

SECOND DIVISION

[G.R. No. 163898, December 23, 2008]

ROBERTO BARBASA, PETITIONER, VS. HON. ARTEMIO G. TUQUERO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE, GRACE GUARIN, NESTOR SANGALANG, VICTOR CALLUENG, RESPONDENTS.

DECISION

QUISUMBING, J.:

Petitioner assails the Decision^[1] dated July 29, 2003 and the Resolution^[2] dated May 21, 2004 of the Court of Appeals in CA-G.R. SP No. 62610, which dismissed his petition for certiorari and denied his motion for reconsideration, respectively. The appellate court had found no reason to reverse the Resolution^[3] of the Secretary of Justice ordering the City Prosecutor of Manila to move for the dismissal of Criminal Case No. 336630 against private respondents.

Petitioner avers that he is the president of Push-Thru Marketing, Inc., which leases commercial stalls CS-PL 05, 19 and 30 in Tutuban Center, owned by Tutuban Properties, Inc., (TPI). On June 30, 1999, Angelina Hipolito, merchandising officer of Push-Thru Marketing, received a notice of disconnection of utilities from private respondent Grace Guarin, the Credit and Collection Manager of TPI, for failure of Push-Thru Marketing to settle its outstanding obligations for Common Usage and Service Area (CUSA) charges, utilities, electricity and rentals.

Petitioner settled the charges for CUSA, utilities and electricity, which payment was accepted by private respondent Guarin, but petitioner failed to pay the back rentals. Thus, on July 1, 1999, private respondents Guarin, Nestor Sangalang, engineering manager of TPI, and Victor Callueng, TPI head of security, together with several armed guards, disconnected the electricity in the stalls occupied by Push-Thru Marketing.

Aggrieved, petitioner filed a criminal complaint for Grave Coercion against TPI and its officers, David Go, Robert Castanares, Buddy Mariano, Art Brondial, and herein private respondents before the Office of the City Prosecutor of Manila.^[4] The complaint dated July 13, 1999 alleged that TPI and its officers cut off the electricity in petitioner's stalls "in a violent and intimidating manner"^[5] and by unnecessarily employing "several armed guards to intimidate and frighten"^[6] petitioner and his employees and agents.

The respondents in the criminal complaint filed separate counter-affidavits^[7] which presented a common defense: that the July 1, 1999 cutting off of electrical supply was done peacefully; that it was an act performed in the lawful performance of their assigned duties, and in accordance with the covenants set forth in the written

agreements previously executed between petitioner and TPI; that petitioner was not present when the alleged acts were committed; and that petitioner had outstanding accumulated unpaid rentals, CUSA billings, electrical and water bills, unpaid interest and penalty charges (from June 1998 to May 1999) in the amount of P267,513.39 for all his rented stalls, as reflected in three Interest-Penalty Reports^[8] duly sent to him. Petitioner was likewise given demand letter-notices in writing at least three times wherein it was stated that if he did not settle his arrears in full, electricity would be cut.^[9] Of the total amount due from him, petitioner paid only P127,272.18 after receipt of the third notice. Accordingly, private respondents proceeded with the power cut-off, but only after sending a "Notice of Disconnection of Utilities"^[10] to petitioner's stalls informing him of the impending act.

Private respondents also pointed out that aside from the above arrears, petitioner has outstanding accountabilities with respect to "Priority Premium Fees" in the amount of P5,907,013.10.^[11]

They likewise stressed that their Agreement^[12] with petitioner contains the following stipulations:

CONTRACT OF LEASE
Prime Block Cluster Stall

x x x x

PRIORITY PREMIUM : P *2,367,750.00

x x x x

RENT PER MONTH : P *****378.00 per sq. m
(Plus P*****37.80 10% VAT)

x x x x

OTHER FEES AND EXPENSES CHARGEABLE
TO THE LESSEE:

x x x x

B.COMMON USAGE AND SERVICE AREA (CUSA) CHARGES

Minimum rate of P190.00/sq. m./mo. to cover expenses stipulated in Section 6 hereof, subject to periodic review and adjustment to reflect actual expenses.

C. INDIVIDUAL UTILITIES : metered + reasonable service
ELECTRIC CONSUMPTION charge (meter to be provided
by the LESSOR, for the
account of the LESSEE)

OTHER SERVICES : metered and/or reasonable
service charge

x x x x

7. PAYMENTS

x x x x

In cases where payments made by the LESSEE for any given month is not sufficient to cover all outstanding obligations for said period, the order of priority in the application of the payments made is as follows:

- a. Penalties
- b. Interests
- c. Insurance
- d. CUSA Charges
- e. Rent
- f. Priority Premium

x x x x

21. PENALTY CLAUSE

x x x x

It is also expressly agreed that in case the LESSEE fails to pay at any time the installments on the priority premium, lease rentals or CUSA and utility charges corresponding to a total of three (3) months, even if not consecutively incurred, the LESSOR is hereby granted the option to cut off power and other utility services to the LESSEE until full payment of said charges, expenses, penalty and interest is made, without prejudice to any other remedies provided under this Contract, including the termination of this Contract.

x x x x (Emphasis supplied.)

Petitioner filed his Reply Affidavit,^[13] claiming that Go, Castanares, Mariano, Brondial, Guarin and Sangalang, while not personally present at the scene at the time, were to be held liable as the authors of the criminal design since they were the ones who ordered the cutting off of petitioner's electricity. Petitioner admitted that none of the armed personnel drew his gun, much more aimed or fired it, but insisted that he was unduly prevented from using electricity to the detriment of his business and his person. He claimed that the officers of TPI were unable to show the amount and extent of his unpaid bills; that as to the electric bills, the same were paid; and that there was an ongoing negotiation with respect to the matter of rentals and for reformation of the lease agreements.^[14]

The Office of the City Prosecutor of Manila, through Prosecutor Venus D. Marzan, dismissed the complaint against David Go, Roberto Castanares, Buddy Mariano and Art Brondial but found probable cause against private respondents Grace Guarin, Nestor Sangalang and Victor Callueng. On January 13, 2000, an Information^[15] for grave coercion was filed in court, but proceedings therein were deferred when the private respondents filed an appeal to the Secretary of Justice.

On August 23, 2000, the Secretary of Justice reversed the City Prosecutor's Resolution, as follows: