



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**MA. DULCE C. FERNANDEZ**, as represented by her attorneys-in-fact **JAIME C. FERNANDEZ**, **ROBERTO C. FERNANDEZ**, and **MA. ELENA C. FERNANDEZ**,  
Petitioner,

**G.R. No. 266145**

Present:

**LEONEN**, *Chairperson*,  
**LAZARO-JAVIER**,  
**LOPEZ, M.**  
**LOPEZ, J.**  
**KHO, JR. JJ.**

- versus -

**ENRIQUE C. FERNANDEZ**,  
Respondent.

Promulgated:

**AUG 19 2024**

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**DECISION**

**LAZARO-JAVIER, J.:**

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 169784:

- 1. **Decision**<sup>1</sup> dated September 15, 2022 reversing the grant of the complaint for unlawful detainer filed by petitioner Ma. Dulce C.

<sup>1</sup> *Rollo*, pp. 9-43. Penned by Associate Justice Rex Bernardo L. Pascual and concurred in by Associate Justices Myra V. Garcia-Fernandez and Tita Marilyn B. Payoyo-Villordon of the Eleventh Division, Court of Appeals, Manila.

Fernandez (Dulce), through her attorneys-in-fact,<sup>2</sup> against one of her children, herein respondent Enrique C. Fernandez (Enrique); and

2. **Resolution**<sup>3</sup> dated March 3, 2023 denying Dulce's Motion for Reconsideration.

### **Antecedents**

In her Complaint for unlawful detainer<sup>4</sup> against Enrique, Dulce, through her attorneys-in-fact, her other children Roberto C. Fernandez (Roberto), Jaime C. Fernandez (Jaime), and Ma. Elena C. Fernandez (Ma. Elena) essentially alleged that the subject property is located at 1381 Palm Avenue, Dasmariñas Village, Makati City and covered by Transfer Certificate of Title No. (TCT No.) 217361. She and her late husband Jose B. Fernandez (Jose) used to own the property, albeit during his lifetime, Jose executed a Deed of Absolute Sale<sup>5</sup> dated May 28, 1993, conveying his 50% share to his children Enrique, Roberto, Jaime, and Ma. Elena.<sup>6</sup>

After the death of Jose in 1994, Enrique sought Dulce's permission to stay in the property together with his family<sup>7</sup> and for her to assist him in raising them. She acceded.<sup>8</sup>

On October 14, 1999, the siblings<sup>9</sup> executed a Contract of Usufruct<sup>10</sup> in Dulce's favor, viz.:

### **CONTRACT OF USUFRUCT**

#### **ARTICLE II**

#### **PERIOD OF USUFRUCT**

This Contract of Usufruct shall be for the lifetime benefit and enjoyment of the Usufructuary, who shall have unlimited use and access to the Property.

#### **ARTICLE III**

#### **OTHER TERMS AND CONDITIONS OF THE USUFRUCT**

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<sup>2</sup> Roberto C. Fernandez, Jaime C. Fernandez, and Ma. Elena C. Fernandez.

<sup>3</sup> *Rollo*, pp. 46–48.

<sup>4</sup> *Id.* at 298–312.

<sup>5</sup> *Id.* at 186–188.

<sup>6</sup> *Id.* at 299.

<sup>7</sup> Erika, Amanda, and Enriquito - children of Enrique.

<sup>8</sup> *Rollo*, p. 300.

<sup>9</sup> Enrique, Roberto, Jaime, and Ma. Elena.

<sup>10</sup> *Rollo*, pp. 161–163.

The Usufructuary may make on the Property such useful improvements for mere pleasure as she may deem convenient/proper. She may also remove such improvements should it be possible to do so without damage to the same.

The Usufructuary shall take care of the property as a good father of the family.

The Usufructuary may make the ordinary repairs on the Property. Ordinary repairs are understood as those required by the wear and tear due to the natural use of the thing and are indispensable for its preservation.

The Usufructuary is obliged to notify the Joint Owners/Title Holders when the need for extraordinary repair is urgent[,] and the said repair shall be for the account of the Usufructuary;

The payment of annual charges and taxes shall be at the expense of the Usufructuary for all the time that the Usufruct lasts.

The taxes which may be imposed directly on the Property during the Usufruct shall be for the expense of the Usufructuary.

#### ARTICLE IV

#### EXTINGUISHMENT OF USUFRUCT

The Usufruct shall automatically be extinguished by the death of the usufructuary.<sup>11</sup> (Emphasis in the original)

Per Deed of Absolute Sale dated September 18, 2000,<sup>12</sup> Dulce also transferred her 50% share to all her children, making each an owner of 25% of the property.

The siblings, thereafter, executed a Memorandum of Agreement<sup>13</sup> dated December 18, 2000 in Dulce's favor, viz.:

#### MEMORANDUM OF AGREEMENT

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#### **I. During the Lifetime of the FIRST PARTY**

The First Party shall have full control and possession of the Property during her lifetime. Her rights in, to and over the Property shall be, as follows:

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<sup>11</sup> *Id.* at 161–163.

<sup>12</sup> *Id.* at 192–194.

<sup>13</sup> *Id.* at 196–199.

(a) To execute such documents, contracts, or agreements allowing the lease of the Property in favor of third parties, under such terms and conditions as she shall deem proper and at her sole discretion.

(b) To make on the Property such useful improvements and/or ordinary repairs as she shall deem necessary and indispensable for the preservation of the Property.

(c) To remove from the Property any personal asset (furniture, antiques, works of art, dinner and kitchen ware including appliances) and/or dispose of it or otherwise distribute to the Second Party or whomsoever as she pleases or as she deems proper at her sole discretion.

## II. Occupancy and Use of Property

At no point shall any of the Second Party or any member of their respective families stay in, or occupy the Property on an indefinite basis or for a period longer than twenty-four (24) months (from the time the First Party leaves the Property for any reason whatsoever), unless consented to in writing by the majority comprised of three (3) of the Second Party (the "Majority"), and under such specific terms and conditions as the latter shall mutually [agree] upon.

It is hereby agreed that any of the Second Party or any member of their respective families who will be allowed to stay in or occupy the Property (as Second Party/lessee), in accordance with the foregoing provision, shall:

(a) Pay the following:

- (i) all maintenance and upkeep costs of the Property, including all utilities, telephone, cable, association dues, and other charges enumerated in (ii) below during the term of the lease.
- (ii) monthly rental for the Property at prevailing market rate as determined by a specialist in rental properties in the area, to be chosen by the Second Party/lessor; and, payable one (1) year in advance, inclusive of association dues and special assessments.
- (iii) security deposit equivalent to three (3) months rental, which will answer for any unpaid bills for water, electricity, telephone, SkyCable charges, utilities (garbage/security), and/or damages to the Property and/or its furnishings for which the Second Party/lessee is responsible, excluding damages due to regular wear and tear not to exceed P5,000.00 (sic) shall be to (sic) the account of the Second Party/lessee. Such amounts shall be deducted from this deposit and the balance, if any, shall be refunded to the Second Party/lessee upon settlement of such accounts.

