

## SPECIAL FOURTH DIVISION

[ CA-G.R. CV No. 102636, April 25, 2015 ]

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS), PLAINTIFF-APPELLEE, VS. SAMAHAN NG MGA NAGHAHANAPBUHAY SA BALARA GATE (SNBG), REPRESENTED BY ITS PRESIDENT, ADOLFO P. AZUL AND OTHER PERSONS CLAIMING RIGHTS UNDER THE SAMAHAN, DEFENDANTS-APPELLANTS.**

### DECISION

**ABDULWAHID, J.:**

Before us is an appeal interposed by defendants-appellants *Samahan ng mga Naghaahanapbuhay sa Balara Gate* (SNBG), through its president, Adolfo P. Azul, and other persons claiming rights under SNBG, from the *Decision*<sup>[1]</sup> dated November 29, 2012 and *Order*<sup>[2]</sup> dated June 20, 2013 of the Regional Trial Court (RTC), Branch 224, Quezon City in Civil Case No. Q-10-68433.

The present appeal arose from a *Complaint*<sup>[3]</sup> for recovery of possession of property and collection of sum of money filed on December 13, 2010 by plaintiff-appellee Metropolitan Waterworks and Sewerage System (MWSS) against defendants-appellants. The subject of the *Complaint* is a parcel of land situated at the corner of Ventura Street and Katipunan, Barangay Pansol, Balara, Quezon City.

In the above-mentioned *Complaint*, MWSS averred that it was the absolute owner of the subject property in Barangay Pansol. Pursuant to a *Contract of Lease*<sup>[4]</sup> dated January 15, 2007, said property was leased out to SNBG, particularly the following members:

- |                       |                        |
|-----------------------|------------------------|
| 1. Adolfo P. Azul     | 14. Alexander Estanol  |
| 2. Virgilio Lucas     | 15. Maximo Borja       |
| 3. Zenaida Reyes      | 16. Virgilio Encila    |
| 4. Fe Crisostomo      | 17. Aileen Regino      |
| 5. Feliza Ablaza      | 18. Aida Mahusay       |
| 6. Vicente Villasquez | 19. Terry Arriola      |
| 7. Elpidia Sevilla    | 20. Stella Avendano    |
| 8. Renato De Jesus    | 21. Nelda V. Coronel   |
| 9. Bayani Gabriel     | 22. Amelia Vinoya      |
| 10. Rizalina Baduria  | 23. Katherine Omogtong |
| 11. Melissa Nebdrida  | 24. Lotto Outlet       |
| 12. Rodolfo Matinez   | 25. Wilfredo Solomon   |
| 13. Carmelita Encila  |                        |

MWSS likewise alleged that the subject property was leased to the above-mentioned defendants at an agreed rental rate of Php25,000.00 per month, payable on/or

before the end of each month. Corollary thereto, the pertinent provision of the Contract of Lease relevant to the instant case reads, as follows:<sup>[5]</sup>

**5. Default.** – LESSEE shall be considered in default if it fails to pay three (3) consecutive monthly rentals. Accordingly, LESSOR shall have the right to terminate this contract and demand LESSEE to surrender and peacefully vacate the leased premises.

However, despite repeated demands by MWSS that SNBG pay its accrued rentals as agreed upon under the *Contract of Lease*, SNBG had defaulted on the payment of the rentals for the leased units since July 2007 up to September 2010. As of the time of the filing of the *Complaint*, the accrued rentals amounted to Php1,373,595.50. Consequently, MWSS served upon SNBG a *Demand Letter*<sup>[6]</sup> dated October 5, 2010, ordering SNBG to pay the accrued rentals and to vacate the subject premises. However, SNBG failed to comply with MWSS' demands, thus resulting in the filing of the instant Complaint, wherein MWSS prayed, as follows:<sup>[7]</sup>

8. WHEREFORE, it is respectfully prayed that judgment be rendered:

a) ordering the defendant and all persons deriving title from him to vacate the area occupied by him at the corner of H. Ventura Street, and Katipunan Road, Brgy. Pansol, Balara, Quezon City;

b) ordering the defendant to pay the plaintiff the amount of Php1,373,595.50 representing the amount due for the premises from June 2007 to September 2010 with interest at the legal rate from the date of filing of the complaint until fully paid;

c) ordering the defendant to pay the plaintiff the amount of Php25,000.00/month from the date of filing until he has actually vacated the premises and return the possession thereof to the plaintiff; and

d) to pay the plaintiff the cost of the suit.

On February 15, 2011, the *Summons*<sup>[8]</sup> dated January 3, 2011 was served upon SNBG through Mr. Azul. Despite filing a *Motion for Extension of Time to File Answer*<sup>[9]</sup> on February 23, 2011, SNBG never filed its Answer to the *Complaint*, thus causing MWSS to file a *Motion to Declare Defendants in Default*<sup>[10]</sup> on June 28, 2011. During the hearing on MWSS' *Motion* on July 6, 2011, MWSS was required by the court *a quo* to submit proof of service of the above *Motion* to defendants-appellants.<sup>[11]</sup> MWSS later filed a *Compliance*<sup>[12]</sup> dated October 20, 2011, attaching thereto a copy of the same *Motion* and indicating therein that the same was mailed to defendants-appellants via registered mail, as evidenced by Registry Receipt No. 10224, but the same was found to be not the proof of service that the RTC required. Thus, on February 6, 2012, MWSS filed a second *Motion to Declare Defendants in Default*,<sup>[13]</sup> with the Copy Furnished portion signed and received by Mr. Virgilio Luces, one of the concerned members of SNBG. In addition, MWSS presented in open court the *Affidavit of Proof of Service*<sup>[14]</sup> executed by Arturo M. Tuason, Jr., an employee of MWSS, who stated therein that he personally served the Motion to SNBG and that the same was received by the latter's vice-president, Mr. Luces. Consequently, on March 23, 2012, the RTC issued an *Order*<sup>[15]</sup> declaring

defendants-appellants in default for failure to file their *Answer*, despite service of *Summons* upon them, and setting the case for the presentation of MWSS' evidence *ex-parte*.

