505 Phil. 624

SECOND DIVISION

[G.R. NO. 148632, August 31, 2005]

BELEN DELA TORRE, PETITIONER, VS. BICOL UNIVERSITY, REPRESENTED BY DR. LYLIA CORPORAL-SENA AND/OR DR. EMILIANO ABERIN, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the decision[1] of the Court of Appeals dated 26 January 2001 which affirmed with modification the decision of Branch 8 of the Regional Trial Court (RTC) of Legazpi City ordering, among other things, the termination of the Contract of Lease[2] subject of this case, and its Resolution dated 19 June 2001 denying petitioner's motion for reconsideration.

The factual antecedents are stated in the decision of the Court of Appeals.

> On April 2, 1990, plaintiff Belen dela Torre and defendant Bicol University (BU for brevity), through its then president Patria G. Lorenzo, entered into a Contract of Lease allowing plaintiff to construct and operate an eatery business within defendant university's compound for a monthly rental of Php 5.00 per square meter. A total of forty-nine (49) square meters, or seven meters long and seven meters wide, were leased to plaintiff.
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> After plaintiff completed the construction of her canteen valued at Php110,000.00, she started to operate the same after compliance with all the necessary license and permits.
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> On February 28, 1994, defendant Lylia Corporal-Sena brought to the attention of plaintiff the discovery of illegal electrical connections in her eatery, which were tapped to the mainline of the university, and at the same time demanding settlement or payment of the unauthorized consumption. To determine plaintiff's accountability, defendant university's electrician, Engr. Arturo Gesmundo, was directed to inspect the appliances and lights installed in plaintiff's canteen. Plaintiff was fist assessed the amount of Php25,500.00, which was later on reduced to Php9,726.48, payable either in full or installment, at the option of [plaintiff's] husband, who is employed at BU.
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> Simultaneous with the assessment of unpaid electrical consumptions, plaintiff was likewise assessed her unpaid rentals from April 2, 1990 up to May 3, 1994 in the amount of Php14, 750.00.

In the meantime, defendant Sena issued Office Memorandum No. 178 dated August 2, 1994 directing the persons named therein to stop the operation of small temporary stores and ambulant vendors within the BU compound and to confiscate the goods if they continue to defy the order.

On September 17, 1994, defendant Aberin sent a handwritten memorandum to plaintiff's husband, Romeo dela Torre, enjoining compliance with the earlier memorandum to avoid embarrassment. In reply thereto, Romeo dela Torre wrote Dr. Aberin on September 19, 1994 inquiring as to the authenticity of the handwritten memorandum and in essence invoking the authority given to his wife to operate the canteen. Again, on September 22, 1994, defendant Sena issued Office Memorandum No. 206 reiterating the stoppage of operation of temporary stores within the campus.

In a letter dated October 4, 1994, defendant Sena terminated the Contract of Lease effective ninety (90) days from October 4, 1994 stating therein that "it is the desire of the Board of Regents to rid the campus of ambulant vendors, small stores, rolling stores, etc. operated within the reservation of the University as a way of protecting the constituencies from any form of sickness/ailments/security that may be brought by these stores".

Believing that the unilateral termination of the lease contract by the defendant was a violation of their agreement, plaintiff instituted an action for breach of contract with damages before the court a quo.[3]

Petitioner Belen dela Torre filed the Complaint for Breach of Contract and Damages[4] on 18 October 1994 before the RTC of Legazpi City which was raffled to Branch 8 thereof. She alleged that from the time the lease contract was terminated by respondent Lylia Sena on 4 October 1994, she still had two (2) more years to operate the eatery before the expiration of the lease which would coincide with the retirement of her husband from Bicol University (BU). In terminating the lease contract, she claimed that respondents had a sinister motive of favoring, if not associating with, a certain Edgar Narvaez, another BU personnel, in the opening and operation of the same line of business she is in. She asked that respondents be ordered to pay the cost of the building, lost income for the remaining two years, moral damages, attorney's fees, exemplary damages and costs of suit.

In their Answer[5] filed on 28 November 1994, respondents revealed that petitioner had blatantly and repeatedly violated the terms and conditions of the Contract of Lease, among them being:

a) She has exceeded the area allowed her by the university under the contract, *i.e.*, that she could occupy only an area of 49 sq. meters, the dimension of which is 7 meters wide by 7 meters long; the actual area occupied is some 88 sq. meters.

b) The building is not made of light materials.

c) Plaintiff did not pay rentals in accordance with the terms of the contract.

d) Plaintiff did not put up her own power and water supply but illegally tapped the same from the university's power and water lines.

On account of these violations, respondents maintain that they have every right to terminate the contract. They pray that the complaint be dismissed, and on the compulsory counterclaim, they ask that petitioner be ordered to immediately vacate the premises, to pay for the power and water consumptions occasioned by her illegal tapping from the university's facilities, deficiency rentals, moral and exemplary damages, attorney's fees and costs of suit.

On 10 March 1995, an ocular inspection was conducted on the eatery being operated by petitioner.[6] On 21 March 1995, pre-trial was terminated. After trial, the RTC rendered its decision[7] on 24 June 1996. It said in part:

> Plaintiff's violations are apparent, substantiated and remained uncontroverted. These violations by itself (sic) already constitute breach of the contract. Basic is the principle that he who comes to court must come with clean hands. In the instant case, here is the plaintiff who is herself guilty of breach of contract and yet charges the defendants also of breach for the latter's exercise of its right to terminate in case of any violation of the contract. The court finds it quite ironic.
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> Defendants' acceptance of payment for rentals beyond the grace period and the assessment of power consumptions despite the illegal tapping may be deemed to be a waiver of their right to rescind or terminate on these grounds. This is probably the reason why they chose to terminate the contract "as a way of protecting the [constituencies] from any form of sickness/ailments/security that may be brought about by (these) stores. x x x in consonance with the Department of Health in safeguarding the health of the BU population and for the protection and general safety of the university as a whole." (Exhibit F). Plaintiff assailed this by trying to prove that no violent incident transpired in her canteen and no sickness or illness has been contracted by any of the BU community on account of the food being served at her canteen. As the contract itself is worded: "x x x if the leased premises POSES DANGER to the security and safety of the BU property, its students and personnel and/or other analogous courses." Danger means a hazard, peril or that which may injure or harm. It does not, require that some form of sickness or injury has in fact been sustained. Defendants' act of terminating the contract was, therefore, but an exercise of its right under the contract and is legal.

It disposed of the case as follows:

> ALL THE FOREGOING CONSIDERED, judgment is hereby rendered in favor of the defendants and against the plaintiff. The Contract of Lease is hereby ordered terminated and the plaintiff is hereby ordered (1) to vacate the leased premises within thirty (30) days from receipt of this Decision and to remove any and all improvements she has introduced thereon; (2) to pay the rentals from October 14, 1994 until she vacates

> the premises corresponding to the 75.3 square meters actually occupied by her; (3) to pay such amount representing power and water consumptions occasioned by her illegal and unauthorized tapping from the time of the operation of her canteen until disconnection; (4) to pay deficiency rentals from July 15, 1990 to September 1994 pertaining to 26.3 square meters (75.3 sq. m.) as found out by the court during the ocular inspection, minus 49 square meters) the area in excess of the 49 square meters allowed in the contract at the rate of P5.00 per square meters; (5) to pay the costs.

Dissatisfied, petitioner appealed to the Court of Appeals.[8] In the meantime, she vacated the leased premises on 12 December 1996, the day her husband, Romeo dela Torre, retired from BU.

On 26 January 2001, the Court of Appeals affirmed the RTC decision with modification as to the award of costs. The decretal portion of the decision reads:

> WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED WITH MODIFICATION as to the award of costs which is hereby deleted for lack of basis.

The motion for reconsideration filed by petitioner was denied on 19 June 2001.

Petitioner is now before us via an appeal under Rule 45 of the 1997 Rules of Civil Procedure. She contends that:

> THE RESPONDENT COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN PRE-TERMINATING THE CONTRACT OF LEASE BETWEEN PETITIONER AND PRIVATE RESPONDENT BASED ON THE GROUNDS NOT MENTIONED IN THE PRE-TERMINATION LETTER DATED OCTOBER 4, 1994 WHOSE GROUNDS OR VIOLATIONS WERE ALREADY WAIVED AND ABANDONED BY PRIVATE RESPONDENT BEING NOT MENTIONED IN THE PRE-TERMINATION LETTER.

She poses the question: Can a Contract of Lease be pre-terminated on a ground not mentioned in the pre-termination letter?

We answer in the negative.

A contract of lease, if pre-termination is allowed or agreed upon, should be allowed on a ground or grounds mentioned in the pre-termination letter. Only the ground or grounds stated therein should be considered in the contract's pre-termination. This is in keeping up with the principle of due process. Due process demands that a party to a contract should be fully apprised as to why the contract is being pre-terminated so he will know if the ground or grounds relied upon are allowed and provided for in the contract. To allow the pre-termination for a reason other than that contained in the pre-termination letter is unfair to the other party. This will deprive him the right to air his side on the matter. If there are other grounds that would justify the pre-termination of the contract, the same should be included in the pre-termination letter. If said grounds are not mentioned therein, they should not be considered.

Petitioner argues that the Court of Appeals erred when it pre-terminated the contract of lease on grounds not mentioned in the pre-termination letter dated 04