SUPREME COURT
THIRD DIVISION

ROMAN CATHOLIC ARCHBISHOP OF MANILA,
***Petitioner*,**

-versus-

G.R. No. 123321
March 3, 1997

COURT OF APPEALS and MANUEL UY & SONS, INC.,
***Respondents*.**
x----------x

D E C I S I O N

MELO, *J.*:

FRANCISCO, J., dissenting:

Before us is a Petition Praying for the Review and Consequent Reversal of the Decision of the Court of Appeals dated December 21, 1995, in its CA-G.R. SP Case No. 32673 which affirmed in toto that of Branch 43 of the Regional Trial Court of the National Capital Judicial Region stationed in Manila, which in-turn reversed the decision of the Metropolitan Trial Court of Manila.

The decision of the regional trial court that was affirmed by the Court of Appeals in all respects was rendered on October 28, 1993 and decreed as follows:

> WHEREFORE, the judgment appealed from is hereby reversed and set aside and considering the legal and equitable considerations discussed above which has as their main thrust substantial justice and fundamental principle that no one should be unjustly enriched at the expense of another, a ten-year period is hereby fixed as the remaining life of the lease, the same to start as of the date of this decision. Each party will shoulder its own costs and expenses.
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> SO ORDERED. (pp. 119-120, Rollo.)

Petitioner Roman Catholic Archbishop is the absolute owner of a parcel of land, known as Lot 3, Block 829 of the Manila Cadastre. On January 18, 1962, petitioner, as lessor, and private respondent Manuel Uy & Sons, Inc., as lessee, executed a Lease Agreement (Annex C-1, pp. 58-61, Rollo) over a portion of said lot as described in said agreement.

Among the stipulations in said agreement are that the lease shall be for 8 years from the date of the execution of the lease agreement, renewable for 2 successive 8-year periods, at the option of the private respondent, the lessee; that in view of the expenses which private respondent may incur in the ejectment of the then occupants of the premises and the demolition of their tenements, it shall be granted the right to occupy the premises free of rent until June 30, 1962, but shall pay a monthly rental of P2,000.00, starting July 1962, said rental to be paid within the first 5 days of the month it is due; that the monthly rental shall be P2,300.00, as soon as that part of the premises west of Santiago Street is delivered to the private respondent.

The lessee (private respondent) also undertook to grant the lessor (petitioner) a yearly loan of P50,000.00 for 5 consecutive years, or a total loan of P250,000.00 with interest at the rate of 8% per annum. However, the monthly rentals are to be applied to discharge the loan.

A store and office building worth P200,000.00 was to be constructed by private respondent on the property.

It was also agreed that private respondent shall pay all taxes due on the leased premises, and that upon the termination of the lease, all improvements on the leased premises shall belong to petitioner without need of reimbursing private respondent the value of such improvements.

As part also of the consideration of the Lease Agreement, private respondent Manuel Uy & Sons executed in favor of petitioner a deed of donation whereby 3 parcels of land with a total area of 536.50 square meters located at Molave Street, Manuguit Subdivision, Tondo, Manila were conveyed for free to petitioner who wanted to build a chapel there for the residents in the subdivision (RTC Decision, p. 106, Rollo).

On January 19, 1962, the Lease Agreement was amended so as to reduce its area (Ibid.)

Petitioner, claiming that the period of lease, all of its 24 years, expired on January 18, 1986, and that this notwithstanding, private respondent refused to surrender possession of the premises or to pay the rentals due thereon despite demands, addressed a letter dated November 5, 1991 to respondent Manuel Uy & Sons, demanding, inter alia, that respondent vacate the leased premises and surrender possession thereof to petitioner within 10 days from receipt thereof.

Thereafter, an exchange of correspondence between the parties followed, but still private respondent refused to vacate the subject premises.

