

**THE NET, INC., PLAINTIFF-APPELLEE, VS. EQUATORIAL REALTY DEVELOPMENT, INC. AND MAYFAIR THEATER, INC., DEFENDANTS.
EQUATORIAL REALTY DEVELOPMENT, INC.,
DEFENDANT-APPELLANT.**

Ponente: CRUZ, J.

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CRUZ, J.:

Before the Regional Trial Court (or “RTC”) of Manila (Branch 5) was an action for interpleader involving the rentals on a 138 square-meter portion (or “contested premises”) of the ground floor of CARBA Building (or “building”) situated at 1883 C. M. Recto Avenue, Manila. The building stands on four lots formerly covered by Transfer Certificates of Title (or “TCT”) Nos. 130407 to 130410 in the name of Equatorial Realty Development, Inc. (or “appellant”).

The contested premises was leased by The Net, Inc. (or “appellee”) from appellant for a period of three years starting July 1, 1996 at a monthly rental of P63,000.00.

Filed by appellee on November 6, 1997 against Mayfair Theater, Inc. (or “Mayfair”) and appellant, the action was predicated on the averments that Mayfair and appellant were demanding payment of the rentals for the contested premises (or “rentals in question”), each claiming ownership of the building and lots whereon it stands (or “subject property”).

On December 24, 1997, January 5, 1998 and February 5, 1998, appellee deposited with the Office of the Clerk of Court, RTC of Manila, various amounts totaling P436,590.00 representing the rentals in question from September 1997 to February 1998 (or “rental deposit”).

In answer, appellant laid claim to the rentals in question on the grounds that it is the owner of the subject property per TCT Nos. 130407 to 130410; that said TCTs still subsist and cannot be collaterally attacked; that the Supreme Court’s decision in Equatorial Realty Development, Inc. and Carmelo & Bauermann, Inc. vs. Mayfair Theater, Inc. (G.R. No. 106063, November 21, 1996) did not vest title over the subject property in Carmelo & Bauermann, Inc. (or “Carmelo”) nor annul the sale thereof by the latter in its favor since the decision deemed the sale rescinded only upon Carmelo’s restitution of the purchase price; and that pending execution of a deed of sale in favor of Carmelo, appellant continues to be the owner of the subject property.

Appellant set up a compulsory counterclaim for unpaid and accruing rentals and interests thereon and a cross-claim against Mayfair for damages and attorney’s fees. It sought a temporary restraining order (or “TRO”) and preliminary injunction to enjoin Mayfair from collecting rentals from appellee and from taking possession of the contested premises.

For its part, Mayfair filed a motion to dismiss the complaint on the grounds (i) that it “plainly states no cause of action” since TCT Nos. 130407 to 130410 were already canceled and, in lieu thereof, TCT Nos. 235120 to 235123 were issued to it; (ii) that there is another action pending between the same parties for the same cause; and

(iii) that the action is improper because appellee had knowledge of the transfer of ownership of the subject property to Mayfair.

On March 6, 1998, appellee and Mayfair executed a compromise agreement whereby the former recognized Mayfair as the true owner of the subject property and undertook to pay to the latter the rentals in question.

On March 27, 1998, appellee and Mayfair filed a joint omnibus motion praying (i) that their compromise agreement dated March 6, 1998 be approved; (ii) that the complaint be dismissed for having been mooted by said compromise agreement; and (iii) that appellee's rental deposit be released and paid directly to Mayfair.

On April 2, 1998, Mayfair filed a motion to dismiss the cross-claim predicated on (i) non-compliance with the rule on certificate of non-forum shopping; (ii) non-payment of docket fees; (iii) bar by prior judgment (in G.R. No. 106063); and (iv) the abovementioned compromise agreement.

On November 27, 1998, the RTC issued an order approving the compromise agreement, denying appellant's application for TRO and preliminary injunction and dismissing appellant's counterclaim and cross-claim. Pertinent portions of said order read:

"x x x. In the case at bar, the rights of the defendant Equatorial over the rentals sought to be paid by the plaintiff is not only undetermined and free of doubts but was already resolved as belonging to the other claimant, the Mayfair Theater, Inc. And, further considering that defendant Mayfair and plaintiff, The Net has also executed a Compromise Agreement, which they have submitted to this Court for approval and to dismiss this case, and the same not appearing to be contrary to law, morals, public order and public policy, is ordered Approved.

