

FIRST DIVISION

[G.R. NO. 158608, January 27, 2006]

JOHANNES RIESENBECK, PETITIONER, VS. SPOUSES SILVINO G. MACEREN, JR. AND PATRICIA A. MACEREN, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Impugned in this petition for review is the Decision^[1] dated 02 September 2002 of the Court of Appeals, which dismissed the appeal filed by petitioner from the Order^[2] of the Regional Trial Court (RTC) of Lapu-Lapu City, Branch 54, in civil case No. 4307-L for annulment of Contract of Lease on the ground that the case has been rendered moot. Assailed likewise is the Resolution^[3] of the Court of Appeals denying the motion for reconsideration still on mootness and forum shopping.

We recount the facts paving the way to this petition:

Respondents Atty. Silvino G. Maceren, Jr., and his wife Patricia A. Maceren are the registered owners of a beach resort, known as the Golden Views Resort, situated at Buot, Punta Engaño, Lapu-Lapu City.

On 25 March 1988, Juergen Maile, a German national, and respondents Atty. Silvino G. Maceren, Jr., and his wife Patricia A. Maceren, entered into a Contract of Lease.^[4] Petitioner Johannes Riesenbeck, a Dutch national, was the substitute lessee. Linda Villariasa,^[5] Filipino wife of Riesenbeck, also appended her signature in the contract.^[6] Excerpts of the lease contract provide:

That the ORIGINAL LESSEE rented and leased the above-mentioned premises and facilities and in fact as part of the contract, he has introduced the restaurant of indigenous materials along the beach;

That the ORIGINAL LESSEE has manifested his desire to relinquish the Contract of Lease covering the aforementioned beach resort and the facilities therein in favor of the SUBSTITUTE LESSEE who is interested to go on with the lease under the terms and conditions stipulated herein;

That the herein LESSOR is willing to grant in lease the aforementioned beach resort and all its improvements in favor of the SUBSTITUTE LESSEE.

x x x x

5. IMPROVEMENTS – The SUBSTITUTE LESSEE undertakes to introduce within the leased premises within a period of SEVEN AND A HALF (7 & ½) years from the signing of this contract, permanent

improvements worth not less than FIVE HUNDRED THOUSAND PESOS (P500,000) — provided that before any improvement is introduced, the LESSOR shall be first advised as to its location. In no case will the LESSEE destroy the tennis court and introduce improvements thereon, nor shall the LESSEE destroy any existing improvements without first getting the written permission of the LESSOR;

x x x x

8. OWNERSHIP AND POSSESSION – That at the end of the term of the lease or termination of the same for violations of its terms, all improvements introduced by the SUBSTITUTE LESSEE in the leased premises shall belong to the LESSOR without need of reimbursement of its costs; That upon termination of this contract the LESSEE shall return the peaceful possession of the properties herein leased together with any and all improvements they may have introduced to the LESSORS without need of demand;
9. RESERVATION OF PRIVILEGE – The LESSOR TOGETHER WITH THEIR GUESTS and lot buyers shall have free access to the beach and to enjoy bathing in the area, but in no case shall they crowd the leased premises and hamper the business of the SUBSTITUTE LESSEE. Neither can they make use of the hotel rooms and restaurant without paying the proper fees and charges, subject however to any special discount and privileges which the SUBSTITUTE LESSEE(s) may grant in their discretion. The LESSOR and his guests retain the privilege to use the tennis court which shall be maintained by the SUBSTITUTE LESSEE.
10. SUB-LEASE - THE SUBSTITUTE LESSEE cannot sublease the leased premises to any party without first securing the written prior consent of the LESSOR, otherwise the sublease shall not be respected by the latter;
11. FIRST PRIORITY OPTION TO BUY – In case the LESSOR(s) decide to sell the property herein leased, they shall give the SUBSTITUTE LESSEE the first priority to equal the price offered by an interested buyer and should the LESSEE fail to exercise this option within 15 days from notice, the LESSOR shall have the right to sell the property herein leased to said buyer;

x x x x

13. VIOLATION AND DAMAGES – In case of violation of any terms and conditions contained herein will be a ground for the offended party to terminate the contract even before the end of its term and in case the LESSEE violates the same the LESSOR have the option to terminate the contract without prejudice to his rights to collect whatever rentals due for the remaining years of the contract plus

damages;

14. TERM OF LEASE AND PARTIES BOUND – This CONTRACT OF LEASE shall be commenced immediately upon the signing hereof and shall remain valid and binding between the parties and their heirs for a period of FIFTEEN (15) YEARS from January, 1988 and to end on December 2003, unless earlier terminated for violation of terms hereof.

15. TAXES - The SUBSTITUTE LESSEE shall contribute for the payment of the taxes and leased premises at no less than FIVE THOUSAND PESOS (P5,000.00) each year, however, for their additional improvements, all taxes thereon during the term of the lease shall be paid by the SUBSTITUTE LESSEE. (Emphases supplied)

On 23 July 1990, petitioner Johannes Riesenbeck filed Civil Case No. 2296-L for Declaratory Relief.^[7] The Complaint alleged, *inter alia*, that he had spent a sizeable sum of money for the improvement and upkeep of the leased property. Sometime in April 1990, petitioner learned that the actual amount of realty taxes due annually is only P2,495.00, which is less than the P5,000.00 that was stipulated in the contract. Too, the Complaint averred that petitioner got wind of an impending sale of the leased property in favor of a third party. He alleged that judicial declaration is necessary to delineate the rights of the petitioner from those of the respondents *vis-á-vis* the stipulations pointed out in the contract and prayed for a declaration of his rights under the lease contract, specifically with respect to Stipulations No. 5, 8, 9, 11, 13, 14 and 15 as above-quoted concerning improvements, ownership and possession, reservation of privilege, first priority option to buy, violation and damages, term of lease and parties bound, and the taxes due, respectively.

Meanwhile, respondent Atty. Maceren sent a letter to petitioner Johannes Riesenbeck, as lessee of the property, informing the latter of his intention to transfer the ownership of the property subject of the Contract of Lease to the family corporation MAGICCORN. Thereafter, respondent Atty. Maceren was able to effect the transfer of the leased property to MAGICCORN based on an instrument denominated as "Deed of Exchange of Shares of Stocks and Transfer of Property."

Stirred by the foregoing event, on 30 March 1993, petitioner's wife, Linda Villariasa - Riesenbeck filed a complaint for Redemption tagged as Civil Case No. 2819 against M. A Gen. Industrial and Commercial Corp. or MAGICCORN pursuant to clause 11^[8] of the Contract of Lease as cited above. In an order dated 11 March 1994, the trial court dismissed the complaint for redemption, with a ruling that there was no actual transfer of ownership interests of the leased property when the same was transferred by respondent Atty. Maceren to defendant corporation in exchange for the latter's shares of stock inasmuch as the transfer was merely one in form and not in substance, citing *Delpher Trades Corporation v. Intermediate Appellate Court*.^[9] The Court of Appeals affirmed the ruling of the trial court on 08 February 2000.

Awaiting the conclusion of Civil Case No. 2819 for redemption and Civil Case No. 2296-L for Declaratory Relief, petitioner Johannes Riesenbeck filed on 13 September 1995 the case subject of the present review docketed as Civil Case No. 4307-L^[10] against respondents, this time, to **annul** the aforementioned contract of lease.

Petitioner replicated his allegations in his earlier Complaint for Declaratory Relief that he had suffered damages from respondents' act of defrauding him into entering into the abovementioned Contract of Lease. Petitioner specifically asserted that respondents swayed petitioner to enter into the Contract of Lease by stipulating, *inter alia*, that petitioner will have the first option or priority to purchase the same from respondents. Likewise, petitioner echoed the contention that he was conned as to the amount of taxes due inasmuch as he was assessed and had paid respondents P5,000 per taxable year pursuant to the provision in the said contract, only to find out much later that the taxes payable were only slightly over P2,000.

On 10 October 1995, respondents filed a Motion to Dismiss^[11] citing the following grounds: (1) two other actions between the same parties and for the same cause are pending, one before Branch 53 of the RTC of Lapu-Lapu City, docketed as Civil Case No. 2296-L, and the other, before the Court of Appeals in CA-G.R. CV No. 45655, docketed as Civil Case No. 2819-L in the trial court; (2) the complaint violates the proscription against forum-shopping; and (3) the complaint does not state a cause of action. respondents averred in their Motion to Dismiss that the lease contract which petitioner wants to be annulled was already terminated by respondents effective 30 November 1994, or almost a year before this case was filed before the trial court on 13 September 1995 due to petitioner's violation of clauses 10 and 11^[12] of their contract.

On 20 May 1996, the trial court issued a verdict^[13] favoring the respondents and granting the Motion to Dismiss filed by respondents on the rationale that the present case is akin to forum-shopping. In the trial court's elucidation, there is no dispute that the plaintiff herein is the same plaintiff in Civil Case No. 2296-L for Declaratory Relief and at least, vicariously, in Civil Case No. 2819 for Redemption, since his wife is the one named as party plaintiff. Said trial court noted that all these cases sprung out of the same Contract of Lease executed by the same parties. In the trial court's words: "While it may be conceded that the present complaint, seeking as it does, the annulment of the said lease contract is literally different from the other two, which by the very nature of the action, necessarily sought the enforcement or at least, presupposes the recognition of the validity of the terms and conditions embodied therein, nonetheless, this fact standing alone, does not militate against the proscription against multiplicity of suits and forum-shopping, if the filing thereof would bring about the same evil sought to be avoided by the said rule."^[14]

On 02 September 2002, the Court of Appeals rendered a Decision^[15] affirming the trial court's decision with the initial finding that there was no forum-shopping, but nonetheless, dismissing the case for being moot. The Court of Appeals imparted the following rationale-

Nevertheless, even if there is no substantial finding of forum-shopping, we note that events which transpired prior to the filing of the instant suit have rendered the same moot and academic.

The lease contract which appellant wants to be annulled was already terminated by appellees effective November 30, 1994, or almost a year before this case was filed before the trial court on September 13, 1995. Appellees alleged in their Motion to Dismiss that this was prompted by appellant's violation of the terms and conditions of their contract,

particularly paragraph 13 thereof. Not once did appellant refute this. We thus see no point in appellant pursuing the annulment of the lease contract when the same is already of no force and effect between the parties.^[16]

Petitioner moved to reconsider the Court of Appeals' Decision, still obdurate that the case has not been rendered moot, but the Court of Appeals held in a Resolution^[17] dated 12 May 2003, that since not once did petitioner address the issue on violations of the terms of the contract head on, he cannot now rightfully claim that the termination of their lease contract has not rendered the instant suit for annulment of contract moot following Section 2, Rule 9 of the Rules of Court, the law in force at the time this case was filed, which provided that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." Quite noteworthy is the fact that although the Court of Appeals, at first glance, held in its Decision that there was no forum-shopping, a second look at the case under reconsideration led to its change of heart - this time ruling that petitioner already sought to recover damages in the suit for Declaratory Relief arising from the same lease contract subject of the instant case and to claim damages once more, this time via the present case would already be tantamount to forum-shopping, if not harassment.

The Issue

His motion for reconsideration having been denied by the Court of Appeals, petitioner now lays his cause before this Court through this petition for review where he assigns the following lone error to the Court of Appeals. Thus:

THE LOWER COURT ERRED IN HOLDING THAT THE CASE HAS BECOME MOOT AND ACADEMIC.^[18]

Critical to the resolution of this case is the issue of whether or not the act of respondents of unilaterally terminating the lease contract, subject matter of this petition, on the basis of petitioner's alleged violation of the terms thereof has rendered the present case for annulment of said contract and for damages fusty.

Petitioner submits that the potestative act of respondents in unilaterally and extrajudicially terminating the lease contract could not have rendered the said contract *functus officio* inasmuch as such termination was without judicial approval.^[19] Petitioner says that it is precisely this arbitrary termination of the contract by respondent that petitioner now seeks redress for as he had suffered damages from respondents' act of defrauding him into entering into the said Contract of Lease. Petitioner specifically claims that respondents convinced petitioner to enter into the Contract of Lease by stipulating, among other things, that petitioner will have the first option or priority to purchase the same from respondents. Repeating his argument, petitioner claims that as he is unfamiliar with the Philippine laws, and trusting on the representation of respondent who is a lawyer, he entered into a contract and spent, among other things, P1,153,890. Likewise, petitioner avers that he was duped into believing that respondents will be shouldering part of the taxes on the property because petitioner will only be allegedly contributing the sum of P5,000 per tax period, only to find out much later that the taxes due were only slightly over P2,000. It is these fraudulent acts resulting in petitioner's damage and prejudice that is the heart of the complaint filed in the present case, according to