Petitioner then filed an ejectment suit with the Metropolitan Trial Court of Manila, praying that respondent Manuel Uy & Sons, Inc. be ordered to: (1) vacate the premises subject matter of the case and to surrender possession thereof to then plaintiff; (2) pay P 10,000.00 per month as the reasonable amount of rent from January 1986 to the date of actual turn-over of the premises; and (3) pay litigation expenses and attorney's fees in the amount of P20,000.00 or in such amount as the trial court may adjudge.

Respondent Manuel Uy & Sons, as defendant, in its Answer, denied liability for the alleged reasonable amount of rent from January 1986, alleging as defense that the lease period has not yet expired, and, that, therefore, the complaint is precipitate and premature. It thus prayed that the complaint be dismissed for lack of merit and that plaintiff be ordered to reimburse then defendant the sum of P20,000.00 as and for attorney's fees.

On June 16, 1993, the Metropolitan Trial Court of Manila (Branch X), rendered Judgment finding in favor of then plaintiff Roman Catholic Archbishop of Manila and against Manuel Uy & Sons, Inc., ordering:

1) the defendant and all other occupants claiming right under him to vacate the aforesaid premises;

2) the defendant to pay plaintiff the monthly rent of P 10,000.00 to commence in January 1986 until the above premises shall have been vacated and delivered possession to plaintiff. However, the rental payments made by defendant for the period January 1986 to May 1992 to the plaintiff shall be deducted from the aggregate amount of the monthly rental of P10,000.00;

3) the defendant to pay attorney's fees in the amount of P20,000.00; and the cost of the suit; and

4) the defendant's counterclaim is hereby dismissed. (p. 102, Rollo.)

Manuel Uy & Sons thereupon appealed, and as earlier stated, the regional trial court rendered on October 28, 1993 its reversal judgment fixing a 10-year period from said date as the remaining term of the lease contract between the parties.

Thereafter, the Court of Appeals, acting upon a petition for review, affirmed in toto the decision of the regional trial court.

Hence, the instant petition which raises the main issue of whether the regional trial court and the Court of Appeals were justified in extending the term of the lease for 10 years.

Before resolving this central issue, it is necessary for us to determine whether or not there was constructive delivery of the leased premises to private respondent by the petitioner by virtue of the parties' execution of the Lease Agreement (Annex C-1 to Petition) on January 18, 1962.

The Court of Appeals in its decision under review, quoted with approval the regional trial court that there was no delivery of the premises in question to the private respondent, to wit:

> "While paragraph 3 of the 'Lease Agreement' speaks of granting 'the appellant the right to occupy the premises free of rent until June 30, 1962' and paragraph 6 thereof states that 'upon delivery of the premises to the LESSEE, the LESSEE will commence the ejectment and removal of the tenants or squatters' there was in fact neither actual nor constructive delivery of the premises to the appellant. For appellee never actually placed appellant in possession and enjoyment of the property. It merely executed the 'Lease Agreement' which, even if embodied in a public instrument, did not effect a symbolic or constructive delivery because, in the premises being then in the possession and control of squatters, as the appellee very well knew, was not within the power of the appellee to deliver. As held by our Supreme Court, if, notwithstanding the execution of the public instrument, the one to whom possession is intended to be transferred cannot have the enjoyment and material tenancy of the thing and make use of it himself or through another in his name, because such tenancy and enjoyment is opposed by the interposition of another will, the fiction yields to the reality — the delivery has not been effected (Addison vs. Felix, 38 Phil. 404; Masallo vs. Cesar, 39 Phil. 134)." (pp. 126-127, Rollo.)

Petitioner argues that at the time the Lease Agreement was executed, respondent, as lessee, was fully aware that portions of the leased premises were actually occupied by squatters; that private respondent

voluntarily took upon itself the burden of ejecting the squatters, hence, petitioner was relieved of the obligation to deliver the entire leased premises to private respondent free of squatters.

Further, it is said that during the entire 24-year duration of the lease, respondent never complained of "delay" or "non-delivery" of the leased property, so respondent Court of Appeals may not invoke the matter to justify its ruling extending the lease to the year 2003.

