all three (3) cases. It found that the parties were the same and the reliefs prayed for were the same.

Forum shopping is the practice of resorting to multiple *fora* for the same relief, to increase the chances of obtaining a favorable judgment.[96] In *Spouses Reyes v. Spouses Chung*:[97]

> It has been jurisprudentially established that forum shopping exists when a party avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts.
>
> The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Simply put, when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist.
>
> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. On the other hand, the elements of *res judicata*, also known as bar by prior judgment, are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter,

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[95] *Pajuyo v. Court of Appeals*, 474 Phil. 557, 578 (2004) [Per J. Carpio, First Division].

[96] *Dy v. Mandy Commodities, Inc.*, 611 Phil. 74, 84 (2009) [Per J. Chico-Nazario, Third Division].

[97] G.R. No. 228112, September 13, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/228112.pdf> [Per J. Velasco, Jr., Third Division].

and causes of action.[98] (Citation omitted)

As observed by the Metropolitan Trial Court, there is an identity of parties in the specific performance and interpleader cases, and the Complaint for Ejectment. However, there is no identity of asserted rights or reliefs prayed for, and a judgment in any of the three (3) cases will not amount to *res judicata* in the two others.

In respondent's amended complaint for specific performance, it prays that petitioner be compelled to offset respondent's unpaid rentals, with the expenses that respondent supposedly incurred due to the Department of Tourism's WOW Philippines project,[99] pursuant to a July 27, 2004 Memorandum of Agreement. Concededly, one of respondent's reliefs prayed for is for petitioner to respect respondent's lease over Puerta de Isabel II, Asean Garden and Revellin de Recoletos:

> 2. Order [Department of Tourism], [Intramuros Administration] and [Anna Maria L. Harper] to perform their obligation under the "Memorandum of Agreement" dated 27 July 2004 by OFFSETTING the rentals in arrears from the expenses incurred by Offshore in the continuance of the Department of Tourism's WOW Philippines Project and to allow Offshore to recover their investment at Intramuros by respecting their lease over Puerta Isabel II, Asean Garden and Revellin de Recoletos[.][100]

Nevertheless, the Memorandum of Agreement expressly stated that its purpose was for respondent to pay petitioner and the Department of Tourism rentals in arrears as of July 31, 2004:

> WHEREAS, [respondent] has been indebted to [petitioner] in the form of rental and utility consumption arrears for the occupancy of Puerta Isabel Chambers, Asean Gardens and Baluarte de San Andres (Stable House) in the amount of Six Million Seven Hundred Sixty[-]Two Thousand One Hundred Fifty[-]Three and 70/100 (P6,762,153.70) as of July 31, 2004 and as a way of settling said arrears, [respondent] had proposed to pay its obligations with [petitioner] as shown in the breakdown in "Annex A" hereof through [respondent's] assumption of [Department of Tourism's] monthly operational expenses for lights and sound equipment, electricity, and performers at the Baluarte Plano Luneta de Sta. Isabel in Intramuros, Manila[.][101]

This was affirmed in petitioner's May 29, 2005 letter to respondent, in which petitioner stated:

[98] Id. at 5–6.
[99] *Rollo*, p. 225.
[100] Id. at 227.
[101] Id. at 161.

> During our meeting last May 5, 2005 with Mr. Rico Cordova, it was reiterated that the subject of the [Memorandum of Agreement] for the lights and sound at Plano Luneta de Sta. Isabel was your accumulated account as of July 2004. Subsequent rentals have to be remitted to [Intramuros] as they become due and demandable. We have emphasized this concern in our letter of November 12, 2004.[102]

A final judgment in the specific performance case will not affect the outcome of the ejectment case. As pointed out by petitioner, respondent's right to possess the leased premises is founded initially on the Contracts of Lease and, upon their expiration, on petitioner's tolerance in hopes of payment of outstanding arrears. The July 27, 2004 Memorandum of Agreement subject of the specific performance case cannot be the source of respondent's continuing right of possession, as it expressly stated there that the offsetting was only for respondent's outstanding arrears as of July 31, 2004. Any favorable judgment compelling petitioner to comply with its obligation under this agreement will not give new life to the expired Contracts of Lease, such as would repel petitioner's unlawful detainer complaint.

