



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 30, 2020** which reads as follows:*

**“G.R. No. 251273 - ACACIA HOMEOWNERS ASSOCIATION, INC., represented by Wilfredo B. Orcales vs. PURIFICACION FETALCORIN, SPOUSES VERONICA TEVES and REYNALDO BELAY, JR.,**

Petitioner Acacia Homeowners Association Inc., represented by its President Wilfredo B. Orcales, asks the Court to reverse the Court of Appeals’ Decision<sup>1</sup> dated September 12, 2019 and Resolution<sup>2</sup> dated January 7, 2020. It avers that the complaint sufficiently established that respondents’ occupation of the subject land was by its mere tolerance. When respondents failed to pay the monthly dues and amortizations, they were expelled from the association. With the cessation of their membership with the association, respondents’ right to occupy the subject land also ceased. In any case, while the Court of Appeals was correct in saying that they are other remedies for it to recover possession of the subject land from respondents, unlawful detainer is the better and more appropriate remedy. As the Regional Trial Court (RTC), Branch 257, Parañaque City, held in its Decision<sup>3</sup> dated March 18, 2019 in Civil Case No. 2018-336, respondents’ act of continuously occupying the subject land after losing their membership with the association is certainly a case for unlawful detainer.<sup>4</sup>

In fine, petitioner asks the Court to rule on whether unlawful detainer is the proper remedy to recover possession of the subject land from respondents.<sup>5</sup>

- over – six (6) pages ...

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<sup>1</sup> Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justice Nina G. Antonio-Valenzuela and Associate Justice Louis P. Acosta; *rollo*, pp. 17-25.

<sup>2</sup> *Id.* at 27-28.

<sup>3</sup> Penned by Judge Rolando G. How, *id.* at 140-144.

<sup>4</sup> *Id.* at 9-10.

<sup>5</sup> *Id.* at 3.

The petition must fail.

Primarily, we note that the docket fees for the present petitioner were paid a day late. The petition states that petitioner received the assailed resolution on January 20, 2020.<sup>6</sup> Thus, petitioner had until February 4, 2020 within which to file the present petition and pay the corresponding docket fees. The petition was filed through registered mail on February 4, 2020,<sup>7</sup> but the fee was paid only on February 5, 2020.<sup>8</sup> Petitioner, though, filed a Manifestation<sup>9</sup> dated February 5, 2020 explaining that the present petition was intended to be personally filed on February 4, 2020, but the courier came to the court minutes before the closing time. Hence, said courier opted to file the petition through registered mail and returned to the court on the following day to pay the docket fees.

It has been repeatedly held that the payment of appeal docket fees is both mandatory and jurisdictional. It is mandatory as it is required in all appealed cases, otherwise, the Court does not acquire the authority to hear and decide the appeal. The failure to pay or even the partial payment of the appeal fees does not toll the running of the prescriptive period, hence, will not prevent the judgment from becoming final and executory.<sup>10</sup>

It bears emphasis that the manifestation specifically states that petitioner's courier arrived at the court minutes before closing time. If that was the case, he or she should have still filed the present petition directly to the court and simultaneously paid the corresponding docket fees. Petitioner did not really offer any viable explanation as to why it opted to file the present petition through registered mail and pay the docket fees on the following day. Verily, the Court of Appeals' dispositions had already become final and executory.

Nevertheless, even if we set aside the procedural lapse, the petition must still fail.

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

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<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 231-232.

<sup>10</sup> *National Transmission Corporation v. Heirs of Teodulo Ebesa, et. al.*, 781 Phil. 594, 604 (2016).

1. Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

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

4. Within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

These averments are jurisdictional and must appear on the face of the complaint.<sup>11</sup>

Here, the pertinent portions of the Complaint<sup>12</sup> dated November 16, 2017 read:

x x x x

3. That the Plaintiff is the owner of the subject lot having purchased the same from J.M. Tuason, Inc., as evidence(d) by the Deed of Sale hereto attached as Annex "C" and forming an integral part hereof.

4. That the occupation by Defendants of the subject lot is by tolerance of the Plaintiff, defendants being former members of the Plaintiff Homeowners' Association (AHOAI);

5. That Defendants were expelled as members of the Plaintiff (A)HOAI for their failure to pay their members monthly dues, share in the purchase price of the lot occupied by the plaintiff AHOAI and its members and for actions inimical to the interest of the plaintiff AHOAI; x x x x

6. That on January 23, 2017, the Board of Directors adopted and approved a Resolution No. 2017-2 series of 2017 directing that the defendants be ejected/evicted from the lot they presently occupy. x x x x

7. That demand to vacate the lot was sent to Defendants but they refused to vacate to the damage and prejudice of the Plaintiff and its members; x x x x<sup>13</sup>

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<sup>11</sup> *Hidalgo v. Velasco*, G.R. No. 202217, April 25, 2018, 862 SCRA 738, 748.

<sup>12</sup> *Rollo*, pp. 172-174.

<sup>13</sup> *Id.* at 172-173.

The foregoing clearly states that respondents' possession of the subject land was by petitioner's tolerance. On proving tolerance, *Eversley Childs Sanitarium v. Barbarona*<sup>14</sup> ordained:

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. **If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.**

**Petitioner failed to prove that respondents' possession was based on his alleged tolerance.** He did not offer any evidence or even only an affidavit of the Garcianos attesting that they **tolerated respondents' entry to and occupation** of the subject properties. A bare allegation of tolerance will not suffice. **Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property . . .**

....

In addition, plaintiff must also show that the supposed acts of tolerance have been **present right from the very start of the possession** - from entry to the property. Otherwise, **if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.** Notably, **no mention was made in the complaint of how entry by respondents was effected or how and when dispossession started.** Neither was there any evidence showing such details.

In any event, petitioner has some other recourse. He may pursue recovering possession of his property by filing an *accion publiciana*, which is a plenary action intended to recover the better right to possess; or an *accion reivindicatoria*, a suit to recover ownership of real property. We stress, however, that the pronouncement in this case as to the ownership of the land should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land.

It bears emphasis that petitioner never refuted that respondents had been in actual possession of the subject land years before the incorporation of the association. It necessarily follows, then, that respondents' possession of the subject land was not by mere tolerance of the association. In all of the proceedings below, petitioner was not able to clarify when the alleged tolerance began. Petitioner also

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<sup>14</sup> G.R. No. 195814, April 4, 2018, 860 SCRA 283, 311-312, citing *Carbonilla v. Abiera*, 639 Phil. 473 (2010).

cannot claim that respondents' occupation of the subject land is by contract as it never presented any contract with respondents for the possession of the subject land.

Verily, as correctly held by the Court of Appeals, without the proving the element of tolerance, the complaint for unlawful detainer has no leg to stand on.

More importantly, it bears emphasis that the complaint itself avers that what respondents failed to pay was monthly dues and "*share in the purchase price of the lot occupied by the plaintiff AHOAI and its members.*"<sup>15</sup> Clearly, the fees paid by respondents were not rental fees, but monthly amortization for the purchase of the lot. As the name of petitioner itself suggests, respondents were members of the Homeowners' Association which means that they were homeowners or co-owners, and *not lessees*, of the subject land. As such, petitioners cannot evict respondents from the subject land through a mere unlawful detainer case. The fact that respondents were expelled from being members of the association did not divest them of the right to possess the property for which they pay, or at least used to pay. Petitioners must resort to the proper remedy to regain possession of the subject land if they so desire, but certainly not through a summary action of unlawful detainer.

**WHEREFORE**, the petition is **DENIED**. The Court of Appeals Decision dated September 12, 2019 and Resolution dated January 7, 2020 in CA-G.R. SP No. 160324 are **AFFIRMED**

**SO ORDERED."**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court *matw*


by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>15</sup> *Rollo*, p. 172.



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(CA-G.R. SP No. 160324)

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The Hon. Presiding Judge  
Regional Trial Court, Branch 257  
1700 Parañaque City  
(Civil Case No. 2018-336)

The Hon. Presiding Judge  
Metropolitan Trial Court, Branch 90  
1700 Parañaque City  
(Civil Case No. 2017-73)

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