Petitioner argues that the issue of "delay" or "non-delivery" of the premises was never raised in the Answer filed by private respondent with the metropolitan trial court, the sole and only affirmative defense asserted therein being tacita reconduccion or implied renewal of lease. Petitioner thus concludes that the regional trial court as well as the Court of Appeals to have entertained and appreciated a defense that was never pleaded constitutes grave abuse of discretion.

The Court cannot give its full concurrence to the affirmance decision of the Court of Appeals.

In the first place, in the case of Addison vs. Felix cited by the regional trial court and the Court of Appeals, there was no constructive delivery of the land by the vendor to the vendee because one Villafuerte claimed ownership of the parts of the land occupied by him.

In the instant case, the tenants and squatters occupying parts of the leased premises do not claim ownership of the portions occupied by them. Besides, private respondent agreed with petitioner that it (private respondent) would assume the burden of ejecting the tenants or squatters occupying portions of the leased premises.

By the execution of the Lease Agreement, there was constructive transfer of possession of the incorporeal rights of petitioner over the leased premises to private respondent, with or without squatters who do not have claims of ownership over the portions they occupy. This is so because "constructive delivery" is a general term comprehending all those acts which, although not conferring physical possession of the thing, have been held by construction of law equivalent to acts of real delivery, as for example, the giving of the key to the house, as

constructive delivery of the house from the vendor to the vendee (Banawa vs. Mirano, 97 SCRA 517 [1980]).

Indeed, one of these incorporeal rights whose possession was transferred to private respondent by virtue of the execution of the lease contract was the right to eject and remove the tenants or squatters from the leased premises.

Secondly, a lease is not a contract imposed by law, with the terms thereof also fixed by law. It is a consensual, bilateral, onerous. and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay the rent therefor (4 Sanchez Roman, 736; Lim Si vs. Lim, 98 Phil. 868 at 870 [1956]).

Paragraph 6 of the Lease Agreement which provides that "upon delivery of the premises to the LESSEE, the LESSEE will commence the ejectment and removal of the tenants or squatters now occupying the premises and will commence demolition work of all existing improvements thereon, all expenses for ejectment and demolition to be the exclusive account of the LESSEE," was made by the parties through their mutual and voluntary consent.

This provision cannot be considered as delaying the delivery of the leased premises by petitioner for the reason that by the very words of this provision, private respondent voluntarily assumed the burden of ousting the tenants or squatters of the leased premises. This cannot be considered too burdensome on the part of private respondent either because the lease was to run for a total of 24 years, a term devised precisely because of the burden of ejecting the squatters. The presumption is that private transactions have been fair and regular (Section 4 (p), Rule 131, Revised Rules of Court).

Hence, petitioner cannot be considered to have failed in his duties under Article 1654 of the Civil Code "to deliver the thing which is the subject of the contract in such a condition as to render it fit for the use intended" and "to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." (Pars. 1 & 3, Art. 1654, Civil Code)

And thirdly, private respondent, even in its Answer did not raise the issue of failure of petitioner to deliver the premises in question. As aptly argued by petitioner, private respondent's sole and only affirmative defense that was asserted was tacita reconduccion or implied renewal of the lease. Hence the issue of non-delivery or delay in delivery of the premises in question was not a litigated issue in the lower court.

This Court has laid the principle that points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal (Tay Chun Suy vs. Court of Appeals, 229 SCRA 151 [1994]; Santos vs. Intermediate Appellate Court, 145 SCRA 592 [1980]).

Indeed, it is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process (Gevero vs. Intermediate Appellate Court, 189 SCRA 201; 208 [1990] citing Matienzo vs. Sarvidad, 107 SCRA 276 [1981]: De la Santa vs. C.A., 140 SCRA 44 [1985]; Dihiansan vs. CA, 157 SCRA 434 [1987] among others).