In its Amended Answer in the specific performance case, petitioner sets up the counterclaim that "[respondent] be ordered to pay its arrears of (₱13,448,867.45) as of December 31, 2009 plus such rent and surcharges as may be incurred until [respondent] has completely vacated the [leased] premises."[103] This counterclaim is exactly the same as one of petitioner's prayers in its ejectment complaint:

> WHEREFORE, premises considered, it is most respectfully prayed that JUDGMENT be rendered ORDERING:
>
> . . . .
>
> (2) DEFENDANT [OFFSHORE CONSTRUCTION] TO PAY ITS ARREARS OF THIRTEEN MILLION FOUR HUNDRED FORTY-EIGHT THOUSAND, EIGHT HUNDRED SIXTY-SEVEN PESOS AND FORTY-FIVE CENTAVOS (P13,448,867.45), PLUS INTEREST OF 1% PER MONTH AS STIPULATED IN THE LEASE CONTRACTS[.][104]

A compulsory counterclaim is a defendant's claim for money or other relief which arises out of, or is necessarily connected with, the subject matter of the complaint. In *Spouses Ponciano v. Hon. Parentela, Jr.*:[105]

> A compulsory counterclaim is any claim for money or other relief which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of plaintiff's complaint.

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[102] Id. at 168.
[103] Id. at 532.
[104] Id. at 342–343.
[105] 387 Phil. 621 (2000) [Per J. Gonzaga-Reyes, Third Division].

> It is compulsory in the sense that if it is within the jurisdiction of the court, and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, it must be set up therein, and will be barred in the future if not set up.[106] (Citation omitted)

In its complaint for specific performance, respondent claimed that petitioner should offset its outstanding rentals and that it was petitioner which had an outstanding debt to respondent:

> 16. In compliance with the Memorandum of Agreement, Offshore incurred expenses amounting to Seven Million Eight Hundred Twenty[-]Five Thousand Pesos (P7,825,000.00) by way of Expenses for Rentals of Lights & Sound System, Electrical Bill and Performers Fees. This amount is excluding the expenses incurred during the period Offshore supplied the Light & Sound System, as well as Performers, aforementioned started in October 2004. A copy of the Statement of Account is hereto appended as ANNEX "H" to "H-4";
>
> 17. Based on Offshore's records, upon re-computation of Actual Area used during all these period[s] from July 2001 to March 30, 2008, copy of Statement of Accounts has been sent to Intramuros Administration for reconciliation, Offshore's total obligation by way of back and current rentals up to March 30, 2008 is only in the amount of Six Million Four Hundred Three Thousand Three Hundred Sixty[-]Four Pesos (P6,403,364.00);
>
> 18. Obviously, when both accounts are offset, it will clearly show that [Intramuros] still owes Offshore the amount of One Million Four Hundred Twenty[-]One Thousand Six Hundred Thirty[-]Six Pesos (P1,421,636.00) as of March 2008;
>
> 19. Unfortunately, despite this glaring fact that [Intramuros] owes Offshore, Defendant [Anna Maria L.] Harper (who has already showed sour and adverse treatment of Offshore in the past), being the new Administrator of Intramuros Administration, sent a Letter dated 09 April 2008 demanding from Offshore to pay [Intramuros] alleged rentals in arrears in the amount of P12,478[,]461.74, within seven (7) days from receipt. A copy of the Letter is hereto attached and marked as Annex "I" to "I-1";
>
> 20. It can be deduced from the attachment to the aforementioned letter that [Intramuros] did not honor the obligations imposed in the Memorandum of Agreement because the monthly expenses incurred by Offshore for the payment of the Lights and Sound System, Electricity and Performers Fees for the continuance of the Department of Tourism WOW Project at Baluarte Plano, Luneta de Sta. Isabel which were duly furnished [Intramuros] in the amount of Seven Million Eight Hundred Twenty[-]Five Thousand Pesos (P7,825,000.00) as expressly agreed by [Department of Tourism], [Intramuros] and Offshore in the Memorandum of Agreement were NOT deducted from the rentals due[.][107]

