

SECOND DIVISION

[G.R. Nos. 224131-32, June 25, 2018]

SM INVESTMENTS CORPORATION, PETITIONER, V. MAC GRAPHICS^[1] CARRANZ INTERNATIONAL CORP., RESPONDENT.

[G.R. Nos. 224337-38, June 25, 2018]

PRIME METROESTATE, INC., PETITIONER, V. MAC GRAPHICS CARRANZ INTERNATIONAL CORP., RESPONDENT.

D E C I S I O N

CAGUIOA, J:

Before the Court are petitions^[2] for review on *certiorari* (Petitions) under Rule 45 of the Rules of Court assailing the Decision^[3] of the Court of Appeals^[4] (CA) dated December 22, 2015 in CA-G.R. SP Nos. 132392 and 132412 and the Resolution^[5] dated March 31, 2016. The CA Decision denied the petitions for *certiorari* under Rule 65 filed by petitioner SM Investments Corporation (SMIC) and petitioner Prime Metroestate, Inc. (PMI) before the CA while the CA Resolution denied their motions for reconsideration.

Facts and Antecedent Proceedings

On November 24, 2006, respondent Mac Graphics Carranz International Corp. (Mac Graphics), which is engaged in advertising and operation of billboards and other outdoor advertising media, entered into a Contract of Lease^[6] (lease contract) with Pilipinas Makro, Inc. (Makro) for exclusive use of the latter's billboard sites located at Makro EDSA Cubao, Quezon City (Makro-Cubao) and Makro Makati City (Makro-Makati) for a period of 20 years.^[7]

Among the provisions of the lease contract are:

2. **Term.** This Contract shall be for a period of Twenty (20) years which may be renewed upon the terms and conditions mutually acceptable to both parties. x x x The lease term shall commence, as follows:
 - a. For Lot 1 (EDSA Cubao) the contract shall commence on 15 January 2007 and end on midnight of 14 January 2027 x x x.
 - b. For Lot 2 (Makati City) the contract shall commence on 15 January 2007 and end on midnight of 14 January 2027 x x x.

x x x x

Should LESSEE fail to obtain the necessary permits and licenses to legally conduct its business in the leased premises on the commencement dates

mentioned above, the LESSOR may pre terminate this Contract immediately, and the security deposits shall be forfeited in favor of LESSOR. x x x

x x x x

5. **Licenses and Permits.** Licenses and permits shall be secured by the LESSEE, cost and fees required in the processing shall be shouldered by the **LESSEE**. The **LESSOR** shall however assist the **LESSEE** in securing the following licenses and permits for the operation of the latter's business in the **LEASED PREMISES**:

- a. Barangay Permit
- b. Business Permit
- c. Building Permit/Sign Permit

Payment of the afore-cited licenses and/or permits shall be borne by the **LESSEE**.

x x x x

11. **Warranties of the LESSEE.**

x x x x

- b. That it shall strictly comply with and perform all the terms and conditions of the lease.

x x x x

e. Before the actual start of construction of its structures, that it has covered all the improvements built on the Lot with sufficient "All Risk" property insurance cover in an amount not lower than Php 15,000,000 for Sucat site, Php 2,000,000 for Cubao site, and 1,000,000 for Makati including third party liability cover in an amount not lower than Php 10,000,000 for each site or per location during the construction phase of said improvements, and subsequently during the entire term of this Contract including the time of actual and total vacation of the leased premises by **LESSEE**. The insurance policies shall only be obtained from reputable insurance companies acceptable to the **LESSOR**. x x x

12. **Rescission.** In the event of default, breach or falsity in any of the warranties, representations and undertakings of the parties and/or in case of any violation of the provisions hereof, the non-defaulting party shall have the option to rescind, terminate, or cancel this lease upon written notice to that effect, or to demand specific performance hereof against the other, with the right to claim for consequent damages in any case.

x x x x

14. **Pretermination of Lease.** This Contract may be pre-terminated:

x x x x

- c. by either party, if the other party fails to comply with any of its obligations under this Contract (other than as specified in Section 3