(b) Preserve the Property, provided, that any major structural changes, alterations or improvements therein cannot be undertaken without the written consent of the Second Party/lessor. However, any major alterations or improvements made or introduced by the Second Party/lessee on the Property with the written consent of the Second Party/lessor shall, upon termination of the lease, automatically inure to the Property and without any obligation on the part of the other Second Party/lessor to pay or refund its value or cost to the Second Party/lessee. Upon departure of the First Party from the Property, either due to death or relocation, all of her personal property (paintings, antiques, works of art, valuables) will be removed from the Property except for those items given or willed by the First Party to the Second Party/lessee. As such, the only assets to remain in the Property after the First Party leaves (for whatever reason) will be the following: i.) those gifted or willed by the First Party to the Second Party/lessee; ii.) those permanently attached or bolted to the Property, including but not limited to appliances, motors, generators; and iii.) the personal property of the Second Party/lessee. The Second Party/lessee shall keep an inventory of all the items under ii.) hereof and shall keep the same intact and in good and proper working condition.

(c) Bear other pertinent changes and costs for the maintenance and occupancy of the Property including fire insurance. Both the Second Party/lessor and Second Party/lessee, being the joint owners of the Property shall bear the real property tax expense.

(d) Upon occupancy of the Property by the Second Party/lessee, a property specialist (inspector or such type of person) chosen by the Second Party/lessor, shall do a complete and thorough review of the state of all aspects of the Property (all machines; roof, structures, flooring, walls, appliances, etc.) and prepare a complete report. At the end of the stay of the Second Party/lessee in the Property, the Second Party/lessor will have another thorough review. Any damage to the Property (as evidenced by a change between the initial review and the ending review) will be paid by the Second Party/lessee. If Second Party/lessee refuses to pay, then whatever the amount is necessary to fix the damage to get the Property prepared for resale will be taken from the portion of the sales proceeds due the Second Party/lessee. This will include expense needed to get the Property ready for resale such as, but not limited to repainting, recarpeting (sic), and other necessary repairs that are deemed required by the realtor because of wear and tear between the beginning of the twenty-four (24) month period and the end thereof.

### III. Disposition of the Property

After the lifetime of the First Party, the Second Party may offer the Property for sale to any interested third party at the purchase price based on the current market value, as determined by a real estate broker or appraiser who specializes in similar properties in the area, to be chosen by the Majority. If two of the Second Party herein bid on the Property, then the appraiser shall be chosen by the remaining two of the Second Party not bidding on the Property. If three of the Second Party bid for the property, then the appraiser shall be chosen by the remaining of the Second Party not bidding on the Property. Any of ECF, JCF, RCF, or MECF may offer to buy the Property by matching the offer price within a period of fifteen (15) days (the "Offer Period") from the date the offer to a third party is made. Payment

in cash shall be delivered by the buyer within forty[-]five (45) days after the Offer Period.<sup>14</sup> (Emphasis in the original)

Dulce nonetheless tolerated Enrique's stay in the property despite the execution of the foregoing contract of usufruct and memorandum of agreement in her favor. Enrique, however, refused to respect these contracts. He contributed a negligible amount for household expenses even though his entire family, household, staff, driver, and pets were allowed to stay in the property.<sup>15</sup>

Sometime in 2016, Roberto visited Dulce and got shocked when he chanced upon Dulce curled in a fetal position, with a swollen knee, and in poor health condition. Roberto and his wife Teresa brought her to the hospital and had her checked by a team of doctors. After several tests, it was discovered that she suffered a stroke two or three weeks ago.<sup>16</sup>

In October 2016, Ma. Elena flew from the United States of America (USA) after she got informed of Dulce's health condition. She got disappointed when she saw that the property was in disarray, filthy, and disorganized. Out of despair, Ma. Elena and Teresa arranged for a deep house cleaning to restore the habitable state of the property. They also shouldered the maintenance costs which respondent himself failed to do.<sup>17</sup>

To prevent the property from further deterioration, Jaime, Roberto, Ma. Elena and Enrique's daughters drafted some house rules which Dulce wholeheartedly accepted. By February 2017, Enrique had already violated almost all the house rules, prompting the family members in Manila to convene and draft new house rules taking into consideration Dulce's deteriorating health and the need for her to stay in a healthy environment. The siblings, including Enrique himself, acceded to the new house rules, albeit he simply disregarded the same, demonstrating defiance and even uttering threats which consequently caused Dulce's health to further deteriorate. Worse, he even tore the copy of the house rules posted in the garage.<sup>18</sup>

To ensure Dulce's well-being, Roberto and Ma. Elena installed closed-circuit television (CCTV) cameras in the family room, living room, and veranda to monitor her health and general condition. Enrique and his family, however, continued to stay in the property, together with their highly allergenic pets. He would even store his hunted fish and wild ducks in the freezer, thus contaminating the food in the refrigerator. On February 25, 2018, Roberto, Jaime, and Ma. Elena calmly requested Enrique to leave the property considering that all his children are already adults and for Dulce to be able to

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<sup>14</sup> *Id.* at 196–199.

<sup>15</sup> *Id.* at 300–301.

<sup>16</sup> *Id.* at 301.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 301–302.

peaceably enjoy the property as envisioned in the contract of usufruct and memorandum of agreement.<sup>19</sup>

But instead of vacating the premises, Enrique controlled the ingress and egress of the property and even removed the CCTV installed. Thus, on April 12, 2018,<sup>20</sup> Dulce executed an irrevocable special power of attorney in favor of Roberto, Jaime, and Ma. Elena for the general administration of the property, including the filing of appropriate cases to protect her interest.<sup>21</sup>

In their Formal Demand to Vacate<sup>22</sup> dated May 21, 2018, Dulce, through Jaime, Roberto, and Ma. Elena enforced the contract of usufruct and memorandum of agreement and requested for Enrique to leave the property.<sup>23</sup> On June 2, 2018,<sup>24</sup> Dulce wrote to all her children, including Enrique, and manifested her wish to be the sole occupant of the property and for Enrique and his family to leave. But Enrique refused.

Dulce repleaded the foregoing allegations to support her prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order.<sup>25</sup> She prayed that Enrique and all persons acting on his behalf to vacate the property, pay his accrued rent of PHP 500,000.00 per month reckoned from final demand, moral and exemplary damages of PHP 100,000.00 each, and attorney's fees of PHP 500,000.00.<sup>26</sup>

On February 4, 2019, Dulce officially moved out of the property.<sup>27</sup>

In his **Answer**,<sup>28</sup> Enrique moved to dismiss the case for alleged lack of jurisdiction in view of the absence of any allegation in the complaint on how Dulce's right as usufructuary had been denied or restricted since there was no dispossession to speak of in the first place.<sup>29</sup> His family's stay in the property was not by virtue of any act of tolerance on the part of Dulce but in the exercise of his right as a co-owner.<sup>30</sup> At any rate, Dulce's right as usufructuary do not conflict with his right to reside in the property as co-owner.<sup>31</sup>

In 1994, after the death of Jose, Enrique and his mother, Dulce, discussed the possibility of him moving back in the property as his mother did not wish to live there alone. At that time, he was already married with three

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<sup>19</sup> *Id.* at 302–303.

