

[ **G.R. No. 176291, December 04, 2009** ]

**JORGE B. NAVARRA, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN, SAMUEL NAMANAMA, FELIXBERTO LAZARO AND  
DANILO MEDINA, RESPONDENTS.**

**D E C I S I O N**

**CARPIO MORALES, J.:**

The petition is one for certiorari.

Far East Network of Integrated Circuit Subcontractors Corporation (FENICS) leased the premises of Food Terminal, Inc. (FTI) in Taguig, Metro Manila from 1995 up to 2002.

It appears that before the expiration of the lease contract or on the night of September 16, 2002, armed elements of the FTI took over the FTI premises in Taguig, Metro Manila and forced two building custodians to leave following which the gates were welded, drawing FENICS' president- herein petitioner Jorge B. Navarra to file before public respondent, Office of the Ombudsman, a complaint for grave coercion, malicious mischief, and/or grave threats against herein private respondents Samuel Namanama (Namanama, head of FTI's legal department) and Danilo Medina (Medina, FTI's Senior Manager) along with Felixberto Lazaro (FTI's Legal Assistant).

The pertinent portions of petitioner's affidavit read:

x x x [On September 16, 2002] Gerry informed me that our people had already been ejected from our premises and that they could not re-enter through the welded gates. Armed FTI policemen were guarding the perimeters and FTI employees had forcibly opened the doors to our building and had gone inside. x x x

In the morning of September 17, the employees working in our compound were not allowed to enter the FENICS compound and were forced to stay outside the gates. xxx I went to the group of FTI policemen who were positioned near Gate 1 and inquired from them why they welded our gates and prevented our people from entering our place of work. They replied that they were acting on orders from FTI higher-ups. I inquired on what grounds the FTI management had ordered the take-over of our compound without a court order. They replied that FENICS owed unpaid rentals to FTI and that "matagal nang plano ng aming management na gawin ito." x x x

Then, I walked to Gate 2 which was not welded but which was guarded from both the outside and the inside by FTI policemen without

nameplates and FTI employees in civilian clothes. x x x I talked to the security guards occupying the FENICS guard house inside Gate 2. I asked him if he could allow me to enter thru Gate 2. He replied that his orders were not to allow anyone to go in, except FTI personnel. I asked what the FTI personnel were doing inside. He said he did not know. I asked him who went inside. He mentioned the name of Mr. [Felixberto] Lazaro as the only person he knew because he was the leader of the group. x x x

x x x x

[At about 2:00 PM, a van] arrived and was heading towards Gate 2. [The driver was signaled] to stop and identify himself. x x x A man got out and he was asked his named. He identified himself as Danny Medin[a] of FTI Legal Department. [He was asked] why the FENICS premises were padlocked and repossessed by FTI. Danny Medin[a] replied that "FENICS owed rentals to FTI." He was asked what he and the people [with] him would be doing inside FENICS. Danny Medin[a] answered that they were taking inventories. I told him that FENICS personnel should be present to ensure that things would be done correctly. Danny answered that the barangay was with them.<sup>[1]</sup>

The pertinent portions of the affidavit of petitioner's witness Freddie San Juan, a FENICS employee, read:

x x x Nang bandang mga alas 8:30 ng gabi ng [ika-16 ng Septiyebre 2002], x x x may isang sasakyan ang Fuji Reynolds na lumalabas sa aming Gate 1 kaya binuksan ng kasama kong si Jun Abalajen ang gate nang biglang dumating at pumasok sa nakabukas na gate ang maraming taong naka-uniporme ng FTI police na may dalang mga baril at shotgun at hinarangan ang L-300 na kasalukuyang minamaneho palabas na sana ng gate.

x x x Pinatigil ang sasakyan at pinalabas ang driver. Kinuha ang papel ng registration na pinakita ng driver at hindi na binalik pagkatapos sigawan ang driver na lisanin na ang lugar. Sinabi ng driver na may mga kargamento siyang kailangan ihatid sa mga proyekto ng Fuji Reynolds ngunit siya ay pinilit na pinalabas ng mga armadong FTI police. Mahigit kumulang sa tatlumpo (30) katao silang lahat.

Nagtanong kami kung bakit nila ginagawa iyon. Sinagot lang kami na utos ng mga Boss nila (at kasama na doon ang isang Attorney Samuel Namanama). Natakot na rin ako dahil sa dami nilang mga armado, may dalang mga shotgun, at sabay-sabay na nagsisigawan. Pinilit nila kaming pina-alis sabay ang panakot na may masamang mangyayari sa amin dahil bubuksan at papasukin na nila ang loob ng aming opisina. x x x Nakita ko rin na ang kasama kong si Jun Abalajen ay pilit ding pinalabas at pilit pang kinukuha ang kanyang bisikleta.

Pagkalabas namin, agad ni-welding nila ang paikot na steel bar sa poste

ng aming Gate 1. x x x

Noong nasa labas kami ng gate dahil napilitang lumabas at natakot na baka kami ay saktan o barilin, sinabi ko sa mga FTI police na huwag sanang magkasakitan dahil pareho lang kaming lahat na ginagampanan ang aming katungkulan. Nilista ko sa isang papel ang mga pangalan ng ilan sa kanila na may mga pangalan sa kanilang uniporme. x x x Habang sinusulat ko ang mga pangalan ng ilan sa kanila, biglang inagaw sa aking kamay ang aking papel ng isang FTI policeman na walang nameplate o namepatch sa dibdib. Wala akong magawa dahil bigla niyang ginawa iyon AT NARINIG KO NA MAY NAGPAPUTOK NG BARIL SA LOOB NG FENICS COMPOUND. x x x

x x x x

Magdamag kaming nagbantay sa labas. Kinabukasan sa umaga ng ika-17 ng Septyembre, dumating ang mga empleyadong pumapasok sa FENICS compound ngunit sinalubong sila ng mga FTI police x x x.<sup>[2]</sup> (Capitalization in the original)

Donato Abalajen, another witness of petitioner, executed another affidavit substantially corroborating that of Freddie de Juan.<sup>[3]</sup>

Neither petitioner nor FENICS employees had thereafter been allowed to enter the FTI premises.

Upon the other hand, private respondents claimed that, among other things, they acted under the orders of their superiors, and that FTI was merely exercising its right under a Compromise Agreement forged between FTI and FENICS wherein FENICS undertook to pay the outstanding obligation of a previous lessee of FTI, the pertinent portion of which Compromise Agreement reads:

x x x x

In the event that FENICS shall default in at least three (3) consecutive monthly amortization payments on its rental arrearages or one (1) semestral or annual payment of its current rentals, FTI shall be entitled to rescind the lease contract without need of judicial action or intervention and all unpaid rentals, including unpaid arrearages shall automatically be considered due and demandable plus interest of one (1%) percent per month commencing from due date.<sup>[4]</sup>

x x x x (Underscoring supplied)

Private respondents also cited Article 21 of the lease contract between FTI and FENICS which provides:

It is expressly agreed that if the rent hereby stipulated shall be unpaid after becoming payable, whether formally demanded or not, or if any covenant herein contravened shall not be performed or observed, then in any of said cases, it shall be lawful for the LESSOR to re-enter the leased premises and the lease shall automatically terminated, without prejudice, however, to the right of action of the LESSOR with respect to any covenant herein contained. The LESSOR shall in such case, be entitled likewise to forfeit improvements on the leased premises without any obligation to pay the value thereof.<sup>[5]</sup> (Underscoring supplied)

By Resolution of February 22, 2005, Graft Investigation and Prosecution Officer Janet Cabigas-Vejerano found probable cause to hale private respondents into court for grave coercion under Article 286 of the Revised Penal Code<sup>[6]</sup> under the following disquisition:

The strong assertion by the respondents that FENICS property was voluntarily opened to them cannot stand in the light of the surrounding circumstances that precipitated the take-over of FENICS premises. The undeniable facts, to wit: the circumstance of nighttime, the overwhelming number of armed respondents as against two (2) caretakers of FENICS marching at the compound, their failure to notify complainant of the date of actual repossession, and their lack of any court order authorizing their action, convince this Office that respondents truly abused their authority. This notwithstanding any rightful claim that FTI may have over the subject property. No man is above the law. It is elementary even to some respondents from the FTI legal department that any such kind of repossession requires a court order to be implemented by the proper officer of the court, or at the very least a notice to the party concerned, provisions in their contract notwithstanding, The purported witness, a Barangay Tanod, did not even submit his account of what actually transpired. He would have then attested to whether FENICS was indeed invited to observe the inventory undertaken. It is unfortunate that respondents, who are government employees at that, took the matter into their own hands.

Under Article 286 of the Revised Penal Code (RPC) the crime of Grave Coercion in "imposed upon any person who, without any authority of law, shall, by means of violence, threats, or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong."

On the other hand, Grave Threats under Article 282, RPC, is imposed upon "any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime."

x x x x

While it may be true that FTI had the right to collect payment for the outstanding obligation of the company complainant represents, the