During hearing, MWSS presented Mr. Ceasar C. Raymundo, the Acting Division Manager of MWSS, to testify in its behalf.<sup>[16]</sup> Mr. Raymundo testified that, as part of the duties and responsibilities of his office, he was in charge of the safekeeping of pertinent documents concerning the real properties belonging to MWSS. Thus, he brought the original copies for comparison with the copies of the documents which he had certified as true copies of the original, and which were later formally offered in evidence for MWSS, to wit: (1) *Contract of Lease* dated January 15, 2007 (Exhibit A); (2) *Notice to Proceed* dated January 11, 2007, directing SNBG to proceed with the construction of their commercial structures on the subject property (Exhibit B); (3) *Demand Letter* to pay and vacate dated October 5, 2010 (Exhibit C); (4) *Order of Payment* dated March 24, 2011, for the partial payment of SNBG's arrears (Exhibit D); (5) *Official Receipt* dated March 24, 2011, for the partial payment of SNBG's arrears (Exhibit E); (6) *Demand Letter* dated September 3, 2009 (Exhibit F); and (7) *Statement of Lease Accounts* stating that SNBG's unpaid rentals amounted to Php2,158,482.65 (Exhibit G).<sup>[17]</sup>

The foregoing exhibits were admitted in evidence, after which, the case was deemed submitted for decision.

On November 29, 2012, the RTC rendered its Decision by default, disposing the case in favor of MWSS, viz:<sup>[18]</sup>

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff as follows:

- a) The defendant, "Samahan Ng Mga Naghahanapbuhay sa Balara Gate" represented by its president, Adolfo P. Azul, and all persons deriving title from it are Ordered to vacate the area occupied by them at the corner of H. Ventura Street and Katipunan Road, Brgy. Pansol, Balara, Quezon City;
- b) The said defendant is also Ordered to pay the plaintiff the amount of One Million Three Hundred Seventy Three Thousand Five Hundred Ninety Five Pesos and Fifty Centavos (Php 1,373,595.50) representing the amount due for the premises from July 2007 to September 2010 with interest at the legal rate from the date of filing of the Complaint until fully paid;
- c) The said defendant is further Ordered to pay the plaintiff the amount of Twenty Five Thousand Pesos (Php 25,000.00) per month from the date of filing of the Complaint until the defendant and all persons deriving title from it actually vacate the premises and return the possession thereof to the plaintiff; and
- d) The said defendant is finally Ordered to pay the plaintiff

the cost of the suit.

SO ORDERED.

SNBG received a copy of the above judgment by default on January 28, 2013, and subsequently filed its *Urgent Motion to Set Aside Judgment by Default*<sup>[19]</sup> on February 11, 2013, citing fraud on the part of MWSS in obtaining the Order declaring the former in default and the judgment by default. In particular, SNBG averred that, on March 24, 2011, MWSS officials, Atty. Jeff Codamon, Atty. Darlene Uy (changed to Atty. Annabelle Altura in a subsequent *Manifestation and Motion*<sup>[20]</sup> dated February 20, 2013), Acting Manager Engr. Raymundo and Department Manager Benedicto Arellano, informed Mr. Azul that, upon payment of Php56,100.00, the instant case would be settled and that SNBG would just have to wait for the new contract to be executed by MWSS and SNBG, which will include the arrears and rental fees of Php1,000.00 for a period of five years, at the rate of Php1,313.76 per stall per month. Thus, upon the representation of the foregoing MWSS officials, SNBG no longer filed an *Answer* and merely ignored the notices which it received at its office. However, SNBG was surprised when it received the *Order* of default dated March 23, 2012. Thus, SNBG prayed that the order of default be lifted, that the judgment by default be set aside and reconsidered, and that SNBG be allowed to present their evidence in court.

On May 2, 2013, MWSS filed its *Compliance*<sup>[21]</sup> by way of comment to defendants-appellants' *Urgent Motion*, categorically denying the latter's allegations.

On June 20, 2013, the RTC rendered its assailed Order, denying the motion to lift the order of default and to set aside the judgment in default, thus:<sup>[22]</sup>

This Court is not persuaded. The defendants' bare allegation of fraud is not only insufficient but it is not of the kind which ordinary prudence could have guarded against. Moreover, there is no showing of undisputed facts constituting the said defendants' good and substantial defense. The record clearly shows and the defendants have admitted that they did not file any Answer and ignored the Notices they have received. The Order declaring defendants in default is the proper legal consequence sanctioned under the Rules of Court. The Decision was also rendered in accordance with due process of law and based on the testimonial and documentary evidence presented in Court.

There is simply no competent evidence which shows that the plaintiff, through its officials, had given the defendants' representative, Adolfo P. Azul, any kind of assurance that the instant case would be settled and a new contract of lease would be executed. Despite duly receiving the subject Summons and Notices in this case, the defendants had imprudently chosen not to file any Answer and they still intentionally failed to heed the Notices concerning the proceedings conducted before this Court. Significantly, the alleged fraud imputed by the defendants does not appear to be extrinsic which would have prevented them from having their day in court. "Extrinsic or collateral fraud is trickery practiced by the prevailing party upon the unsuccessful party, which prevents the latter from fully proving his case—it affects not the judgment itself but the manner in which said judgment is obtained."