[**Rental fee**]) and such breach is not remediable, or if remediable, shall is (sic) unremedied for a period of ninety (90) days after written notice thereof shall have been given by the terminating party to the other party[.]^[8]

Makro is one of the companies where SMIC, as an incorporator, has substantial interest and such interest existed at the time when Mac Graphics and Makro entered into the lease contract.^[9] SMIC owns 10% of the capital stock of Makro while Rappel Holdings, Inc., which is owned by SMIC, owns 50%.^[10]

SMIC alleges that it is a publicly-listed holding company of the SM Group of Companies and while it is not engaged in the business of shopping mall development and management, retail merchandising, financial services, real estate development, and tourism, it has interests in the respective companies belonging to the SM Group of Companies that are engaged therein.^[11] It also alleges that it has never operated the properties which Makro used to operate and it does not operate SM Hypermart,^[12] which is being operated by an independent corporation.^[13]

Makro, which operated the Makro retail stores in the country, was originally a partnership among the SM Group of Companies, SHV Holdings N.V. of the Netherlands, and the Ayala Group of Companies.^[14] SMIC was not a party to the lease contract and contended that Makro operated independently and its management was left to its own corporate officers.^[15]

Mac Graphics offered the leased billboards for advertising to the public and contracted with Asiawide Refreshments Corp. and Aboveboard Multimedia Services for the use of the billboard sites.^[16] Mac Graphics also caused the necessary repair, retrofitting and improvement of the billboard sites to suit the design of its outdoor advertising media.^[17]

Mac Graphics and Makro implemented the lease contract at Makro-Cubao and Makro-Makati for almost two years from its effectivity on January 15, 2007.^[18] Sometime in 2007, the majority shareholders of Makro, which included SMIC, increased their ownership of Makro to 60%.^[19]

Makro sent a letter^[20] dated October 6, 2008 to Mac Graphics terminating the lease contract effective immediately because of the latter's alleged failure to obtain the relevant Metro Manila Development Authority (MMDA) and local government permits and to obtain a comprehensive all-risk property insurance for the sites.^[21] Makro averred that the 90 days "remedy period" of the lease contract does not apply because Mac Graphics' violation was not remediable.^[22] At any rate, there was no compliance within such 90-day period because the insurance policies were not comprehensive and did not cover the stipulated third party liability, and the third party liability policies were issued in April 2009 or beyond the 90-day period.^[23]

Mac Graphics objected to the termination in its letter dated October 22, 2008.^[24] SMIC's counsel sent a letter on January 15, 2009 reiterating the termination of the lease contract.^[25] Mac Graphics answered in a letter dated January 23, 2009, stating its compliance with the provisions of the lease contract.^[26] A meeting among representatives of Mac Graphics, Makro and SMIC was subsequently held.^[27]

Makro and SMIC then removed Mac Graphics' billboards and other advertising media installed at Makro-Cubao and Makro-Makati.^[28] They also prevented Mac Graphics from entering the leased premises.^[29] Mac Graphics sent a letter dated July 31, 2009 to Makro and SMIC expressing its objection to the unilateral removal or dismantling of the billboards and other advertising media and its demand for Makro to cease and desist from further infringing upon its rights under the lease contract.^[30] Mac Graphics' demand went unheeded.^[31]

In 2009, a plan was implemented to convert Makro outlets to SM Hypermart outlets.^[32]

On November 12, 2009, Mac Graphics filed before the Regional Trial Court, Branch 204^[33] (RTC), Muntinlupa City, a Complaint^[34] for "Permanent Injunction and Declaration of Subsistence of Contract; Damages with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction" against Makro and SMIC docketed as Civil Case No. 09-124.^[35]

SMIC filed its Answer (with Compulsory Counterclaim)^[36] and reiterated that since it is not privy or party, successor-in-interest, or assign of the lease contract, then Mac Graphics has no cause of action against it.^[37]

Makro filed its Answer with Compulsory Counterclaims^[38] dated March 14, 2011. Makro insisted that Mac Graphics has no cause of action against it and the termination of the lease contract was legal.^[39]