For the Court of Appeals to sustain the regional trial court in taking cognizance of the issue of non-delivery or delayed delivery of the premises in question to private respondent, notwithstanding that this was never raised nor pleaded by private respondent, is reversible error, violative as such act is of the above principles.

Was the Court of Appeals justified in upholding the 10-year extension of the lease?

Private respondent argues that its occupancy of the leased premises even beyond the final term of the lease contract is not disputed by petitioner for no less than the petition states that the contract lapsed on January 18, 1986 and that the first demand to vacate was made only on November 5, 1991 which is approximately 5 years from the expiration of the final term of the lease agreement. After the lease expired on January 18, 1986 without petitioner demanding that the

premises be vacated and without a new lease agreement having been executed by the parties, an implied new lease was established, this time without a fixed period.

In its affirmative defense set up in its Answer, private respondent justified the extension of the lease up to May, 1998 by averring that although Paragraph 3 of the contract provides for a monthly payment of rent, this was never implemented since, per agreement of the parties, private respondent actually paid an advance rental for 17½ years as its initial payment from January 18, 1962 to June 18, 1979, when the loan of P250,000.00 with an annual 8% interest was applied for said period. From June 19, 1976 to January 18, 1986, P155,220.15 was paid for said period of 6½ years; and on May 25, 1992, private respondent paid rentals from January 1986 to May 1992, or for a period of 6 years. Private respondent concludes that in accordance with Article 1670, in relation to Article 1687 of the Civil Code, an implied new lease was created for 6 years from May 1992 to May 1998, there being no demand to vacate made before May 25, 1992, the date of the last payment of 6 years rentals.

Upon the other hand, petitioner argues that the parties have fixed the maximum lifetime of the lease at 24 years which commenced on January 18, 1962 and expired on January 18, 1986; that the proposition of respondent that an implied lease was created for 6 years, from May 1992 to May 1998 is flawed because petitioner, in fact, made a demand on respondent to vacate the premises and to pay overdue rentals of P10,000.00 per month starting July 1979, the first demand having been made on November 5, 1991, the second demand on February 5, 1992, and the third demand on July 28, 1992; that from the language of Article 1670 of the Civil Code, an implied new lease maybe created only where (1) the continued enjoyment of the thing by the lessee is with the acquiescence of the lessor and (2) no notice to the contrary has been given by the lessor; that in the case at bar, both requisites are wanting, and because respondent had already been served with demand letters before payments made by the former the lease terminated when the demand to vacate was made.

The view that the extension of the period of the lease is improper is not well taken.

In Divino vs. Marcos (4 SCRA 186 [1962]) this Court held:

> (1) We are of the opinion that the trial court was correct in applying Article 1687, in connection with Article 1197 of the New Civil Code, in this case. Article 1687 states: —
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> > "If the period for the lease has not been fixed, it is understood to be from year to year, if 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 paid daily. However, even though a monthly rent is paid, and no period for the lease has not 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 court may likewise determine a longer period after the lessee has been in possession for over six months. In the case of daily rent, the court may also fix a longer period after the lessee has stayed in the place for over one month. "

Commenting on the quoted article this Court has said: —

> "the power of the court to 'fix longer term for lease' is p[R]otestative or discretionary — 'may' is the word — to be exercised or not in accordance with the particular circumstances of the case; a longer term to be granted where equities come into play demanding extension, to be denied where none appear, always with due deference to the parties' freedom to contract." (Acasio vs. Corp. de los PP Dominicas de Filipinas, G.R. No. L-9428, Dec. 21, 1956.)

This Court then concluded:

> The lot in question has been rented to the petitioner for about 20 years and his predecessors in interest for more. Even though rentals had been paid monthly, still no period for the duration of the lease had been set. The lease had been consistently and tacitly renewed (tacita reconduccion) until the ejectment case was filed (Co Tiam vs. Diaz, 75 Phil. 672; Villanueva vs. Canlas, 77 Phil. 381; Art. 1670, N.C.C.; Art. 1566, old Civil Code).