<sup>20</sup> *Id.* at 152–156.

<sup>21</sup> *Id.* at 303.

<sup>22</sup> *Id.* at 279–280.

<sup>23</sup> *Id.* at 303.

<sup>24</sup> *Id.* at 281.

<sup>25</sup> *Id.* at 307–308.

<sup>26</sup> *Id.* at 310.

<sup>27</sup> *Id.* at 284.

<sup>28</sup> *Id.* at 313–324.

<sup>29</sup> *Id.* at 322–323.

<sup>30</sup> *Id.* at 319.

<sup>31</sup> *Id.* at 320.

children and had a residence of his own in the same village. His mother initially asked Ma. Elena to live with her but the latter begged off as she had already established her residence and job in the USA. His other siblings likewise refused as they had their respective families and homes as well.<sup>32</sup>

Out of respect for his mother, he moved in to accompany and attend to the needs of his mother. The arrangement had no agreed time frame and was known to his other siblings. So as not to be a burden to his mother in case she decided it was time for him to move out, he initially did not sell his residence (a house and lot and a condominium unit) until 1998 when Dulce ordered them to rent out or sell their properties as she did not want them to leave her alone in the house.<sup>33</sup>

Through the Contract of Usufruct dated October 14, 1999, the siblings<sup>34</sup> granted Dulce usufructuary rights but with the concomitant agreement that he and his family could continue to stay in the property as they used to do for five years before the contract of usufruct even came into existence. On December 18, 2000, the siblings<sup>35</sup> executed a Memorandum of Agreement confirming Dulce's usufructuary rights subject to the same condition that his family shall continue to stay in the property.<sup>36</sup> His right as co-owner of the property therefore pre-dated the above documents and his mother knew that she was to continue living with him and his family there as they had always done so for 24 years, sans any issue at all.

Sometime in July 2016, Enrique's daughters Amanda Fernandez and Erika Fernandez (Erika) noticed that Dulce exhibited signs of forgetfulness. He relayed this observation to his siblings. Then came September 2016, when they heard a loud thud coming from Dulce's room. His daughter Erika rushed and chanced upon her "*Mamita*" (Dulce) lying on the floor. Dulce personal aide<sup>37</sup> and the head house help<sup>38</sup> rushed to assist her as Dulce seemed to have lost her balance on her way to the bathroom. They called her personal doctor, Dr. Paolo Lorenzo, to ensure she had no fractures.<sup>39</sup>

Enrique kept his siblings updated on the health condition of Dulce. After Dulce was found to have had undetected strokes, he did his best to keep the property conducive for her fast recovery. In fact, he had the property thoroughly cleaned and moved some of his stuffed trophies to his log cabin in Tagaytay. Due to her stroke, it was highly probable for Dulce to no longer be

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<sup>32</sup> *Id.* at 315.

<sup>33</sup> *Id.*

<sup>34</sup> Enrique, Jaime, Roberto, and Ma. Elena.

<sup>35</sup> *Rollo*, pp. 316

<sup>36</sup> *Id.* at 315-316.

<sup>37</sup> Nora.

<sup>38</sup> Ester Ap-ap.

<sup>39</sup> *Rollo*, p. 316.

able to process some information, shedding doubt on her supposed consent to the Special Power of Attorney dated April 12, 2018.<sup>40</sup>

The house rules were clearly imposed to make his family's stay in the property as uncomfortable as possible. He was even denied access to his mother's health condition and medical records.<sup>41</sup>

He prayed for moral damages of PHP 5,000,000.00 and attorney's fees of PHP 1,000,000.00.<sup>42</sup>

By Order<sup>43</sup> dated November 20, 2018, Branch 63, Metropolitan Trial Court for Makati City denied Dulce's application for temporary restraining order and/or writ of preliminary injunction.

### **Ruling of the Metropolitan Trial Court**

In its Decision<sup>44</sup> dated January 14, 2020, the Metropolitan Trial Court ruled:

**WHEREFORE**, defendant ENRIQUE C. FERNANDEZ and all persons acting under his control and directions, or claiming any right under him are hereby ordered to:

1. Immediately and peacefully vacate the subject premises covered by TCT No. 217361, located at 1381 Palm Avenue, Dasmariñas Village, Makati City, and to surrender its full possession in favor of herein plaintiff Ma. Dulce C. Fernandez; and

2. Pay attorney's fees in the amount of One Hundred Thousand Pesos (Php100,000.00) plus costs of suit amounting to Seventy-Four Thousand Three Hundred Seventy[-]Four Pesos and 50/100 (Php74,374.50).

**SO ORDERED.**<sup>45</sup> (Emphasis in the original)

It held that through the Contract of Usufruct and Memorandum of Agreement, the siblings<sup>46</sup> unanimously granted their mother (Dulce) full control and possession of the property during her lifetime. This right of possession and control will never be complete if Enrique continues to be likewise in possession of the property simultaneous with Dulce. Enrique's possession became illegal from the time he received the demand to vacate

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<sup>40</sup> *Id.* at 316–317.

<sup>41</sup> *Id.* at 317.

<sup>42</sup> *Id.* at 323–324.

<sup>43</sup> *Id.* at 1169–1172.

<sup>44</sup> *Id.* at 438–443.

<sup>45</sup> *Id.*

<sup>46</sup> Enrique, Roberto, Jaime, and Ma. Elena.

under letter dated May 21, 2018, but refused to heed the same. As a co-owner, he could not claim a definite portion of the undivided property.<sup>47</sup>

For lack of basis, the Metropolitan Trial Court denied Dulce's claims for payment for Enrique's use and occupation of the property and for moral and exemplary damages.<sup>48</sup>

Pending Enrique's appeal, Dulce moved<sup>49</sup> to fix rent *ad cautelam* and prayed that the Metropolitan Trial Court fix the monthly deposit which Enrique must post pending appeal. Considering that the subject property covers an area of 4,000 square meters, she prayed that a monthly rent of PHP 1,600,000.00 be imposed based on prevailing monthly rate of PHP 400,000.00 for a house and lot with an area of 1,000 square meters in Dasmariñas Village, Makati City per the Hoppler website.

Enrique opposed<sup>50</sup> on the ground that Dulce's motion was premature and a prohibited pleading under the Rules on Summary Procedure.

In Dulce's reply to the opposition,<sup>51</sup> she countered that her motion to fix rent *ad cautelam* was not premature and not prohibited under the Rules on Summary Procedure. She prayed that the monthly rent be fixed at PHP 500,000.00—a reasonable rent compared to PHP 650,000.00 based on the Judicial Affidavit<sup>52</sup> of Wilfredo Manzon (Manzon), a licensed real estate broker and appraiser. The rate provided by Manzon was based on the prevailing rent on four different properties situated in the same village where the property lies.

The case on appeal got raffled to Branch 149, Regional Trial Court, Makati City.<sup>53</sup>

After the parties submitted their respective memoranda,<sup>54</sup> Dulce moved for execution with prayer for break-open order<sup>55</sup> and likewise moved to cite Enrique in contempt. Enrique moved to compel Dulce to appear for the Judicial Dispute Resolution proceedings which were all denied by Order<sup>56</sup> dated October 16, 2020.