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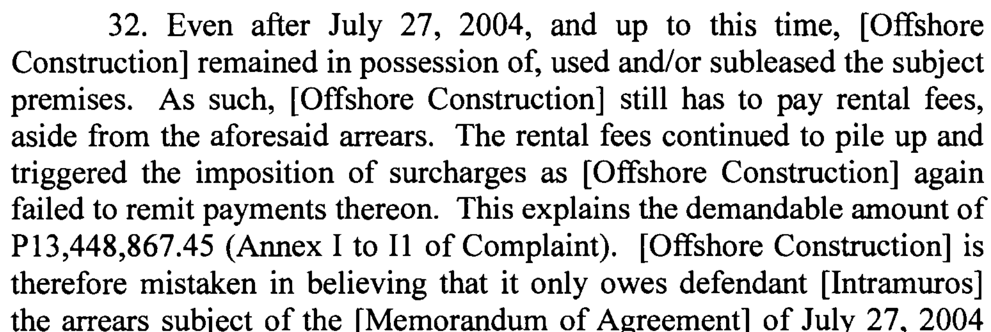
[106] Id. at 627.
[107] *Rollo*, pp. 224–225.

Petitioner's counterclaim in its Amended Answer was set up to defend itself against such a claim:

> 26. [Offshore Construction] has not established its right, or the reality is, [Offshore Constructioin] has been delinquent in the payment of its financial obligations which are specifically provided in its contract with defendant [Intramuros], such as rental fees.
>
> 27. [Offshore Construction] has to pay rent for being still in possession of Puerta Isabel II and Asean Garden. Moreover, plaintiff has enjoyed the fruits of subleasing these premises for years and yet it has continuously failed to remit all rental fees and surcharges despite repeated demands from defendants. It bears stressing that as of December 31, 2009, [Offshore Construction's] arrears has already ballooned to thirteen million four hundred and forty[-]eight thousand eight hundred and sixty[-]seven pesos and forty[-]five centavos (P13,448,867.45).
>
> 28. Glaringly, [Offshore Construction] has been remiss in performing its obligations stated in the Lease Contracts (Annexes A to A-15; B to B-14 and C to C-14 of the Complaint), Compromise Agreement (Annexes E to E-17 of the Complaint) and Memorandum of Agreement (Annexes F to F-16 of the Complaint). [Intramuros and Anna Maria L. Harper] are therefore constrained to demand payment from [Offshore Construction] for the latter's failure or refusal to honor its just and valid obligations. Necessarily, [Intramuros and Anna Maria L. Harper] will not hesitate to seek legal remedies if [Offshore Construction] continues to be delinquent.
>
> 29. Essentially, [Offshore Construction] is protesting the computation of its arrears (P12,478,461.74) in the demand letter sent by Administrator [Anna Maria L.] Harper on April 9, 2008. [Offshore Construction] also asserts that it only owes defendant [Intramuros] six million four hundred three thousand and three hundred sixty[-]four pesos (P6,403,364.00).
>
> 30. [Offshore Construction] is misguided. The [Memorandum of Agreement] dated July 27, 2004 was executed because [Offshore Construction], at that time, had been indebted to defendant [Intramuros] in the form of rental and utility consumption arrears for the occupancy of Puerta Isabel Chambers, Asean Gardens and Baluarte de San Andres in the amount of six million seven hundred sixty[-]two thousand one hundred fifty[-]three and seventy centavos (P6,762,153.70). . . .
>
> . . . .



> 32. Even after July 27, 2004, and up to this time, [Offshore Construction] remained in possession of, used and/or subleased the subject premises. As such, [Offshore Construction] still has to pay rental fees, aside from the aforesaid arrears. The rental fees continued to pile up and triggered the imposition of surcharges as [Offshore Construction] again failed to remit payments thereon. This explains the demandable amount of P13,448,867.45 (Annex I to I1 of Complaint). [Offshore Construction] is therefore mistaken in believing that it only owes defendant [Intramuros] the arrears subject of the [Memorandum of Agreement] of July 27, 2004

and nothing more.[108]

