

## THIRD DIVISION

[ CA-G.R. CV No. 101132, January 20, 2015 ]

**DOWNTOWN PROPERTIES, INC., PLAINTIFF-APPELLEE, VS.  
MANILA BAY REALTY AND MANAGEMENT CORPORATION,  
DEFENDANT-APPELLANT.**

### DECISION

**GONZALES-SISON, M., J.:**

Before this Court is an Appeal<sup>[1]</sup> from the Decision (Assailed Decision) of the Regional Trial Court of Pasay City, Branch 111 dated 25 February 2013 in Civil Case No. 03-0404-CFM which is for Specific Performance, Collection of Sum of Money and Damages.

Briefly, the facts of the case, as culled from the records, are as follows:

At the heart of the controversy is a Lease Agreement dated 17 December 1986 over a parcel of land with an area of 240 sq. meters located at Quezon Boulevard, Quiapo Maynila and covered by TCT No. 123331. The lessors: Maria B. Trinidad, Gloria T. Caniza, Paz T. Pardo and Remedios Fuentes agreed to lease the above property to herein appellant Manila Bay Realty and Management Corporation (Manila Bay Realty) for fifteen years beginning on 1 January 1987 until 31 December 2001. Part of the Lease Agreement is a stipulation, which is reproduced as follows:

"4. BUILDING. The LESSEE shall build a four-story building of concrete and strong materials in the leased premises and which building shall automatically belong to the LESSORS on a turn-key basis upon the expiration of the 15-year period of this Lease;"<sup>[2]</sup> (underscoring supplied)

In accordance with the above provision, Manila Bay Realty constructed a building over the leased land.

Subsequently, the lessors formed a corporation named Downtown Properties, Inc., exchanging their shares in the leased premise for the shares of the newly created company. Forthwith, Downtown Properties, Inc., (Downtown Properties) and Manila Bay Realty entered into an Amendment to Lease Agreement dated 21 May 1996 in order to reflect Downtown Properties as the new lessor under the same terms and conditions of the Lease Agreement.<sup>[3]</sup>

On 2 January 2002, or after the expiration of the Lease Agreement, Manila Bay Realty turned over to Downtown Properties the leased land and the building. However, Downtown Properties found out that the building was not in a good and tenantable condition in accordance with the "turn key" basis under the Lease Agreement. Moreover, Downtown Properties discovered that Manila Bay Realty failed to pay the real estate taxes on the building from 1996 to 2001, the last five (5)

years of the lease. In addition, Manila Bay Realty allegedly failed to pay the rent for the months of November and December 2001 amounting to P77,000.00.

As a result, on 19 March 2002, Downtown Properties, thru counsel, sent a demand letter to Manila Bay Realty demanding the payment of P1,154,838.39 representing back real estate taxes.<sup>[4]</sup>

In a letter dated 4 May 2002, Manila Bay Realty's counsels thus requested that they be given time to verify the validity of Downtown properties claim and advised Downtown Properties not to make representations with any individual or entity on said claim, otherwise, Manila Bay Realty will not reimburse Downtown Properties for any payment made.<sup>[5]</sup>

Later however, Downtown Properties entered into a Compromise Agreement with the City of Manila to pay the past due real estate taxes in a reduced amount of P504,873.70 with the understanding that Downtown Properties is not admitting any responsibility for the same.

Thereafter, Downtown Properties engaged the services of several contractors in order to repair the building, the electrical system, the plumbing and the roof. On 18 June 2003, Downtown Properties thru counsel sent a demand letter to Manila Bay Realty demanding the payment of P5,394,840.70 representing the repairs made, unpaid real property taxes and the unpaid rentals.<sup>[6]</sup> When said demand was left unheeded, Downtown Properties filed a Complaint<sup>[7]</sup> against Manila Bay Realty before the Regional Trial Court of Pasay City, Branch 111 (trial court) for Specific Performance, Collection of Sum of Money and Damages. In its prayer, Downtown Properties asked that it be awarded P5,394,840.70 in actual damages, P500,000.00 as moral damages, P500,000.00 as exemplary damages as well as P100,000.00 as attorney's fees plus P2,5000 per appearance on top of cost of suit.