The RTC Ruling

After presentation of evidence, the RTC issued an Order^[40] dated April 22, 2013 granting the application for a Writ of Preliminary Mandatory Injunction (WPMI), upon the filing of a P5 million bond. The RTC ruled that the evidence presented by Mac Graphics initially showed that there was a breach of the lease contract with respect to the period of its existence,^[41] and that the lease contract was pre-terminated by Makro without giving Mac Graphics a chance to remedy any violation that Makro alleged to have been committed by Mac Graphics.^[42]

Regarding SMIC's contention that it is not privy to the lease contract, the RTC stated that SMIC, being majority owner of Makro, could influence any major decision of the latter and SMIC even re-named Makro-Cubao and Makro-Makati as SM Hypermart.^[43] The RTC ruled that SMIC, although not a party to the lease contract, had received benefits by the decision of Makro to terminate the same, *i.e.*, by the dismantling of the structures/advertisements already placed by Mac Graphics in Makro-Cubao and Makro-Makati, and subsequently substituting them with advertisements of SMIC.^[44]

As to damages, the RTC ruled that apart from the profits that Mac Graphics could have realized from its existing and future contracts, the good will or reputation that it had built in the realm of advertisements had been soiled.^[45] As such, to the mind of the RTC, the injuries which Mac Graphics might have sustained and would sustain as a result of the act of Makro and SMIC are irreparable and could not be remedied by a simple computation of damages before the main issue of the case could be finally heard.^[46]

The dispositive portion of the said Order states:

WHEREFORE, premises considered, the Application for a Writ of Preliminary Mandatory Injunction filed by plaintiff MACGRAPHICS CARRANZ INTERNATIONAL CORP. (MACGRAPHICS) is hereby GRANTED. Let a Writ of Preliminary Mandatory Injunction be issued against the defendants MAKRO and SMIC, upon filing of bond by MACGRAPHICS in the amount of FIVE MILLION PESOS (Php 5,000,000.00) conditioned upon the payment of damages which defendants may incur as a result of the issuance hereof, should the Writ be adjudged later on as improper.

Accordingly, upon approval of the bond, Defendants PILIPINAS MAKRO INC. (MAKRO) and SM INVESTMENTS CORPORATION (SMIC) and all persons/entities claiming rights under them are hereby directed:

1. To restore plaintiff to the possession of the billboard structures in MAKRO Cubao and MAKRO Makati for its use in accordance with the Contract of Lease dated November 24, 2006 entered into between MAKRO and MACGRAPHICS;
2. To allow plaintiff the unrestrained use of the Billboard structures in MAKRO Cubao and MAKRO Makati referred to in the Contract of Lease of November 24, 2006 subject to the monthly rental payments agreed upon in the said contract. Said rental payments shall become due upon the defendants' turn-over of possession of said structures to the plaintiff; and
3. To cease and desist from doing any act of dispossession of said billboard structures against the plaintiff in MAKRO Cubao and MAKRO Makati; until further orders from this court.

The Sheriff of this court is directed to personally furnish the parties herein named, a copy of this Order at the expense of the plaintiff.

IT IS SO ORDERED.^[47]

SMIC filed a motion for reconsideration while Makro filed a motion for reconsideration with motion for substitution of PMI in lieu of Makro, by reason of Makro's change of name.^[48] As of December 14, 2012, Makro amended its corporate name to "Prime MetroEstate, Inc."^[49]

The RTC, in its Order^[50] dated August 14, 2013, granted the motion for substitution but denied the motions for reconsideration. The dispositive portion of the said Order states:

WHEREFORE, premises considered, the Motion for Reconsideration of the Order dated 22 April 2013 is hereby DENIED. Prime Metroestate, Inc. (Formerly: Pilipinas Makro, Inc.), is hereby substituted to MAKRO in view of the amendment of the latter's Articles of Incorporation. Let copies of the orders, decision, and other processes of this court addressed to MAKRO be sent instead to Prime Metroestate, Inc. (Formerly: Pilipinas Makro, Inc.).