

## NINETEENTH DIVISION

[ CA-G.R. CV NO. 03986, January 26, 2015 ]

**ANDREE ABRIAM PLAINTIFF-APPELLEE, VS. FRANCIS A. JUAN  
DEFENDANT-APPELLANT.**

### D E C I S I O N

**LOPEZ, J.:**

Challenged in this Appeal is the Decision<sup>[1]</sup> dated 10 May 2011 of the Kalibo, Aklan, Regional Trial Court, Branch 9, in Civil Case No. 8155, the dispositive portion of which reads:

**WHEREFORE**, premises considered, judgment is hereby rendered against the defendant declaring him liable to pay variable rentals under the Contract of Lease. Defendant is hereby ordered to pay the plaintiff the following sum of:

- a) P1,352,409.93 plus 6% interest from date of filing of the complaint, as total variable rent due for the years 2002 to 2006;
- b) P29,403 as litigation expenses, and
- c) P20,000.00 as attorney's fees; and

to pay the cost of the suit.

**SO ORDERED.**

### FACTS

The genesis of this case is the complaint filed by Appellee Andree Abriam (hereinafter "Abriam") against appellant Francis A. Juan (hereinafter "Juan").

In his complaint, Abriam alleges the following set of facts:

On 20 August 2002, appellee Abriam and appellant Juan entered into a Contract of Lease for a period of five (5) years commencing on 1 October 2002 until 30 September 2007. Juan leased the property of Abriam with an area of 331 square meters situated at Boracay Island, Barangay Balabag, Malay, Aklan.

Section 4.01, Article IV, paragraph 3, of the said Contract of Lease provides:

"After the LESSEE has fully commenced its operation, the LESSOR shall also be entitled to a variable rent of five percent (5%) of the sales of the LESSEE at the Leased Premises, after deduction of the service charge and all government sales taxes thereon, and which variable rental shall be payable every first week of each month."

According to appellee, Juan fully operated his bar and restaurant under the business name "PIER ONE BORACAY CORPORATION" from October 2002 up to September 2007. He alleges that since the start of Juan's operations on October 2002, appellant has never paid

the variable rent stipulated in the lease contract.

Appellee further alleges that according to available records, appellant's gross sales, from the time he started full operation over the leased premises, up to the year 2006 is P35,129,222.53. This amount excludes his gross sales from January 2007 to September 2007.

Based on the applications for Renewal of business permit<sup>[2]</sup> filed by appellant Juan with the Municipal Government of Malay, and the government taxes due thereon, the following figures are hereunder shown:

<b>Year</b>	<b>Gross Sales</b>	<b>Municipal Taxes</b>	<b>BIR Taxes</b>	<b>Service Charge</b>	<b>Net after gov't. tax paid &amp; service charge</b>
2002	P505,800.24	P16,206.00	P60,696.03	P50,580.03	P378,318.18
2003	P5,013,889.52	P105,295.00	P601,666.75	P501,388.95	P3,805,538.82
2004	P10,174,830.30	P66,880.44	P1,220,979.64	P1,017,483.03	P7,869,487.19
2005	P11,460,576.64	P92,923.78	P1,375,269.20	P1,146,057.67	P8,846,325.99
2006	P7,974,125.83	P71,289.80	P956,895.10	P797,412.59	P6,148,528.34
<b>Total:</b>	<b>35,129,22.53</b>	<b>352,595.02</b>	<b>4,215,506.70</b>	<b>3,512,922.2</b>	<b>27,048,198.52</b>

Pursuant to the Contract of Lease, Abriam is entitled to five percent (5%) of the gross sales after deduction of the service charge and all government taxes. This amount is supposed to be payable to Abriam every first week of each month.

Appellee maintains that based on the abovementioned gross sales less government and service charges, the total variable rent payable to him is P1,352,409.93 which is five percent (5%) of P27,048,198.52. According to him, he is also entitled to an additional amount of variable rent representing the sales from January 2007 up to September 2007. Nevertheless, the additional variable rent for the said period cannot yet be determined with accuracy at the time of the filing of the complaint since the records of the sales are in the possession of appellant Juan.

Despite repeated verbal and written demands, the latest of which was the demand letter<sup>[3]</sup> dated 15 June 2007, Juan failed and/or refused to pay Abriam the abovementioned five percent (5%) variable rent agreed upon to the damage and prejudice of appellee Juan.

As a consequence of the obstinate and unjustifiable refusal or failure of appellant Juan to pay the afore-stated amount, Abriam was constrained to file this case and engage the services of counsel in the sum of P20,000.00 as attorney's fees plus P2,500.00 for every court appearance. He also incurred litigation expenses amounting to not less than P10,000.00. He also maintains that due to the non-payment of the variable rent, appellant should be required to pay the corresponding legal interest of 12% per annum of the variable rent as penalty for depriving appellee the said rent for more than four (4) years.

On the other hand, appellant Juan claims that he does not maintain a business address at Pier 1 Boracay Island, Malay, Aklan and he does not operate a bar and restaurant business under the business name Pier one Boracay Corporation. The Corporation is a domestic corporation duly registered with the Securities and Exchange Commission with its own juridical personality, separate and distinct from that of the defendant-appellant. "Pier One Boracay Corporation" operates the bar and restaurant business, not appellant Juan.

According to appellant, appellee Abriam, in contravention of the Contract of Lease, is insisting on the collection of variable rent using as basis the gross sales of "PIER ONE BORACAY CORPORATION", an entity separate and distinct from appellant. He also maintains that the permit to Engage in Business, Trade or Occupation Numbers 0700, 3597, 173 and 4822<sup>[4]</sup> do not pertain to the gross sales of appellant. Instead, said applications show the gross sales of "PIER ONE BORACAY CORPORATION"

Appellant alleges that as a consequence of the malicious filing by appellee of this suit, he suffered moral shock, besmirched reputation, wounded feelings and serious anxiety which must perforce entitle him to moral damages in the amount of not less than P500,000.00, exemplary damages in the amount of not less than P500,000.00, attorney's fees of P250,000.00, plus an appearance fee of P10,000.00 for every court hearing to be attended.

During pre-trial<sup>[5]</sup>, the parties admitted that there is a Contract of Lease between them. They also admitted that it is "Pier One Boracay Corporation" that conducted business in the subject leased premises.

Hence this appeal.

### **ISSUES**

Appellant raises the following issues for our consideration:

#### **I.**

THE LOWER COURT GRAVELY ERRED WHEN IT RESOLVED THE CASE NOT ON THE PREPONDERANCE OF PLAINTIFF-APPELLEE'S EVIDENCES BUT ON THE WEAKNESS OF DEFENDANT-APPELLANT'S EVIDENCE.

#### **II.**

THE LOWER COURT GRAVELY ERRED WHEN IT AWARDED PHP1,352,409.93 PLUS 6% INTEREST AS THE TOTAL VARIABLE RENT DUE FROM 2002 TO 2006.

#### **III.**

THE LOWER COURT ERRED WHEN IT AWARDED LITIGATION EXPENSES, ATTORNEY'S FEES AND COST OF THE SUIT.

### **OUR RULING**

Appellant maintains that the burden of proof has not been overcome by the appellee. According to him the trial court's findings were based on circumstantial evidence.

We disagree.

In this case, we find that appellee Abriam was able to prove his claim against appellant Juan by a preponderance of evidence. Appellant is therefore liable to pay the variable rent.

We cannot give credence to appellant's contention that it was Paul Sanchez, in his personal capacity as franchisee of Pier One Bar and Grill Holding Corporation, who actually conducted business on the leased premises. The applications for business permit<sup>[6]</sup> (Exhibits "B", "C", "D", "E", and "F") clearly shows the following: (1) it was appellant Juan who filed the applications; (2) licenses were issued in the name of appellant Juan; (3) the

business name was Pier One Boracay Corporation; (4) the business conducted in the leased premises was a bar and restaurant; and (5) the owner/manager of the business was appellant himself. Nowhere in the applications submitted to the local government of Malay, Aklan does the name of Paul Sanchez appear as applicant or owner of the business conducted in the leased premises. While the name of Paul Sanchez appears at the tail end of the applications for the year 2006<sup>[7]</sup> and 2007<sup>[8]</sup>, his name appears beside the preposition "by" and above the name of Francis Juan. The use of the preposition "by" indicates that Paul Sanchez acted for and in behalf of appellant. Furthermore, in the application filed on the 10<sup>th</sup> of January 2005 (Exhibit D)<sup>[9]</sup>, it was appellant Juan himself who signed the dorsal portion as the applicant.

Appellant's defense is further belied by the lack of evidence to show that Pier One Boracay Corporation is indeed a duly registered corporation under Philippine laws. While during pre-trial<sup>[10]</sup>, it was stipulated by the parties that "Pier One Boracay Corporation" conducted business in the leased premises, no proof was presented to prove that Pier One Boracay Corporation is a corporation duly registered under Philippine law. No evidence has been put forward by the appellant to show the corporation's registration with the Securities and Exchange Commission (SEC). When there is no legal organization of a corporation, the association of a group of men for business or other endeavors does not absorb the personality of the group and merge it into the personality of another separate and independent entity which is not given corporate life by the mere formation of the group. Such conglomeration of persons is incompetent to act as a corporation, cannot create agents, or exercise by itself authority in its behalf.<sup>[11]</sup> Basic is the rule that it is only through incorporation and registration that corporations can acquire juridical personality under the Corporation Code.<sup>[12]</sup> It is only upon the approval and issuance of a certificate of incorporation by the SEC that the applicant corporation becomes a juridical person.<sup>[13]</sup>

Here, even if we were to believe appellant, that a different entity – Pier One Boracay Corporation conducted business in the leased premises, he would be liable for breach of contract since by doing so he violated Section 3.02<sup>[14]</sup> of the Lease Contract which provides that the lessee is only allowed to sublease the subject property only after the lessor gives his consent. In any case, he never sought permission from the Appellee that he will sublease the subject property because apparently there was no such intention in the first place.

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.<sup>[15]</sup> Neither party may unilaterally and upon his own exclusive volition, escape his obligation under the contract, unless the other party assented thereto, or unless for causes sufficient in law and pronounced adequate by a competent tribunal.<sup>[16]</sup> Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage, and law.<sup>[17]</sup>

Thus, the trial court was correct when it ruled that "in the end, it does not matter after all whether there was a corporation "Pier One Boracay Corporation", whether the defendant was the owner, or manager or a mere employee of the corporation; whether Paul Sanchez is the franchisee of Pier one Bar and Grill Holding Corporation; or whether as franchisee, Paul Sanchez is the owner, manager, and/or operator of "Pier One Boracay Corporation" to the exclusion of the defendant – for in any which way, defendant could either be held liable under his contractual obligation to pay the variable rent, or in the same measure, to pay damages for his failure to observe good faith in compliance therewith.<sup>[18]</sup>