In its Answer With Compulsory Counterclaim<sup>[8]</sup> Manila Bay argued in *seriatim* that the case was filed in the wrong venue, that there is nothing in the Lease Agreement which made Manila Bay liable for real estate tax, that the building was turned over to Downtown Properties in a habitable and tenantable condition, and that it paid Downtown Properties three (3) months advance and three (3) months cash deposit in the amount of P150,000.00 which are more than enough to cover the lease rentals for November and December 2001. Most importantly, Manila Bay Realty stressed that Downtown Properties failed to first make a demand from the Manila Bay Realty to make the necessary repairs before engaging the services of the contractors. The absence of such demand, according to Manila Bay Realty absolves it from the expenses incurred by Downtown Properties for the repairs made thereon. Consequently, Manila Bay Realty asked for the award of exemplary damages, attorney's fees and costs of litigation.

During pre-trial, the issues were narrowed down as follows:

1. Whether or not defendant complied with its obligation to turn over the building in a good and tenantable condition;
2. Whether or not defendant is liable to the plaintiff for the latter's expenses in the repairs of the building amounting to P4,812,267.99 introduced thereto without prior knowledge of defendant;

3. Whether or not defendant is liable to the plaintiff for the amount of P504,873.70 representing alleged unpaid real estate taxes;
4. Whether or not defendant is liable to the plaintiff for the amount of P77,000.00 representing rental arrears;
5. Whether or not defendant is liable to the plaintiff for the latter's claim for attorney's fees, moral and exemplary damages and costs of suit; and
6. Whether or not plaintiff should pay defendant exemplary damages amounting to P500,000.00, attorney's fees and costs of litigation.<sup>[9]</sup>

After the parties failed to settle the case,<sup>[10]</sup> the trial of the case ensued.

First to testify on the part of Downtown Properties was Elizabeth P. Orbeta, its President. The witness stated that after the building was turned over to them by Manila Bay Realty, they took some pictures of the same and discovered that it was in disarray. Allegedly, the roof and the ceiling have collapsed and the fourth floor was uninhabitable. Moreover, Manila Bay Realty allegedly did not turn over several keys of the different rooms, hence Downtown Properties requested these including the as-built plants to locate the electrical and plumbing utilities as well as the official receipts for the real estate taxes. However, Manila Bay Realty failed to accede to said request and told Downtown Properties to just change the locks. Just the same, Downtown Properties sent another letter requesting for the official receipts of the real estate taxes which were needed for the building permits to allow Downtown Properties to start construction. Due to the delay in obtaining said official receipts from Manila Bay Realty, Downtown Properties then went to the Manila City Hall and discovered that there were arrears in real estate taxes of almost P1,000,000.00. Downtown Properties then sent another letter to obtain the official receipts but Manila Bay Realty replied that it was not its responsibility to pay said taxes. Afterward, Downtown Properties took upon itself to negotiate for the reduction of the real estate tax due and it ended up paying the City Treasurer of Manila in the amount of P500,000.00 plus. As a result, the official receipts reflect Downtown Properties as the payor. After the payment of the real estate taxes, Downtown Properties went on to hire several contractors to renovate the building. The total expenses for the repairs amounted to P4,400,000.00 plus. Subsequently, Downtown Properties sent a demand letter to Manila Bay Realty for the payment of the repairs expenses, back rentals and real estate taxes, but to no avail, hence Downtown Properties was constrained to institute the instant case.<sup>[11]</sup>

On cross-examination, the witness admitted that Downtown Properties did not notify Manila Bay Realty when the repairs were being made because after informing Manila Bay Realty about the poor condition of the building, the latter failed to reply immediately and that Downtown Properties did not want the building to be left vacant for a long time.<sup>[12]</sup>

Next to testify was Rochelle Ciudad-Baylon, the architect hired by Downtown Properties to assess the condition of the building. According to the witness she first saw the building in October of 2001. She then came back in the last week of January 2002 and took some pictures. The witness then noticed that the walls and ceilings of the building were dilapidated, the paint was peeling off, the floor was broken down, and that there were no water and electricity. The witness thus recommended that extensive renovations and repairs are needed as well as the replacement of the plumbing fixtures, tiles, flooring and electrical wiring in order to

use the building.<sup>[13]</sup>

Afterward, Downtown Properties presented Diana P. Aguilar, the Treasurer and Vice President of Downtown Properties. The witness explained that she was the one who negotiated with the City Hall of Manila to compromise the real estate taxes over the building. From P1,000,000.00 she was able to have it brought down to roughly P500,000.00. After getting the official receipts, Downtown Properties was then able to get the permits needed to repair the building.<sup>[14]</sup>