Likewise, the counter claim and cross claim also contained in the answer filed by Equatorial, this Court honestly believed cannot remain pending for an independent adjudication. Apparently, these claims all hinges from the continuing claim for ownership by Equatorial over the leased property notwithstanding the implementation of the Supreme Court's decision of November 21, 1996. That the execution of the pertinent deeds and documents of transfer of the subject property by the Manila RTC Clerk of Court pursuant to Sec. 10, Rule 39 of the Revised Rules of Court and the eventual cancellation and issuance of new transfer certificates of title in the name of Mayfair was further affirmed by the Court of Appeals when it denied the petition for certiorari and prohibition filed by Equatorial to set aside the orders of May 20, 1997, August 25, 1997 and November 6, 1997, by the Presiding Judge of RTC, Branch 7, Manila. That since the questions by Equatorial on the alleged irregularity on the procedure by which Supreme Court's decision was executed has already been resolved by the Court of Appeals, apparently, no material facts are further left to support the counter-claim and cross-claims posed by Equatorial as against the plaintiff, The Net and co-defendant Mayfair. And, furthermore, the cross-claim of Equatorial against Mayfair is so inextricably linked and dependent upon Mayfair's claim also for the rentals over the leased property. However, with the Supreme Court's decision vesting ownership already upon Mayfair over the properties subject of the lease, the counter-claim and cross claim has no more leg to stand on and could not remain for an independent adjudication by this court. (*Belleza vs. HuntingFon*, L-3319; *Froilan vs. Pan Oriental Shipping*, L-6060, Sept. 30, 1954). Hence, to dismiss the counter claim and cross claim pleaded by Equatorial is believed proper and in order.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the claimant, Mayfair Theater, Inc. Accordingly, the plaintiff, The Net, Inc., is ordered to pay their rentals over the property subject of the lease with Mayfair Theater, Inc. from September, 1998 to its termination as may be provided for in their subsequent contract of lease.

The counter-claim filed by the defendant Equatorial against the plaintiff, The Net and cross-claim against Mayfair Theater, Inc. are ordered Dismissed for lack of basis in fact and in law."

Appellant filed a motion for reconsideration of the order dated November 27, 1998 but it was denied per order dated April 12, 1999. Within the reglementary period, appellant filed a notice of appeal in respect to the order dated November 27, 1998.

On April 15, 1999, Mayfair filed an omnibus motion praying, among others, for the release of the rental deposit “pending resolution of (appellant’s) Motion for Reconsideration.”

On May 3, 1999, Mayfair filed a motion for execution pending appeal. Appellant opposed the motion.

On December 15, 1999, the RTC issued an omnibus order, the dispositive portion of which reads:

“WHEREFORE, premises all considered, this Court orders as follows:

- The Joint Omnibus Motion filed by the plaintiff, The Net, and Mayfair Theatre, Inc. for the release of the amount deposited or consigned with the RTC, Clerk of Court of Manila, is hereby Granted.

Accordingly, the Clerk of Court of the Regional Trial Court of Manila is ordered to release The Net, Inc.’s deposit in the amount of P436,590.00 to Mayfair Theater, Inc. upon presentation of the official receipts, and upon posting by Mayfair of a bond for the same amount to answer for damages in case of a reversal of the judgment in this case;

- The Motion for Execution Pending Appeal filed by Mayfair Theatre, Inc. is ordered Denied for lack of basis in fact and in law; And,

- The Notice of Appeal filed by Equatorial Realty Development, Inc. within the reglementary period is hereby Approved. The Branch Clerk of this Court is ordered to transmit within 30-days the entire records of the case, together with all the exhibits, transcripts of stenographic notes and other pertinent documents thereto to the Court of Appeals.

SO ORDERED.”

In support of its appeal, appellant theorizes that the RTC erred –

- “in deciding the case without an answer having been filed by Mayfair, without pretrial having been conducted, and without the parties’ litigation of their several claims among themselves”;

- “in ordering the release of rentals to Mayfair which amounts to execution pending appeal when, in the same order, the same trial court had already denied Mayfair’s motion for execution pending appeal”; and

- “in awarding the rentals to Mayfair when, as the Supreme Court’s decision in G.R. 136221 confirms, Equatorial still retains ownership over the disputed lots; cannot be deprived of its property without due process of law; and should have been awarded the rentals.”

The appeal is bereft of merit.

Appellant contends that the court a quo deviated from the usual procedure when it decided the case without an answer being filed by Mayfair and no pre-trial and trial having been conducted; and that the defenses of *litis pendentia* and lack of cause of action pleaded in Mayfair’s motion to dismiss are baseless and unavailing.

The order dated November 27, 1998, insofar as it declares that “judgment is hereby rendered in favor of x x x Mayfair” and directs appellant to pay the rentals in question to the latter, constitutes a judgment based on compromise. Said judgment was rendered upon the lower court’s finding that the compromise agreement does “not (appear) to be contrary to law, morals, public order and public policy” and in obedience to the Supreme Court’s decision in G. R. No. 106063, the dispositive portion of which reads:

“WHEREFORE, the petition for review of the decision of the Court of Appeals, dated June 23, 1992, in CA-G.R. CV No. 32918, is HEREBY DENIED. The Deed of Absolute Sale between petitioners Equatorial Realty Development, Inc. and Carmelo & Bauermann, Inc. is hereby deemed rescinded; petitioner Carmelo & Bauermann is ordered to return to petitioner Equatorial Realty Development the purchase price. The latter is directed to execute the deeds and documents necessary to return ownership to Carmelo & Bauermann of the disputed lots. Carmelo & Bauermann is ordered to allow Mayfair Theater, Inc. to buy the aforesaid lots for P11,300,000.00.”

