

## FIRST DIVISION

[ G.R. No. 158997, October 06, 2008 ]

**FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER,  
VS. YLLAS LENDING CORPORATION AND JOSE S. LAURAYA, IN  
HIS OFFICIAL CAPACITY AS PRESIDENT, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review on certiorari<sup>[1]</sup> of the Orders issued on 7 March 2003<sup>[2]</sup> and 3 July 2003<sup>[3]</sup> by Branch 59 of the Regional Trial Court of Makati City (trial court) in Civil Case No. 01-1452. The trial court's orders dismissed Fort Bonifacio Development Corporation's (FBDC) third party claim and denied FBDC's Motion to Intervene and Admit Complaint in Intervention.

#### The Facts

On 24 April 1998, FBDC executed a lease contract in favor of Tirreno, Inc. (Tirreno) over a unit at the Entertainment Center - Phase 1 of the Bonifacio Global City in Taguig, Metro Manila. The parties had the lease contract notarized on the day of its execution. Tirreno used the leased premises for Savoia Ristorante and La Strega Bar.

Two provisions in the lease contract are pertinent to the present case: Section 20, which is about the consequences in case of default of the lessee, and Section 22, which is about the lien on the properties of the lease. The pertinent portion of Section 20 reads:

#### Section 20. Default of the Lessee

20.1 The LESSEE shall be deemed to be in default within the meaning of this Contract in case:

- (i) The LESSEE fails to fully pay on time any rental, utility and service charge or other financial obligation of the LESSEE under this Contract;

x x x

20.2 Without prejudice to any of the rights of the LESSOR under this Contract, in case of default of the LESSEE, the lessor shall have the right to:

(i) Terminate this Contract immediately upon written notice to the LESSEE, without need of any judicial action or declaration;

x x x

Section 22, on the other hand, reads:

Section 22. Lien on the Properties of the Lessee

Upon the termination of this Contract or the expiration of the Lease Period without the rentals, charges and/or damages, if any, being fully paid or settled, the LESSOR shall have the right to retain possession of the properties of the LESSEE used or situated in the Leased Premises and the LESSEE hereby authorizes the LESSOR to offset the prevailing value thereof as appraised by the LESSOR against any unpaid rentals, charges and/or damages. If the LESSOR does not want to use said properties, it may instead sell the same to third parties and apply the proceeds thereof against any unpaid rentals, charges and/or damages.

Tirreno began to default in its lease payments in 1999. By July 2000, Tirreno was already in arrears by P5,027,337.91. FBDC and Tirreno entered into a settlement agreement on 8 August 2000. Despite the execution of the settlement agreement, FBDC found need to send Tirreno a written notice of termination dated 19 September 2000 due to Tirreno's alleged failure to settle its outstanding obligations. On 29 September 2000, FBDC entered and occupied the leased premises. FBDC also appropriated the equipment and properties left by Tirreno pursuant to Section 22 of their Contract of Lease as partial payment for Tirreno's outstanding obligations. Tirreno filed an action for forcible entry against FBDC before the Municipal Trial Court of Taguig. Tirreno also filed a complaint for specific performance with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction against FBDC before the Regional Trial Court (RTC) of Pasig City. The RTC of Pasig City dismissed Tirreno's complaint for forum-shopping.

On 4 March 2002, Yllas Lending Corporation and Jose S. Lauraya, in his official capacity as President, (respondents) caused the sheriff of Branch 59 of the trial court to serve an alias writ of seizure against FBDC. On the same day, FBDC served on the sheriff an affidavit of title and third party claim. FBDC found out that on 27 September 2001, respondents filed a complaint for Foreclosure of Chattel Mortgage with Replevin, docketed as Civil Case No. 01-1452, against Tirreno, Eloisa Poblete Todaro (Eloisa), and Antonio D. Todaro (Antonio), in their personal and individual capacities, and in Eloisa's official capacity as President. In their complaint, respondents alleged that they lent a total of P1.5 million to Tirreno, Eloisa, and Antonio. On 9 November 2000, Tirreno, Eloisa and Antonio executed a Deed of Chattel Mortgage in favor of respondents as security for the loan. The following properties are covered by the Chattel Mortgage:

- a. Furniture, Fixtures and Equipment of Savoia Ristorante and La Strega Bar, a restaurant owned and managed by [Tirreno], inclusive of the leasehold right of [Tirreno] over its rented building where [the] same is presently located.
- b. Goodwill over the aforesaid restaurant, including its business name, business sign, logo, and any and all interest therein.

- c. Eighteen (18) items of paintings made by Florentine Master, Gino Tili, which are fixtures in the above-named restaurant.

The details and descriptions of the above items are specified in Annex "A" which is hereto attached and forms as an integral part of this Chattel Mortgage instrument.<sup>[4]</sup>

In the Deed of Chattel Mortgage, Tirreno, Eloisa, and Antonio made the following warranties to respondents:

1. WARRANTIES: The MORTGAGOR hereby declares and warrants that:
  - a. The MORTGAGOR is the absolute owner of the above named properties subject of this mortgage, free from all liens and encumbrances.
  - b. There exist no transaction or documents affecting the same previously presented for, and/or pending transaction.<sup>[5]</sup>

Despite FBDC's service upon him of an affidavit of title and third party claim, the sheriff proceeded with the seizure of certain items from FBDC's premises. The sheriff's partial return indicated the seizure of the following items from FBDC:

- A. FIXTURES
  - (2) - Smaller Murano Chandeliers
  - (1) - Main Murano Chandelier
- B. EQUIPMENT
  - (13) - Uni-Air Split Type 2HP Air Cond.
  - (2) - Uni-Air Split Type 1HP Air Cond.
  - (3) - Uni-Air Window Type 2HP Air Cond.
  - (56) - Chairs
  - (1) - Table
  - (2) - boxes - Kitchen equipments [sic]<sup>[6]</sup>

The sheriff delivered the seized properties to respondents. FBDC questioned the propriety of the seizure and delivery of the properties to respondents without an indemnity bond before the trial court. FBDC argued that when respondents and Tirreno entered into the chattel mortgage agreement on 9 November 2000, Tirreno no longer owned the mortgaged properties as FBDC already enforced its lien on 29 September 2000.

