



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 03 February 2020 which reads as follows:

“G.R. No. 229818 (Carolina G. Marquez v. Josephine Andres-Vergara, Ricardo Andres, Jr., * Enrique Andres, ** Oscar Andres, Rey Andres, and all persons claiming rights under them). – After a judicious study of the case, the Court resolves to **DENY** the instant petition¹ and **AFFIRM** the November 17, 2016 Decision² and the February 8, 2017 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 141285 for failure of petitioner Carolina G. Marquez (petitioner) to sufficiently show that the CA committed any reversible error in dismissing her complaint⁴ for Unlawful Detainer.

As correctly ruled by the CA, petitioner’s complaint failed to sufficiently allege the jurisdictional facts necessary for a complaint for unlawful detainer⁵ when it alleged the following contradictory statements: (a) paragraph 3 thereof alleged that respondents Josephine Andres-Vergara, Ricardo Andres, Jr., Enrique Andres, Oscar Andres, Rey Andres, and all persons claiming under them (respondents) “are mere tenants in the subject property with no right,” thereby implying that respondents’ possession of the same was based on a lease contract; and (b) on the other hand, paragraph 17 insinuated that respondents’ stay in the subject property was by mere tolerance when it alleged that petitioner ended such tolerance by demanding that respondents vacate the same.⁶ Case law provides that

* “Ricardo Ander, Jr.” in some parts of the *rollo*.

** “Erique Andres” in some parts of the *rollo*.

¹ *Rollo*, pp. 8-17.

² *Id.* at 21-33. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.

³ *Id.* at 35-35-A.

⁴ *Id.* at 39-43.

⁵ A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the 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 (4) within one (1) year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (*Fairland Knitcraft Corporation v. Po*, 779 Phil. 612, 624 [2016].)

⁶ See *rollo*, pp. 30-31.

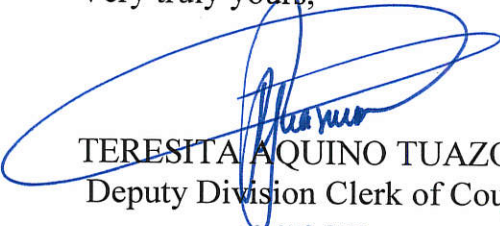
contradictory statements in a complaint for unlawful detainer are sufficient basis for its dismissal,⁷ as in this case.

Even assuming *arguendo* that petitioner's complaint for unlawful detainer is grounded on tolerance, it failed to clearly allege that such tolerance was present right at the beginning of respondents' possession of the subject property. Jurisprudence instructs that in an unlawful detainer complaint based on tolerance, it must be shown that: (a) tolerance must be present right at the inception of the possession,⁸ and (b) there are overt acts indicative of such tolerance as bare allegation of tolerance, without more, will not suffice.⁹

In sum, petitioner failed to prove the existence of the requisites in order for an unlawful detainer complaint to prosper, and as such, her complaint must be necessarily dismissed. It must be clarified, however, that such dismissal is without prejudice to her availment of other remedies that are allowed by law in order to recover the subject property, *i.e.*, *accion publiciana* and/or *accion reivindicatoria*.

SO ORDERED. (Hernando, J., on official leave.)”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

13 AUG 2020

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⁷ See *Jose v. Alfuerto*, 699 Phil. 307-327 (2012).

⁸ *Spouses Cruz v. Spouses Cruz*, 616 Phil. 519, 525-526 (2009).

⁹ See *Ibot v. Heirs of Tayco*, 757 Phil. 441, 452 (2015).