> Having made substantial or additional improvements on the lot, and considering the difficulty of looking for another place to which petitioner could transfer such improvements, and the length of his occupancy of the lot (since 1936), and the impression acquired by him that he could stay on the premises, as long as he could pay the rentals, it would seem that there exists just grounds for granting the extension of lease and that the extension of two years granted by the trial court, is both fair and equitable." (pp. 189-190.)

The above ruling applies to the case at bar. An extension of the term of the lease is justified but not to the extent granted by the regional trial court and the Court of Appeals.

After the lease agreement expired on January 18, 1986, petitioner did not make a demand on private respondent to vacate the leased premises and because no new lease agreement was executed by the parties, an implied lease was established without a fixed period. The demands were only made, first on November, 1991, the second in February, 1992, and the last in July 28, 1992. Before the last demand, private respondent had already paid on May 25, 1992 the rentals for January 1986 to May 1992.

In the case at bar also, the Court of Appeals and the Regional Trial Court found facts and circumstances to justify an extension of the lease on equitable grounds, such as:

> . . . it [petitioner] received the P550,000.00 loan from the appellant; it enjoyed the use of the apartment in the premises far its Parish School in Paco; and it also enjoyed the right to collect the rentals from the lessees of portion of the property whose leases the appellant was required to respect under the lease agreement; it enjoyed the right to apply the interests and the principal of the P250,000.00 loan to the rentals due or supposed to be due from the appellant under the lease agreement; and it was freed from the burden of paying all the taxes and assessments on the leased premises, as well as the water, electricity, guard and garbage fees and the telephone and other expenses and services needed in the leased premises. It will also enjoy the benefit of coming, upon the termination of

> the lease, all improvements constructed or introduced by the appellant on the leased premises without any obligation to reimburse the appellant the value thereof. (p. 130, Rollo.)

We may add that it was not until 1992 when private respondent finally recovered the whole area subject of the lease, and so it was only then that private respondent was able to enjoy possession and use of the whole area. This was after the lapse of more than 30 years, long after the stipulated expiration of the 24-year period.

However, this Court does not agree with the extension of the lease for another 10 years or until 2003 granted by the Court of Appeals and the Regional Trial Court. It is more in keeping with equity, fairness, and justice if the extension be only up to May 1998, as prayed for by private respondent. It is thus presumed that by this time, private respondent, having enjoyed the possession and use of the whole area leased to it for 6 years from 1992, it would have recouped whatever expenses it has incurred in regard the premises in question. This presumption is based on private respondent's own prayer that the extension be until May 1998.

WHEREFORE, as **MODIFIED**, in the sense that the lease period is extended only up to May 31, 1998, as prayed for by private respondent, the decision of the Court of Appeals under review is hereby **AFFIRMED**.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr. and Panganiban, *JJ.*, concur.

SEPARATE OPINIONS

FRANCISCO, J., dissenting:

I concur with the ponencia of my esteemed colleague, Mr. Justice Melo, in so far as it affirmed the Court of Appeals decision to extend the lease contract between the parties on equitable grounds. I feel,

however, that the 10-year lease period extended by both the Regional Trial Court and the Court of Appeals should not be reduced any further.

It is uncontroverted that private respondent lessee took at least 30 long years to evict the squatters spread over the lessor's subject property. This arduous task which the lessee undertook spared the lessor not only an immense amount of money, but also the long agonizing court battles. The lessee never enjoyed full possession of the leased property until 1992 or six (6) years after the expiration of the Lease Agreement. This, coupled with the substantial or additional improvements on the subject property which the lessor will acquire at the termination of the lease without any obligation on its part to reimburse the lessee of the value thereof, and the burden of paying all the taxes and assessments on the leased property which the lessee unselfishly shouldered, to my mind, are just grounds to extend the lease contract until 2003. The extension of 10 years granted by both the Regional Trial Court and the Court of Appeals, in my view, is more in accord with justice and equity as both parties are afforded the full benefits of the lease contract they executed.