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<sup>47</sup> *Rollo*, pp. 440–441.

<sup>48</sup> *Id.* at 442.

<sup>49</sup> *Id.* at 444–449.

<sup>50</sup> *Id.* at 450–453.

<sup>51</sup> *Id.* at 455–465.

<sup>52</sup> *Id.* at 466–476.

<sup>53</sup> *Id.* at 556.

<sup>54</sup> *Id.* at 1752–1769, Petitioner's Memorandum; *id.* at 1738–1751, Respondent's Memorandum.

<sup>55</sup> *Id.* at 1785–1794.

<sup>56</sup> *Id.* at 1798–1800.

On October 30, 2020, Dulce moved for partial reconsideration insofar as the denial of her prayer to fix monthly rent and enforcement of the judgment of the Metropolitan Trial Court were concerned.<sup>57</sup>

Thereafter, the case got re-raffled to Branch 233, Regional Trial Court, Makati City.<sup>58</sup>

On November 19, 2020, Dulce moved<sup>59</sup> for the voluntary inhibition of Acting Presiding Judge Jose Augusto Arreza, claiming that the latter might have already pre-judged the case owing to his adverse decision in a related case docketed as Civil Case No. R-MKT-19-03122-CV (a petition to annul the Contract of Usufruct) partially denying her affirmative defenses. The Motion got denied by Resolution<sup>60</sup> dated November 23, 2020. Dulce moved to reconsider.<sup>61</sup>

### **Ruling of the Regional Trial Court**

Through its Decision<sup>62</sup> dated July 7, 2021, Branch 233, Regional Trial Court, Makati City modified, thus:

CONSEQUENTLY, this [court] hereby affirms the Decision dated 14 January 2020 by the court *a quo* with the modification that the sum due as reasonable compensation for the use and occupation of No. 1381 Palm Avenue, Dasmariñas Village, Makati City by the defendant from 21 May 2018 shall be P325,000.00 per month.

SO ORDERED.<sup>63</sup> (Emphasis in the original)

It ruled that the rights of the co-owners of the property were circumscribed by the contract of usufruct and memorandum of agreement.<sup>64</sup> In the first, the siblings constituted a usufruct on the property effective during the lifetime and for the benefit of Dulce and granted unlimited use and access to the property. In the second, the siblings<sup>65</sup> ceded to Dulce full control and possession of the property during her lifetime. None of the siblings were allowed to stay except only when Dulce herself shall have left the property for whatever reason and provided that the occupancy by any of them shall bear the written consent of the rest of the co-owners.<sup>66</sup>

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<sup>57</sup> *Id.* at 1802–1822.

<sup>58</sup> *Id.* at 556.

<sup>59</sup> *Id.* at 1824–1829.

<sup>60</sup> *Id.* at 1831–1833.

<sup>61</sup> *Id.* at 1835–1843.

<sup>62</sup> *Id.* at 538–544.

<sup>63</sup> *Id.* at 544.

<sup>64</sup> *Id.* at 541.

<sup>65</sup> Enrique, Roberto, Jaime, and Ma. Elena.

<sup>66</sup> *Rollo*, pp. 541–542.

Since Enrique's occupancy was by mere tolerance by his co-owners, the Regional Trial Court awarded a reasonable monthly rent of PHP 325,000.00 reckoned from May 21, 2018—when Enrique refused to vacate the property.<sup>67</sup>

### **Ruling of the Court of Appeals**

In its Decision<sup>68</sup> dated September 15, 2022, the Court of Appeals reversed, viz.:

WHEREFORE, in view of the foregoing:

1. The Decision dated 7 July 2021 issued by the RTC Branch 233, Makati City (which sustained the earlier Decision dated 14 January 2020 issued by the MeTC Branch 62, Makati City), is hereby REVERSED and SET ASIDE;

2. The Resolution (of Execution) dated 3 November 2021, and, the Writ of Execution dated 21 December 2021, issued by the RTC Branch 233, Makati City are hereby annulled and quashed, respectively;

3. When this Decision becomes final and executory:

3.1. The Court *a quo* is directed to restore and reinstate petitioner ENRIQUE C. FERNANDEZ in the subject property located at 1381 Palm Ave., Dasmariñas Village, Makati City, covered by TCT No. 217361 (and/or its derivative titles);

3.2. Respondent MA. DULCE C. FERNANDEZ is directed to restitute to petitioner ENRIQUE C. FERNANDEZ the amount of Php 14,473,374.50, with 6% interest per annum, from 29 March 2022, until fully paid.

3.3. The RTC award “. . . for the reasonable compensation xxx (which is P325,000.00)” and, MeTC award of “attorney’s fees in the amount of One Hundred Thousand Pesos (Php 100,00.00) plus costs of suit amounting to Seventy Four Thousand Three Hundred Seventy Four Pesos and 50/100 (Php 74,374.50)” . . . are vacated.

**SO ORDERED.**<sup>69</sup> (Emphasis in the original)

According to the Court of Appeals, the elements of unlawful detainer have not been established. Dulce failed to prove that she merely tolerated Enrique's entry into the property. For even before the execution of the contract of usufruct and memorandum of agreement on October 14, 1999 and December 18, 2000, respectively, Enrique was already in possession of the property. As co-owner, Enrique need not seek Dulce's permission to live with

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<sup>67</sup> *Id.* at 543.

<sup>68</sup> *Id.* at 9–43.

<sup>69</sup> *Id.* at 42–43.

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her in the same property.<sup>70</sup> As co-owner, Enrique could not be evicted from the property through a mere summary possessory writ.<sup>71</sup>

It disregarded the existence of a special power of attorney executed by Dulce in favor of her other children<sup>72</sup> on the ground that there is a pending case for its annulment.<sup>73</sup> The Court of Appeals even doubted that the subject property on one hand and the property mentioned in the contract of usufruct were one and the same, considering that there was no mention at all of the corresponding transfer certificate of title.<sup>74</sup> Citing Articles 226<sup>75</sup> and 227<sup>76</sup> of the Family Code and *Moralidad v. Sps. Pernes*,<sup>77</sup> the Court of Appeals went on to emphasize that there were instances when an owner and the usufructuary would both be in possession of the same property simultaneously.<sup>78</sup>

At any rate, the Court of Appeals noted that nowhere in the contract of usufruct or memorandum of agreement did the word “exclusive” appear. In any event, if Dulce truly withheld the possession of the property from anyone as a condition for her execution of the Deed of Sale dated September 18, 2000, pertaining to her 50% share, Enrique need not surrender such property already withheld from him and all others.<sup>79</sup>

The Court of Appeals noted Dulce’s Urgent Manifestation and Motion dated February 7, 2022, wherein she informed the court that the property had already been turned over to her<sup>80</sup> and that on July 25, 2022, Enrique’s payment by manager’s check of PHP 14,473,374.50 was already cleared and honored by the drawee bank.<sup>81</sup>

Thus, the Court of Appeals ordered that Enrique be reinstated in the property and refunded the amount of PHP 14,47[3],374.50,<sup>82</sup> with 6% interest

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<sup>70</sup> *Id.* at 26–30.