Clearly, petitioner's counterclaim is compulsory, arising as it did out of, and being necessarily connected with, the parties' respective obligations under the July 27, 2004 Memorandum of Agreement. Petitioner cannot be faulted for raising the issue of unpaid rentals in the specific performance case or for raising the same issue in the present ejectment case, since it appears that respondent's alleged failure to pay the rent led to the non-renewal of the Contracts of Lease. However, it must be emphasized that any recovery made by petitioner of unpaid rentals in either its ejectment case or in the specific performance case must bar recovery in the other, pursuant to the principle of unjust enrichment.[109]

A judgment in the Complaint for Interpleader will likewise not be *res judicata* against the ejectment complaint. The plaintiff in the interpleader case, 4H Intramuros, allegedly representing the tenants occupying Puerta de Isabel II, does not expressly disclose in its Complaint[110] for Interpleader the source of its right to occupy those premises. However, it can be determined from petitioner's Answer[111] and from respondent's Memorandum[112] that the members of 4H Intramuros are respondent's sublessees.

A sublessee cannot invoke a superior right over that of the sublessor.[113] A judgment of eviction against respondent will affect its sublessees since the latter's right of possession depends entirely on that of the former.[114] A complaint for interpleader by sublessees cannot bar the recovery by the rightful possessor of physical possession of the leased premises.

Since neither the specific performance case nor the interpleader case constituted forum shopping by petitioner, the Metropolitan Trial Court erred in dismissing its Complaint for Ejectment.

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[108] Id. at 519–522.

[109] *See* CIVIL CODE, art. 22 which states:
Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[110] *Rollo*, pp. 285–291.

[111] Id. at 304–318. *See* p. 305, which states in part:
During the consultation meetings, *plaintiff's alleged members acknowledged and realized that as sublessees of [Offshore Construction]*, they cannot have any superior right over their sublessor. (Emphasis supplied)

[112] Id. at 677–696. *See* p. 683, which states in part:
This case involves the same parties as Defendants ([Intramuros] and [Offshore Construction], the *Plaintiff 4H being the Sub-Lessees of [Offshore Construction])* . . . (Emphasis supplied)

[113] *The Heirs of Eugenio Sevilla, Inc. v. Court of Appeals*, 283 Phil. 490, 499 (1992) [Per J. Davide, Jr., Third Division].

[114] *Guevara Realty, Inc. v. Court of Appeals*, 243 Phil. 620, 624–625 (1988) [Per J. Gutierrez, Jr., Third Division].

IV

Ordinarily, this case would now be remanded to the Metropolitan Trial Court for the determination of the rightful possessor of the leased premises. However, this would cause needless delay inconsistent with the summary nature of ejectment proceedings.[115] Given that there appears sufficient evidence on record to make this determination, judicial economy dictates that this Court now resolve the issue of possession.[116]

It is undisputed that respondent's occupation and use of Baluarte de San Andres, Baluarte de San Francisco de Dilao, and Revellin de Recoletos started on September 1, 1998 by virtue of Contracts of Lease all dated August 20, 1998.[117] The Contracts of Lease were modified through Addendums to the Contracts likewise dated August 20, 1998.[118]

Then, to amicably settle Civil Case No. 98-91587 entitled *Offshore Construction and Development Company v. Hon. Gemma Cruz-Araneta and Hon. Dominador Ferrer, Jr.*, then pending before Branch 47, Regional Trial Court, Manila,[119] the parties and the Department of Tourism entered into a July 26, 1999 Compromise Agreement. In the Compromise Agreement, the parties affirmed the validity of the lease contracts, but agreed to transfer the areas to be occupied and used by respondent in Baluarte de San Andres and Baluarte de San Francisco de Dilao due to improvements that it had introduced to the leased premises.[120] The lease over Revellin de Recoletos was terminated.[121] It appears that under this Compromise Agreement, the original five (5)-year period of the Contracts of Lease were retained,[122] such that the leases would expire on August 31, 2003, and renewable for another five (5) years upon the parties' mutual agreement.[123]

Thereafter, the Contracts of Lease expired. Respondent does not concede this, but there is no proof that there has been any contract mutually agreed upon by the parties for any extensions of the leases. Respondent can only argue that petitioner's continuing tolerance of respondent's possession and acceptance of respondent's rental payments impliedly renewed the Contracts of Lease.[124]