In ruling on FBDC's motion for leave to intervene and to admit complaint in intervention, the trial court stated the facts as follows:

Before this Court are two pending incidents, to wit: 1) [FBDC's] Third-Party Claim over the properties of [Tirreno] which were seized and delivered by the sheriff of this Court to [respondents]; and 2) FBDC's Motion to Intervene and to Admit Complaint in Intervention.

Third party claimant, FBDC, anchors its claim over the subject properties on Sections 20.2(i) and 22 of the Contract of Lease executed by [FBDC]

with Tirreno. Pursuant to said Contract of Lease, FBDC took possession of the leased premises and proceeded to sell to third parties the properties found therein and appropriated the proceeds thereof to pay the unpaid lease rentals of [Tirreno].

FBDC, likewise filed a Motion to Admit its Complaint-in-Intervention.

In Opposition to the third-party claim and the motion to intervene, [respondents] posit that the basis of [FBDC's] third party claim being anchored on the aforesaid Contract [of] Lease is baseless. [Respondents] contend that the stipulation of the contract of lease partakes of a pledge which is void under Article 2088 of the Civil Code for being pactum commissorium.

x x x

By reason of the failure of [Tirreno] to pay its lease rental and fees due in the amount of P5,027,337.91, after having notified [Tirreno] of the termination of the lease, x x x FBDC took possession of [Tirreno.'s] properties found in the premises and sold those which were not of use to it. Meanwhile, [respondents], as mortgagee of said properties, filed an action for foreclosure of the chattel mortgage with replevin and caused the seizure of the same properties which [FBDC] took and appropriated in payment of [Tirreno's] unpaid lease rentals.<sup>[7]</sup>

### **The Ruling of the Trial Court**

In its order dated 7 March 2003, the trial court stated that the present case raises the questions of who has a better right over the properties of Tirreno and whether FBDC has a right to intervene in respondents' complaint for foreclosure of chattel mortgage.

In deciding against FBDC, the trial court declared that Section 22 of the lease contract between FBDC and Tirreno is void under Article 2088 of the Civil Code.<sup>[8]</sup> The trial court stated that Section 22 of the lease contract pledges the properties found in the leased premises as security for the payment of the unpaid rentals. Moreover, Section 22 provides for the automatic appropriation of the properties owned by Tirreno in the event of its default in the payment of monthly rentals to FBDC. Since Section 22 is void, it cannot vest title of ownership over the seized properties. Therefore, FBDC cannot assert that its right is superior to respondents, who are the mortgagees of the disputed properties.

The trial court quoted from *Bayer Phils. v. Agana*<sup>[9]</sup> to justify its ruling that FBDC should have filed a separate complaint against respondents instead of filing a motion to intervene. The trial court quoted from *Bayer* as follows:

In other words, construing Section 17 of Rule 39 of the Revised Rules of Court (now Section 16 of the 1997 Rules on Civil Procedure), the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment may not be taken up in the case where such claims are presented but in a separate and independent action instituted by the claimants.<sup>[10]</sup>

The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, [FBDC's] Third Party Claim is hereby DISMISSED. Likewise, the Motion to Intervene and Admit Complaint in Intervention is DENIED.<sup>[11]</sup>

FBDC filed a motion for reconsideration on 9 May 2003. The trial court denied FBDC's motion for reconsideration in an order dated 3 July 2003. FBDC filed the present petition before this Court to review pure questions of law.

### **The Issues**

FBDC alleges that the trial court erred in the following:

1. Dismissing FBDC's third party claim upon the trial court's erroneous interpretation that FBDC has no right of ownership over the subject properties because Section 22 of the contract of lease is void for being a pledge and a *pactum commissorium*;
2. Denying FBDC intervention on the ground that its proper remedy as third party claimant over the subject properties is to file a separate action; and
3. Depriving FBDC of its properties without due process of law when the trial court erroneously dismissed FBDC's third party claim, denied FBDC's intervention, and did not require the posting of an indemnity bond for FBDC's protection.<sup>[12]</sup>

### **The Ruling of the Court**

The petition has merit.

#### ***Taking of Lessee's Properties without Judicial Intervention***

We reproduce Section 22 of the Lease Contract below for easy reference:

#### **Section 22. Lien on the Properties of the Lessee**

Upon the termination of this Contract or the expiration of the Lease Period without the rentals, charges and/or damages, if any, being fully paid or settled, the LESSOR shall have the right to retain possession of the properties of the LESSEE used or situated in the Leased Premises and the LESSEE hereby authorizes the LESSOR to offset the prevailing value thereof as appraised by the LESSOR against any unpaid rentals, charges and/or damages. If the LESSOR does not want to use said properties, it may instead sell the same to third parties and apply the proceeds thereof against any unpaid rentals, charges and/or damages.

Respondents, as well as the trial court, contend that Section 22 constitutes a *pactum commissorium*, a void stipulation in a pledge contract. FBDC, on the other hand, states that Section 22 is merely a *dacion en pago*.