<sup>71</sup> *Id.* at 37.

<sup>72</sup> Roberto, Jaime, and Ma. Elena.

<sup>73</sup> *Rollo*, p. 39.

<sup>74</sup> *Id.* at 29–30.

<sup>75</sup> FAMILY CODE, art. 226. The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in ownership and shall be devoted exclusively to the latter’s support and education, unless the title or transfer provides otherwise.

The right of the parents over the fruits and income of the child’s property shall be limited primarily to the child’s support and secondarily to the collective daily needs of the family.

<sup>76</sup> FAMILY CODE, art. 227. If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonable monthly allowance in an amount not less than that which the owner would have paid if the administrator were a stranger, unless the owner grants the entire proceeds to the child. In any case, the proceeds thus given in whole or in part shall not be charged to the child’s legitime.

<sup>77</sup> 529 Phil. 523, 528 (2006) [Per J. Garcia, Second Division].

<sup>78</sup> *Rollo*, pp. 30–31.

<sup>79</sup> *Id.* at 32–36.

<sup>80</sup> *Id.* at 40.

<sup>81</sup> *Id.*

<sup>82</sup> Per CA Dispositive Portion, *Rollo*, pp. 42–43.

per annum from March 29, 2022 until fully paid. It further vacated the awards of reasonable compensation, attorney's fees, and costs of suit.<sup>83</sup>

Following Dulce's Motion for Reconsideration, she also filed an Urgent Motion for Inhibition of Hon. Associate Justice Rex Bernardo L. Pascual (Associate Justice Pascual) from the case, with prayer to defer resolution of the case.<sup>84</sup> By Resolution<sup>85</sup> dated January 5, 2023, Associate Justice Pascual recused himself from the case.

Thereafter, the case was raffled to a new *ponente*, Hon. Associate Justice Tita Marilyn B. Payoyo-Villordon. Nonetheless, by Resolution<sup>86</sup> dated March 3, 2023, the Court of Appeals denied Dulce's Motion for Reconsideration.

### The Present Petition

Dulce now urges the Court to exercise its discretionary jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. She argues that the Court of Appeals completely ignored the lower courts' findings that Enrique, together with his siblings, ceded exclusive possession of the property in her favor through the contract of usufruct, as supplemented by the memorandum of agreement.<sup>87</sup> The two documents superseded whatever feigned or imagined right of possession Enrique supposedly had over the property. The absence of a title number therein did not invalidate the aforesaid documents.<sup>88</sup>

When Enrique and his siblings bought the property from their father Jose in 1993, the parties understood that the sale only involved the naked title thereto, sans the right of usufruct. Should the phrase "unlimited use and access" be insufficient to entail exclusivity, resort could be had to Item II of the memorandum of agreement which expressly prohibited the co-owners from indefinitely staying in the property from the time she shall have left it.<sup>89</sup>

The fact that Dulce merely tolerated Enrique's stay in the property was clearly established. As he was then facing marital problems, he admitted that he moved back into the property in 1993 or only a year after the siblings bought Jose's share. Enrique did so to ask her to help him in raising his young children. She allowed him and his family to live with her in the property.<sup>90</sup>

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<sup>83</sup> *Id.* at 42-43.

<sup>84</sup> *Id.* at 734-750.

<sup>85</sup> *Id.* at 757-758.

<sup>86</sup> *Id.* at 46-48.

<sup>87</sup> *Id.* at 75.

<sup>88</sup> *Id.* at 82.

<sup>89</sup> *Id.* at 80.

<sup>90</sup> *Id.* at 91-92.

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As his purported right to stay in the property was absent in the contract of usufruct and memorandum of agreement, the *parol* evidence rule dictates that such supposed right be deemed nonexistent. At any rate, she did not acquire possession of the property from the two aforesaid documents. Rather, the documents only served as proof of her right of possession. In any event, Enrique himself did not deny that the property is subject to these two documents.<sup>91</sup>

Articles 226 and 227 of the Family Code do not apply in this case because none of the parties is an unemancipated child. Neither provision deals with the right of possession. Nor does *Moralidad* find applications here. For unlike in *Moralidad*, what is involved here is an absolute usufruct which precludes the owner from similarly using the property.<sup>92</sup>

Through her attorneys-in-fact,<sup>93</sup> Dulce validly demanded that Enrique vacate the property per demand letter dated May 21, 2018. In her Sworn Statement<sup>94</sup> dated August 8, 2019, she affirmed the authority of her attorneys-in-fact to serve such a demand on Enrique and to file the appropriate action. That Enrique himself has filed an action for annulment of the special power of attorney which she executed in favor of her attorneys-in-fact has nothing to do with the present case.<sup>95</sup>

In Opposition,<sup>96</sup> Enrique essentially supported the dispositions of the Court of Appeals. He reiterated his right to stay in the subject property as co-owner thereof and his family's continued stay did not defeat Dulce's usufructuary rights. He surmised that Roberto and Ma. Elena resented his family's stay in the subject property and wanted to slowly ease him out of the premises.

Too, Dulce failed to establish prior tolerance as basis of possession. Enrique was already in possession of the subject property in the concept of an owner for about five to six years, respectively, when the Contract of Usufruct dated October 14, 1999, and Memorandum of Agreement dated September 18, 2000 were entered into. Considering the foregoing, it was irrelevant whether the sale of the share of Jose in the subject property covered only the title and not possession.<sup>97</sup>

Meanwhile, the contract of usufruct and memorandum of agreement did not grant Dulce exclusive possession of the subject property. At most, the words "unlimited" and "full" that were used to characterize the use, access, control, and possession of Dulce over the subject property merely refer to the

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 92-95.

<sup>93</sup> Roberto, Jaime, and Ma. Elena.

<sup>94</sup> *Rollo*, pp. 408-416.

<sup>95</sup> *Id.* at 97-104.

<sup>96</sup> *Id.* at 795-847.

<sup>97</sup> *Id.* at 818-819.

extent of which such rights may be exercised over the premises as these, taken and understood in their ordinary meaning and usage, refer to breadth, vastness, and freedom while the term “exclusive” denotes selectiveness and restriction.<sup>98</sup>

Item II of the Memorandum of Agreement dated September 18, 2000 reveals that the prohibition for Enrique to stay in the property on an indefinite basis or for a period longer than 24 months pertains only to the co-owners and not Dulce because it is they and not her, who must consent and mutually agree to the terms and conditions thereof, which must be reduced in writing.<sup>99</sup>

The circumstances surrounding the execution of the Contract of Usufruct dated October 14, 1999 and Memorandum of Agreement dated September 18, 2000 show the intent not to grant exclusive possession of the subject property to Enrique and to allow him and his family to stay with Dulce. For one, the documents were executed at a time when he had already been staying in the subject property together with Dulce for several years sans any issue. On the contrary, Dulce had actually no right to stay in the subject property save for the rights granted under the contract of usufruct and memorandum of agreement.<sup>100</sup>

Dulce’s letter dated February 11, 2001 appears to be nothing more than the personal misgivings of a mother towards a son. Enrique did not assert the existence of an unwritten agreement for him to stay at the property as his argument was that the intent of the parties based on their prior, contemporaneous, and subsequent acts was for him to stay in the property concurrent with Dulce.<sup>101</sup>

Importantly, it is Dulce who contradicts herself. If the right of usufruct had indeed been withheld from Enrique upon the sale of the share of Jose in the subject property as she claims it to be, then he would have nothing to surrender, especially insofar as possession of the premises is concerned.<sup>102</sup>

Even assuming that Dulce had exclusive possession of the subject property, she had effectively and unmistakably waived her right and is now estopped from acting thereon. Notwithstanding the execution of the Contract of Usufruct dated October 14, 1999 and Memorandum of Agreement dated September 18, 2000, Dulce stayed and resided with Enrique in the subject property since 1998 which shows that she had never intended to exercise these and in fact relinquished these for the sake of being with her eldest son and his family.<sup>103</sup>

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<sup>98</sup> *Id.* at 821–822.