But petitioner's tolerance of respondent's occupation and use of the

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[115] *Spouses Morales v. Court of Appeals*, 349 Phil. 262, 272 (1998) [Per J. Panganiban, Third Division].
[116] *See Cathay Metal Corp. v. Laguna West Multi-Purpose Cooperative, Inc.*, 738 Phil. 37(2014) [Per J. Leonen, Third Division].
[117] *Rollo*, pp. 96–126.
[118] Id. at 127–138.
[119] Id. at 139.
[120] Id. at 139 and 141.
[121] Id. at 142.
[122] Id. at 142.
[123] Id. at 128, 132, and 136.
[124] Id. at 688–689.

leased premises after the end of the lease contracts does not give the latter a permanent and indefeasible right of possession in its favor. When a demand to vacate has been made, as what petitioner had done, respondent's possession became illegal and it should have left the leased premises. In *Cañiza v. Court of Appeals*:[125]

> The Estradas' first proffered defense derives from a literal construction of Section 1, Rule 70 of the Rules of Court which inter alia authorizes the institution of an unlawful detainer suit when "the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied." They contend that since they did not acquire possession of the property in question "by virtue of any contract, express or implied" — they having been, to repeat, "allowed to live temporarily . . . (therein) for free, out of . . . (Cañiza's) kindness" — in no sense could there be an "expiration or termination of . . . (their) right to hold possession, by virtue of any contract, express or implied." Nor would an action for forcible entry lie against them, since there is no claim that they had "deprived (Cañiza) of the possession of . . . (her property) by force, intimidation, threat, strategy, or stealth."
>
> The argument is arrant sophistry. Cañiza's act of allowing the Estradas to occupy her house, rent-free, did not create a permanent and indefeasible right of possession in the latter's favor. Common sense, and the most rudimentary sense of fairness clearly require that act of liberality be implicitly, but no less certainly, accompanied by the necessary burden on the Estradas of returning the house to Cañiza upon her demand. More than once has this Court adjudged that a person who occupies the land of another at the latter's tolerance or permission without any contract between them is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. *The situation is not much different from that of a tenant whose lease expires but who continues in occupancy by tolerance of the owner, in which case there is deemed to be an unlawful deprivation or withholding of possession as of the date of the demand to vacate. In other words, one whose stay is merely tolerated becomes a deforciant illegally occupying the land or property the moment he is required to leave.* Thus, in *Asset Privatization Trust vs. Court of Appeals*, where a company, having lawfully obtained possession of a plant upon its undertaking to buy the same, refused to return it after failing to fulfill its promise of payment despite demands, this Court held that "(a)fter demand and its repudiation, . . . (its) continuing possession . . . became illegal and the complaint for unlawful detainer filed by the . . . (plant's owner) was its proper remedy."[126] (Emphasis supplied, citations omitted)

The existence of an alleged concession agreement between petitioner and respondent is unsupported by the evidence on record. The Metropolitan Trial Court found that a concession agreement existed due to the agreements entered into by the parties:

[125] 335 Phil. 1107 (1997) [Per C.J. Narvasa, Third Division].

[126] Id. at 1115–1117.

> This Court agrees with the defendant. The various contracts of lease between the parties notwithstanding, the existence of the other agreements involved herein cannot escape the scrutiny of this Court. Although couched in such words as "contracts of lease", the relationship between the parties has evolved into another kind – that of a concession agreement whereby defendant [Offshore Construction] undertook to develop several areas of the Intramuros District, defendant [Offshore Construction] actually commenced the development of the subject premises and incurred expenses for the said development, effectively making the relationship more than an ordinary lessor-lessee but one governed by concession whereby both parties undertook other obligations in addition to their basic obligations under the contracts of lease. *Consensus facit legem* (The parties make their own law by their agreement). It behooves this Court to respect the parties' contracts, including the memoranda of agreement that ensued after it. . . . [127]

Respondent claims that the parties' agreement was for it to operate the leased premises to recover its investments and to make profits. However, a review of the Contracts of Lease show that they are lease contracts, as defined in Article 1643 of the Civil Code:

> Article 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

The restrictions and limitations on respondent's use of the leased premises are consistent with petitioner's right as lessor to stipulate the use of the properties being leased.[128] Neither the Contracts of Lease nor their respective Addendums to the Contract contain any stipulation that respondent may occupy and use the leased premises until it recovers the expenses it incurred for improvements it introduced there. Instead, the lease period was fixed at five (5) years, renewable for another five (5) years upon mutual agreement:

> 3. CONTRACT TERM. (Leased Period) This lease shall be for a period of FIVE YEARS (5 YRS) commencing from September 1, 1998 to August 31, 2003, renewable for another period of FIVE YEARS (5 YRS) under such terms and condition that may be mutually agreed upon in writing by the parties[.][129]

The subsequent contracts, namely, the July 26, 1999 Compromise

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[127] *Rollo*, p. 79.

[128] CIVIL CODE, art. 1657(2) states:
Article 1657. The lessee is obliged:
. . . .
(2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place[.]

[129] *Rollo*, pp. 128, 132, and 136.

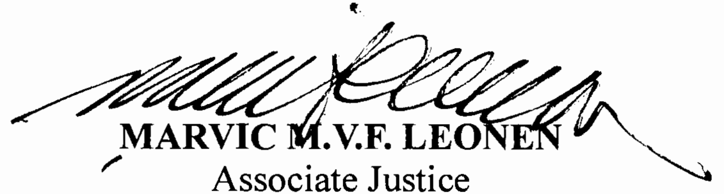
Agreement and the July 27, 2004 Memorandum of Agreement, also do not point to any creation of a "concession" in favor of respondent. The Compromise Agreement affirms the validity of the lease contracts, while the Memorandum of Agreement was for the payment of respondent's arrears until July 2004.

However, this Court cannot award unpaid rentals to petitioner pursuant to the ejectment proceeding, since the issue of rentals in Civil Case No. 08-119138 is currently pending with Branch 37, Regional Trial Court, Manila, by virtue of petitioner's counterclaim. As the parties dispute the amounts to be offset under the July 27, 2004 Memorandum of Agreement and respondent's actual back and current rentals due,[130] the resolution of that case is better left to the Regional Trial Court for trial on the merits.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The April 14, 2011 Decision of Branch 173, Regional Trial Court, Manila in Civil Case No. 10-124740 is **REVERSED AND SET ASIDE**, and a new decision is hereby rendered ordering respondent Offshore Construction and Development Company and any and all its sublessees and successors-in-interest to vacate the leased premises immediately.

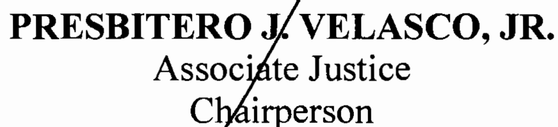
Branch 37, Regional Trial Court, Manila is **DIRECTED** to resolve Civil Case No. 08-119138 with dispatch.

SO ORDERED.

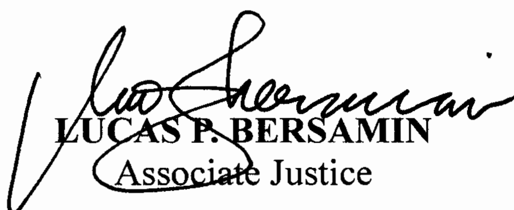


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

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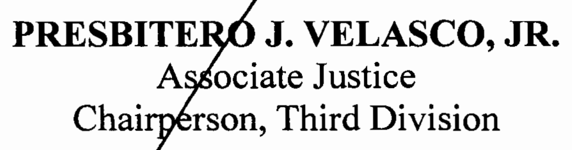
[130] Id. at 224 and 252.

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

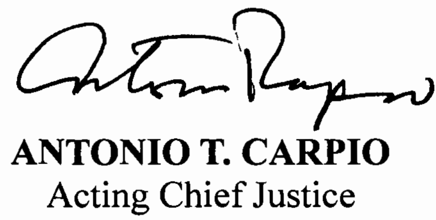
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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, I certify 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.



ANTONIO T. CARPIO
Acting Chief Justice