Corollarily, the order of November 27, 1998 is self-explanatory, thus:

“Based on the foregoing facts and circumstances of the case, it is believed any question of ownership over the subject property and the issue as to who has the right over the rentals of the plaintiff has already been put to rest. As the Supreme Court has already ruled on the right of Mayfair over the subject property and said decision has already become final and has in fact been executed when Equatorial’s Certificates of Title were cancelled and new Certificates of Title were issued in favor of Mayfair, Equatorial has no more evidence left to still establish their continuing claim of ownership over the property subject of the lease. Mayfair as the present owner of the property, including the premises leased by The Net is now undisputed.”

Given the compromise agreement, no answer from Mayfair was necessary while pre-trial and trial were properly dispensed with. Thus, in *Manacop vs. Court of Appeals* (277 SCRA 57), the lower court rendered judgment based on the compromise agreement entered into by the parties before the defendants could file an answer. The Supreme Court declared the judgment “immediately executory”, thereby sustaining the validity thereof even if it was rendered prior to joinder of issues.

Besides, a compromise is a contract wherein the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced (Art. 2028, Civil Code of the Philippines). Certainly, there is no need for issues to be joined, much more for the parties to enter into pre-trial and then trial, if they wish to “put an end to” a litigation by way of compromise. By the same token, courts are not proscribed from rendering judgment based on compromise before joinder of issues.

Parenthetically, the order of November 27, 1998 also constitutes dismissal of appellant’s counterclaim and cross-claim. Before such dismissal, there was no need for an answer on the part of Mayfair nor for pre-trial and trial on the merits. A motion to dismiss may be filed “(w)ithin the time for but before filing the answer to the complaint or pleading asserting a claim” (Sec. 1, Rule 16, 1997 Rules of Civil Procedure).

It is observed that the dismissal of the complaint and cross-claim and the directive for the release of the rental deposit to Mayfair are not anchored on either *litis pendentia* or lack of cause of action but on the Supreme Court decision in G.R. No. 106063 and the compromise agreement. Consequently, discussion of those grounds is unnecessary.

Appellant likewise asserts that Mayfair’s motion to dismiss was filed out of time. However, records show that Mayfair received the summons on January 5, 1998. On January 20, 1999, it filed a motion for extension of time, expiring on February 4, 1998, within which to file a responsive pleading. And on February 4, 1998, it served and filed the motion to dismiss by registered mail.

Besides, the alleged delay in the filing of the motion to dismiss is a new theory which cannot be ventilated in this appeal. Points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal (*Tay Chun Suy vs. Court of Appeals*, 229 SCRA 151).

On the other hand, appellant’s second assignment of error assails the validity of the order dated December 15,

1999. However, said order was not appealed by appellant. Its notice of appeal pertains only to the order dated November 27, 1998. Neither did appellant assail the order of December 15, 1999 thru a special civil action for certiorari.

Nevertheless, appellant insists that the directive for the release of the rental deposit is inconsistent with the denial of the motion for execution pending appeal which also calls for the release of said deposit. However, the inconsistency is more apparent than real. This is so because at any time before the consignment is judicially approved, as in this case, the debtor may withdraw the sum deposited (Art. 1260, Civil Code of the Philippines).

Appellant likewise claims that it was deprived of property without due process of law. It claims that the Supreme Court decision in *Equatorial Realty Development, Inc. vs. Mayfair Theater, Inc.* (G.R. 136221, May 12, 2000) confirmed its ownership of the subject property pending restitution of the purchase price thereof by Carmelo.

However, the purchase price of the subject property, which was deposited by Mayfair in court during the execution by the RTC of the Supreme Court decision in G.R. 106063, was already released by the Clerk of Court to appellant (Manifestation dated August 23, 2002 of the Office of the Clerk of Court of Manila). The delivery of the purchase price to appellant has rendered the issues raised in the instant case moot and academic and the instant appeal of no practical use or value (*Garcia vs. Commission on Elections*, 258 SCRA 755).

At any rate, Mayfair's ownership of the subject property has been settled with finality by the Supreme Court in *Equatorial Realty Development, Inc. vs. Mayfair Theater, Inc.* (G.R. No. 133879, November 21, 2001) where it ruled:

“x x x. As already discussed, our Decision in GR No. 106063 shows that petitioner is not entitled to back rentals, because it never became the owner of the disputed properties due to a failure of delivery. And even assuming arguendo that there was a valid delivery, petitioner's bad faith negates its entitlement to the civil fruits of ownership, like interest and rentals.”

“Furthermore, assuming for the sake of argument that there was valid delivery, petitioner is not entitled to any benefits from the ‘rescinded’ Deed of Absolute Sale because of its bad faith. This being the law of the mother case decided in 1996, it may no longer be changed because it has long become final and executory.”

Certainly, the instant appeal has lost its bearings with the latest Supreme Court ruling (G.R. No. 133879).

WHEREFORE, the appealed order of the Regional Trial Court of Manila (Branch 5) is **AFFIRMED** in toto.

SO ORDERED.

Reyes, Jr., J. and Lanzas, JJ., concur.

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