<sup>99</sup> *Id.* at 822.

<sup>100</sup> *Id.* at 822–823.

<sup>101</sup> *Id.* at 823–825.

<sup>102</sup> *Id.* at 827.

<sup>103</sup> *Id.* at 827–830.

By Dulce's inaction and silence all these years, she not only led Enrique to believe that he could stay and reside in the subject property but also that she would never seek or cause his ouster especially as his family had comfortably established their lives with her for decades.<sup>104</sup>

Even assuming the contrary were true and a valid demand was made, the action for unlawful detainer must still fail since tolerance did not precede at the onset and formed the basis for his possession and such was not exclusive to Dulce. The Letter dated May 21, 2018 is insufficient as a demand to vacate. *One*, the demand was not made for and on behalf of Dulce but rather from Enrique's co-owners Roberto, Jaime, and Ma. Elena. *Two*, there is nothing in the letter to show that it was conveyed by Dulce. *Lastly*, when Enrique confronted Dulce about the demand to vacate, she had no clue but instead proceeded to consider rooming arrangements not only for her children but also her grandchildren (Enrique's daughters).<sup>105</sup>

Lastly, Dulce is not entitled to reasonable rentals because as co-owner, Enrique cannot be made to pay rentals. There was no lease and if there was one, this was only between him and co-owners Roberto, Jaime, and Ma. Elena. At any rate, Enrique did not occupy the subject property to the exclusion of Dulce or his co-owners Roberto, Jaime, and Ma. Elena.<sup>106</sup>

### Issue

Can the usufructuary eject the co-owner of the property during the effectivity of the usufruct?

### Ruling

We reverse.

*Unlawful detainer* is an action to recover possession of real property from one who unlawfully withholds its possession after the termination of his or her right of possession under any contract, express or implied. The defendant's possession in unlawful detainer was originally legal but became illegal due to termination of the right to possess.<sup>107</sup> This action may be filed by one who is not an owner of the property in dispute.<sup>108</sup>

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

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<sup>104</sup> *Id.* at 830.

<sup>105</sup> *Id.* at 823–836.

<sup>106</sup> *Id.* at 838–840.

<sup>107</sup> *Chansuyco v. Spouses Paltep*, 860 Phil. 13, 14 (2019) [Per J. Lazaro-Javier, Second Division].

<sup>108</sup> *Spouses Maninang v. Court of Appeals*, 373 Phil. 304, 309 (1999) [Per J. Quisumbing, Second Division].

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 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 the defendant to vacate the property, the plaintiff instituted the complaint for ejectment.<sup>109</sup>

These jurisdictional facts must be alleged in the complaint itself for unlawful detainer. Failure to do so divests the first level court of jurisdiction over the case.<sup>110</sup>

Here, the complaint sufficiently alleged the essential requisites for unlawful detainer, viz.:

.....

- 2.3 After the death of Jose B. Fernandez in 1994, Enrique sought the permission of Ma. Dulce to allow him and his children, Erika, Amanda, and Enriqueito, to stay in the Dasmariñas Village property and asked for her help in the raising of his children. Consequently, Ma. Dulce allowed them to sojourn with her in the said property.
- 2.4 Subsequently, the siblings Enrique, Roberto, Jaime and[,] Ma. Elena have agreed to grant their mother, Ma. Dulce the lifetime benefit, unlimited use and access, and exclusive control and possession of the Dasmariñas Village property by virtue of a Contract of Usufruct dated 14 October 1999.
- 2.5 With the execution of the Contract of Usufruct, all the rights, save for disposition, were transferred to Ma. Dulce.
- 2.6 On 18 September 2000, the fifty percent (50%) share of Ma. Dulce was transferred equally to the siblings Enrique, Roberto, Jaime[,] and Ma. Elena by virtue of a Deed of Absolute Sale dated 18 September 2000, making each sibling's share equal to twenty five percent (25%) of the property in issue.
- 2.7 To supplement and further bolster the usufructuary rights of Ma. Dulce[,] the parties herein executed a Memorandum of Agreement dated 18 December 2000, where it was agreed that plaintiff shall have the full control and possession of the Dasmariñas Village property during her lifetime.
- 2.8 Despite the transfer of the rights over the beneficial use of the Dasmariñas Village property, including the exclusive right to possess the property, plaintiff Ma. Dulce tolerated defendant's continued stay therein.

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<sup>109</sup> See *Chansuyco v. Spouses Paltep*, 860 Phil. 13, 14 (2019) [Per J. Lazaro-Javier, Second Division].

<sup>110</sup> *Id.*

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.....

2.24 Thus, on 12 April 2018, Ma. Dulce executed an irrevocable special power of attorney in favor of Roberto, Jaime[,] and Ma. Elena for the general administration of the Dasmariñas Village property, including the power and authority to file appropriate cases to protect her interest and usufructuary rights.

.....

2.26 Concomitant thereto, the said attorneys-in-fact through counsel, wrote a Demand Letter dated 21 May 2018<sup>12</sup> to defendant enforcing Ma. Dulce's usufructuary rights and requesting him to vacate the Dasmariñas Village property so that their mother can peacefully possess the same.

2.27 Additionally, Ma. Dulce wrote a letter to all her children, including herein defendant. In the said letter, she categorically declared that she wishes to be the sole resident and occupant of the Dasmariñas Village property, and that defendant and his family should immediately leave and establish their own home elsewhere.

2.28 However, despite receipt and knowledge of the demand letter and Ma. Dulce's letter, defendant refused and continues to refuse to vacate the aforesaid property.<sup>111</sup>

Preliminarily, it is undisputed that the siblings Enrique, Jaime, Roberto, and Ma. Elena (Dulce's children) are the co-owners of the subject property by virtue of: *one*, the Deed of Absolute Sale dated May 28, 1993 where Jose transferred his 50% share in the subject property to the siblings; and *two*, the Deed of Absolute Sale dated September 18, 2000 whereby Dulce herself transferred her own 50% share in the subject property to the siblings—making each sibling's share equal to 25% of the property. The complaint thus alleged:

2.2 In 1993, the fifty percent (50%) share of Jose B. Fernandez was transferred equally to the siblings Enrique C. Fernandez, Roberto C. Fernandez (Robert), Jaime C. Fernandez (Jaime) and Ma. Elena C. Fernandez (Ma. Elena) through a Deed of Absolute Sale dated 28 May 1993, with the following proportion:

.....