Last to testify for Downtown Properties was its lawyer Victor Pablo C. Trinidad. The witness narrated that he and his associate were the ones who drafted the final demand letter to Manila Bay Realty for the payment of the repairs, unpaid taxes and rentals. However, Manila Bay Realty failed to reply to said demand, hence they filed the instant case against the said company.<sup>[15]</sup>

Thereafter, it was the turn of Manila Bay Realty which then presented its Vice President and Treasurer, Cynthia Y. Escalona. The witness was adamant in stating that the building was handed over to Downtown Properties in a good and tenable condition as she herself conducted its repairs prior to the turn over. Further, the witness expressed dismay that Downtown Properties did not inform Manila Bay Realty beforehand as to the repairs needed, until a case had already been filed. As to the real estate taxes, the witness attested that Manila Bay Realty asked to Downtown Properties to give Manila Bay Realty some time to check the records but Downtown Properties in haste, settled the bill without first informing Manila Bay Realty. Manila Bay Realty also did not authorize Diana P. Aguilar to make to compromise the real estate taxes. As to unpaid rentals amounting to P77,000.00, the witness stated that she was hopeful that the advance payments made by Manila Bay Realty to the original lessors amounting to P120,000.00 would be more than sufficient to offset the said balance.<sup>[16]</sup>

Subsequently, Manila Bay Realty presented its employee, Eduardo Pangan who was in charge of overseeing the rooms of the building. The witness testified that at the time of the turn over, the building was in a tenable condition with water and electricity.<sup>[17]</sup>

After trial, the case was deemed submitted for decision.<sup>[18]</sup>

On 25 February 2013, the trial court then rendered the Assailed Decision favoring Downtown. The trial court ratiocinated that under the turnkey provision of the Lease Agreement, the building constructed by Manila Bay Realty should be in a condition ready for use or occupation. However, the trial court found that Manila Bay Realty breached said obligation after finding that the building was in disrepair at the time of the transfer. The trial court thus ordered Manila Bay Realty to pay Downtown Properties the expenses incurred by the latter for the necessary repairs which excludes the renovations made on the mezzanine and the second floor. As to the real estate taxes, the trial court found that Manila Bay Realty was liable for their payment, hence any payment made by Downtown Properties redounded to the benefit of Manila Bay Realty which is then obliged to reimburse Downtown Properties for the same. With respect to the unpaid rentals, the trial court ruled that Manila Bay Realty failed to prove that it paid any advance payments to Downtown, hence, there is nothing to offset. Finally, the trial court awarded the payment of attorney's

fees to Downtown Properties due to Manila Bay Realty's unjustified failure to heed the repeated demands to comply with its obligation under the Lease Agreement. The *fallo* of the trial court's Decision reads:

"WHEREFORE, judgment is in favor of plaintiff. Accordingly, defendant Manila Bay Realty and Management Corporation is ordered to pay plaintiff:

1. P3,512,267.00 as actual damages representing the total necessary repair expenses;
2. P504,873.70 as reimbursement of realty taxes paid;
3. P77,700.00 unpaid rentals for November and December 2001 plus legal interest from demand on 08 August 2002 until fully paid;
4. P100,000.00 as attorney's fees plus P2,500.00 for every court appearance; and
5. Cost of suit.

SO ORDERED."<sup>[19]</sup>

Subsequently, Manila Bay Realty filed a Motion for Reconsideration of the above Decision.

After finding that the parties did stipulate that there were advance payments made at the start of the Lease Agreement, the trial court modified its Decision on 4 June 2013 as follows:

"WHEREFORE, the Decision dated 25 February 2013 is MODIFIED. The order to pay unpaid rentals is DELETED.

SO ORDERED."<sup>[20]</sup>

Dissatisfied still, Manila Bay Realty files this instant Appeal presenting the following issues:

**A.**

**WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING APPELLANT LIABLE FOR ACTUAL DAMAGES REPRESENTING REPAIR EXPENSES**

**B.**

**WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING APPELLANT LIABLE FOR THE AMOUNT OF PHP 504,873.70 AS REIMBURSEMENT FOR REALTY TAXES**

**C.**

**WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING APPELLANT LIABLE FOR ATTORNEY'S FEES.**

**D.**

**WHETHER OR NOT THE TRIAL COURT ERRED IN NOT HOLDING PLAINTIFF-**