2.6 On 18 September 2000, the fifty percent (50%) share of Ma. Dulce was transferred equally to the siblings Enrique, Roberto, Jaime[,] and Ma. Elena by virtue of a Deed of Absolute Sale dated 18 September 2000, making each sibling's share equal to twenty five percent (25%) of the property in issue.<sup>112</sup>

But as things stand, the co-owners themselves conveyed in favor of their mother (Dulce) full right of possession and use of, as well as access to,

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<sup>111</sup> *Rollo*, pp. 303–304.

<sup>112</sup> *Id.* at 299–300.

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the property via the Contract of Usufruct dated October 14, 1999, as supplemented by the Memorandum of Agreement dated December 18, 2000.

Usufruct gives the usufructuary the right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.<sup>113</sup> As a co-owner, Enrique parted with his right to possess and enjoy the property in favor of Dulce as usufructuary to last during her lifetime. In so doing he only retains the *jus disponendi* or the power to alienate the same insofar as his undivided share is concerned.<sup>114</sup> As for the memorandum of agreement, the siblings including Enrique himself further authorized Dulce to exercise full control and possession of the property effective and to last during her lifetime.

What then was the effect, if any, of the continuous stay of Enrique and his family on the property to the rights of Dulce as usufructuary thereof? The answer is plain and simple. It did not diminish the rights of Dulce as such and the continuous stay of Enrique and his children on the property was deemed to be by mere tolerance of Dulce. And when Dulce, through her attorneys-in-fact, demanded for them to vacate the property on May 21, 2018, that tolerance was deemed terminated. From then on, their possession of the property became illegal such that when Dulce filed the complaint for illegal detainer against Enrique on October 22, 2018, well within the one-year period, she did so pursuant to her exclusive right of possession as usufructuary of the property.

That the word “exclusive” is not mentioned in the contract of usufruct nor in the memorandum of agreement does not mean it is not exclusive. *For one*, these documents do not carry any reservation clause in favor of the co-owners or any of them. *For another*, the grant of full control and possession to Dulce effective through her lifetime speaks of exclusivity. As aptly observed by the Metropolitan Trial Court,<sup>115</sup> Dulce’s possession and control can never be “full” if the intention was to share the same with Enrique or someone else.<sup>116</sup>

Contrary to the findings of the Court of Appeals, *Moralidad* does not apply in this case. *For one*, *Moralidad* involved a limited usufruct as shown by the following covenants:

I, MERCEDES VIÑA MORALIDAD, of legal age, single, having been born on the 29th day of January 1923, now actually residing at 802I Lindbergh Boulevard, Philadelphia, Pennsylvania, U.S.A., wishes to

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<sup>113</sup> CIVIL CODE, art 562.

<sup>114</sup> See *Spouses Rosario v. Government Service Insurance System*, G.R. No. 200991, March 18, 2021 [Per J. Zalameda, Third Division].

<sup>115</sup> Memorandum of Agreement, par. I.

<sup>116</sup> *Rollo*, p. 441. Metropolitan Trial Court Decision.

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convey my honest intention regarding my properties situated at Palm Village Subdivision, Bajada, Davao City, 9501, . . . and hereby declare:

1. That it is my desire that Mr. and Mrs. Diosdado M. Pernes **may** build their house therein and stay as long as they like;  
.....
3. That anyone of my kins **may** enjoy the privilege to stay therein and may avail the use thereof. Provided, however, that the same is not inimical to the purpose thereof;<sup>117</sup> (Emphasis supplied)

Meanwhile, the usufruct constituted in favor of Dulce in this case is absolute, viz.:

This Contract of Usufruct shall be for the lifetime benefit and enjoyment of the Usufructuary, who shall have unlimited use and access to the Property.<sup>118</sup>

*For another, Moralidad* involved a resolutive condition for the members of the family who wished to stay in the property, thus:

2. That anybody of my kins who wishes to stay on the aforementioned real property should maintain an atmosphere of cooperation, live in harmony and must avoid bickering with one another.

In this case, Dulce's rights as usufructuary are extinguished only upon her death, viz.:

The Usufruct shall automatically be extinguished by the death of the usufructuary.<sup>119</sup>

While Section II of the Memorandum of Agreement dated December 18, 2000, provides two conditions when a co-owner may be allowed to stay in or occupy the property, viz.:

## **II. Occupancy and Use of Property**

At no point shall any of the Second Party or any member of their respective families stay in, or occupy the Property on an indefinite basis or for a period longer than twenty-four (24) months (from the time the First Party leaves the Property for any reason whatsoever), unless consented to in writing by the majority comprised of three (3) of the Second Party (the "Majority"), and under such specific terms and conditions as the latter shall mutually agree upon.

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<sup>117</sup> 529 Phil. 523, 528 (2006) [Per J. Garcia, Second Division].

<sup>118</sup> *Rollo*, pp. 161.

<sup>119</sup> *Id.* at 161-163.

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It is hereby agreed that any of the Second Party or any member of their respective families who will be allowed to stay in or occupy the Property (as Second Party/lessee), in accordance with the foregoing provision, shall:

a) Pay the following:

- (i) all maintenance and upkeep costs of the Property, including all utilities, telephone, cable, association dues, and other charges enumerated in (ii) below during the term of the lease.
- (ii) monthly rental for the Property at prevailing market rate as determined by a specialist in rental properties in the area, to be chosen by the Second Party/lessor; and, payable one (1) year in advance, inclusive of association dues and special assessments.
- (iii) security deposit equivalent to three (3) months rental, which will answer for any unpaid bills for water, electricity, telephone, SkyCable charges, utilities (garbage/security), and/or damages to the Property and/or its furnishings for which the Second Party/lessee is responsible, excluding damages due to regular wear and tear not to exceed P5,000.00 shall be to the account of the Second Party/lessee. Such amounts shall be deducted from this deposit and the balance, if any, shall be refunded to the Second Party/lessee upon settlement of such accounts.<sup>120</sup>  
(Emphasis in the original)

There is no occasion on which this exception clause may apply in the present case. First, the usufructuary (First Party) must have already left the property; second, a co-owner's stay in the property must be consented to in writing by majority of the co-owners; third, the stay must be for an indefinite time or longer than 24 months; and fourth, the co-owner concerned must pay the maintenance and upkeep costs, rent, and security deposit.

To be sure, the fact that Dulce has not left the property and no written consent by at least three of the co-owners was given to authorize Enrique's stay in the property are twin conditions which negate the application of the exception clause here. But how was Enrique, together with his family, able to stay in the property for such a long time or a total of 24 years?<sup>121</sup> It was because of Dulce's sheer tolerance and nothing else.

But from the time this tolerance ended on May 21, 2018, as indicated in the demand letter to vacate, Enrique became liable to pay reasonable rent in the amount of PHP 325,000.00 per month for his use of the property

<sup>120</sup> *Id.* at 1738-1751.

<sup>121</sup> Reckoned from 1994 until the filing of the complaint on October 22, 2018.

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reckoned from May 21, 2018.<sup>122</sup> We thus affirm the disquisition of the Regional Trial Court on this score:

On the basis of the finding that Enrique voluntarily surrendered his right to enjoy the use of the Dasmariñas Village property, and that his occupancy thereof was by mere tolerance by the other co-owners thereof, the latter are entitled to the cost of Enrique's reasonable use thereof. This entitlement to reasonable rent, however, arose only from the time of Enrique's refusal to vacate the Dasmariñas Village property on 21 May 2018. While there may have been no stipulation in the Memorandum of Agreement for the party who may temporarily occupy it to pay rent, Enrique occupied and used it without the written consent of the other co-owners and even while Dulce was occupying it, in clear violation of the conditions for the occupancy and use thereof. Hence, Enrique should pay reasonable rent for his occupancy and use of the Dasmariñas Village property from the time the cause of action accrued on 21 May 2018.

The plaintiff relies on and has submitted to the Court to which this appeal was initially raffled the Judicial Affidavit of Wilfredo DC. Manzon, a registered property appraiser, in support of the determination of reasonable value of the use and occupation of the Dasmariñas Village property. This Court has examined the witness' report that contains his opinion that the Fair Rental Value of the Dasmariñas Village property is at least P650,000.00 per month. This is based on the asking rent for four (4) other properties in the same area as the Dasmariñas Village property, which ranged from P420,000.00 to P600,000.00 per month. Using the Market Data Approach, which is based primarily on the principle of substitution, data was collected on recent market rents of properties similar to the subject being valued.

This Court has taken note, however, that the appraisal of the four (4) other properties that were used as benchmark for the appraisal of the current rental value of the Dasmariñas Village property apparently did not take into account the age of the structures and their current condition. The appraiser admitted not having physically inspected these properties and neither did he inspect the Dasmariñas Village property because its physical inspection was not allowed. He only made street observation, and the building specifications and finishes were based on plans, cost and bill of materials and other documents that were furnished him. Per the allegations in the Complaint, the Dasmariñas Village property is not exactly in tip-top condition. Moreover, Enrique did not have the exclusive occupation and use of the Dasmariñas Village property. He occupied it together with Dulce. All told, this Court is of the opinion that a monthly rent of half the appraised rental value or P325,000.00 would be reasonable.<sup>123</sup>

The Court of Appeals though aptly noted that Enrique left the property on February 2, 2022 and paid PHP 14,47[3],374.50<sup>124</sup> by way of rent, viz.:

In an Urgent Manifestation and Motion dated 7 February 2022, respondent reported to Us that, "On 2 February 2022, Sheriff Homer

<sup>122</sup> Date of demand letter to vacate.

<sup>123</sup> *Rollo*, pp. 543-544.

<sup>124</sup> Per CA Dispositive Portion. *Rollo*, pp. 42-43.

Samson of RTC Makati Branch 233 implemented the (said) Writ (of Execution) resulting in the peaceful and formal transfer of possession from herein petitioner to the private respondent.” This was followed by a Compliance dated 25 July 2022, where respondent further reported that, “On 4 April 2022, respondent filed a Manifestation stating that the Manager’s Check issued by Petitioner (in the amount of Php 14,47[3],374.50)<sup>125</sup> was cleared and honored by the drawee bank.<sup>126</sup>

Nonetheless, since Dulce was compelled to litigate to protect her rights, we reinstate the Metropolitan Trial Court’s award of attorney’s fees of PHP 100,000.00 in accordance with Article 2208<sup>127</sup> of the New Civil Code<sup>128</sup> plus costs of suit amounting to PHP 74,374.50.

Lastly, the remaining monetary awards shall earn 6% interest per annum from the date of finality of this Decision until full payment, pursuant to *Nacar v. Gallery Frames*.<sup>129</sup>

**ACCORDINGLY**, the Petition is **GRANTED**. The Decision dated September 15, 2022 and Resolution dated March 3, 2023 of the Court of Appeals in CA-G.R. SP No. 169784 are **REVERSED**. The Decision dated July 7, 2021 of Branch 233, Regional Trial Court, Makati City is **REINSTATED with MODIFICATION**. Respondent Enrique C. Fernandez is **ORDERED** to:

1. **COMPLY** with his commitments under the Contract of Usufruct dated October 14, 1999 and Memorandum of Agreement<sup>130</sup> dated December 18, 2000; and
2. **PAY** attorney’s fees of PHP 100,000.00 plus costs of suit amounting to PHP 74,374.50. Legal interest of 6% per annum is imposed on these amounts from finality of this Decision until fully paid.

<sup>125</sup> *Id.*

<sup>126</sup> *Rollo*, p. 40.

<sup>127</sup> CIVIL CODE, art. 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except: . . .

(8) In actions for indemnity under workmen’s compensation and employer’s liability laws. . .

<sup>128</sup> See *Chan v. Magsaysay Maritime Corp.*, 872 Phil. 1061, 1064 (2020) [Per J. Lazaro-Javier, First Division].

<sup>129</sup> 716 Phil. 267, 283 (2013) [Per J. Peralta, *En Banc*].

<sup>130</sup> *Rollo*, pp. 196–199.

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The Court **NOTES** that **FULL POSSESSION** of the property covered by TCT No. 217361 located at 1381 Palm Avenue, Dasmariñas Village, Makati City has been delivered to Ma. Dulce C. Fernandez and reasonable rent of PHP 325,000.00 per month for the use and occupation of the property reckoned from May 21, 2018 has been paid.

**SO ORDERED.**

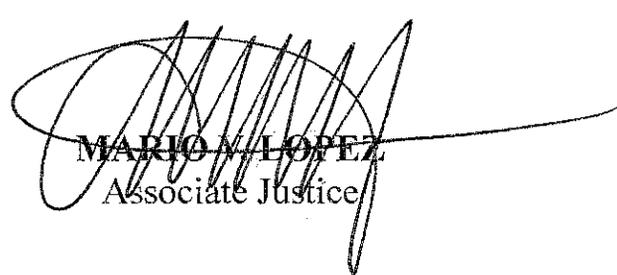


**AMY C. LAZARO-JAVIER**  
Associate Justice

**WE CONCUR:**



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice



**MARIO V. LOPEZ**  
Associate Justice



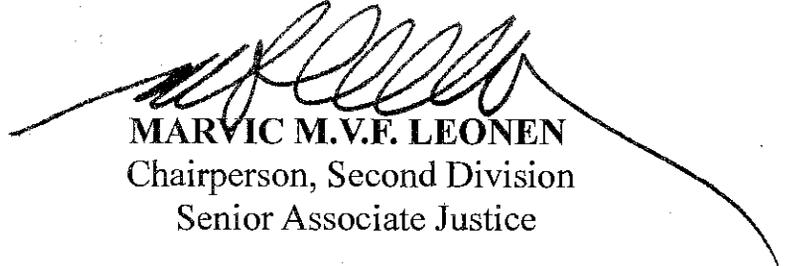
**JHOSEP V. LOPEZ**  
Associate Justice



**ANTONIO T. KHO, JR.**  
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.



**MARVIC M.V.F. LEONEN**  
Chairperson, Second Division  
Senior Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the above 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice