

PONCIANO L. ALMEDA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, HON. NELLY L. ROMERO-VALDELLON, IN HER CAPACITY AS JUDGE; ALBERTO FIGUEROA; AND DEPUTY SHERIFF EUSTAQUIO PARA...

G.R. No. L-45461. November 29, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

At bar is a Petition for Review on Certiorari seeking to set aside the Decision of the then Court of Appeals in CA-G.R. No. 05901-R, which upheld, with qualification, the Order dated September 27, 1976 of the Court of First Instance of Rizal, Branch XXII, in Civil Case No. 15051.

The factual backdrop of the case is recited in the Decision of the Trial Court, thus:

"x x x on February 2, 1970 plaintiff (petitioner Ponciano L. Almeda) and defendant (private respondent Alberto Figueroa) entered into a Contract of Lease (Exh. A) wherein the 'entire ground floor except lobby' of the Almeda Building No. 3 located at the corner of Roxas Blvd. and San Luis Street, Pasay City, was leased to the defendant for a period of five years from March 1, 1970 at a monthly rental of P8,000.00 payable in advance on or before the 5th day of each month; that under said contract of lease, it is stipulated that the leased premises shall be utilized for restaurant business, operation of coin operated machines and other allied activities; that on April 10, 1970 the plaintiff and the defendant entered into another contract of lease (Exh. C) covering an area of 500 square meters of land at the back of Almeda Building No. 3 for a period of ten years from April 1, 1970 'unless sooner terminated' for a monthly rental of P2,500.00 payable in advance on or before the 5th day of each month during the lease. In the lease of 500 square meters of land, it is stipulated that the building to be constructed therein shall be used as a kitchen in the operation of defendant's restaurant and that said building shall be built at the exclusive expense of the defendant; that the premises consisting of the ground of the Almeda Building No. 3 was used and still being used as a restaurant under the tradename of 'Wells Fargo Restaurant'; that the 500 square meters of land and the building constructed thereon by the defendant at the expense of more than P500,000.00 is being used for kitchen purposes and allied activities of the defendant; that the defendant due to the inadequacy of water and air-conditioning system of the building was forced to make the necessary improvement in order to remedy the inadequacy of the water supply and the air-conditioning system and in doing so was forced to effect certain changes and innovation and improvements in the premises to maintain the patronage of the restaurant, 'Wells Fargo'; that in the construction of the said alterations, innovations, or improvements there was no written consent given by the plaintiff to the defendant in violation of paragraph nine (9) of the contract (Exhs. A & C) which is the law between plaintiff and defendant."

xxx xxx[1]

On August 9, 1981, petitioner filed an action for Cancellation of Lease Contract with Damages against private respondent in the former Court of First Instance of Rizal, Branch XXII, docketed as Civil Case No. 15051, on the ground that respondent had violated certain terms and conditions of the contract, to wit: (1) he made

improvements on the leased premises without the written consent of petitioner; (2) he defaulted in the payment of lease rentals; (3) he failed to maintain peace and order within the vicinity of the leased premises; and, (4) he utilized the annex building at the back of Almeda Building No. 3 as a gambling casino.

The Trial Court, with Judge Nicanor Sison presiding, finding that the improvements, alterations or innovations introduced by respondent at the ground floor of Almeda Building No. 3 as well as in the building constructed on the 500 square meter land were made without the prior written consent of petitioner, and that he had defaulted in the payment of monthly rentals, rendered a Decision on May 13, 1975 ordering the cancellation of the lease contracts and their Addendum, and ordered respondent to vacate the two premises, pay attorney's fees of P5,000.00 and the costs of suit.

On July 9, 1975, the Trial Court, upon petitioner's motion, ordered the execution of its judgment pending appeal. Private respondent sought to annul said Order in a petition for Certiorari filed with the Court of Appeals, docketed as CA-G.R. No. SP-04756. Said Appellate Court dismissed the petition on February 27, 1976 and sustained the validity of the Order of execution pending appeal.[2] An ordinary appeal from the same Decision of May 13, 1975 by private respondent to the Court of Appeals (CA-G.R. No. 58726-R) was likewise dismissed on November 25, 1976 for his failure to file appellant's Brief.

After the Decision in CA-G.R. No. SP-04756 had attained finality, petitioner filed in the Trial Court, a Motion for the issuance of an Alias Writ of Execution, which after hearing, was granted on July 26, 1976.

On July 28, 1976, respondent Sheriff implemented the Alias Writ and turned over to petitioner the possession of the premises involved. On August 5, 1976, private respondent filed a Motion to allow him to enter the premises, which had been pad-locked by respondent Sheriff, to take out several articles and personal items left inside the building, claiming that respondent Sheriff implemented the Writ in a hasty manner, which prevented him from taking out those articles. Petitioner opposed the Motion, but respondent Judge granted the same on August 16, 1976.

Petitioner moved for reconsideration of the foregoing Order stating that he would be left without any security nor assurance that private respondent would pay the costs to restore the premises to its original condition, which, according to the architect's estimate, would amount to P331,000.00. The Court denied reconsideration on September 7, 1976, and authorized the special Sheriff to enforce the Order of August 16, 1976.

On September 8, 1976, petitioner filed an Urgent Motion to require private respondent to submit a list of items to be withdrawn from Almeda Building No. 3 and its Annex, and for the Court to allow only the withdrawal of those items which do not partake of the nature of permanent improvements. Private respondent opposed the motion praying that an ocular inspection of the premises be made instead, to put an end to the controversy as to the nature of the things sought to be removed. Respondent Judge conducted the ocular inspection on September 27, 1976 and issued the challenged Order on the same date, stating that the items sought to be taken out by FIGUEROA may be easily removed from the building and, therefore, "do not partake of the nature of permanent improvements." Said Order also authorized respondent Sheriff to withdraw the items enumerated by FIGUEROA's counsel during the ocular inspection.

Petitioner assailed the validity of the foregoing Order in a Petition for Certiorari filed on September 28, 1976 with the former Court of Appeals, docketed as CA-G.R. No. SP-05901-R. It appears that on the basis of the lower Court's Order of September 27, 1976, respondent was able to take out of the premises all the movable items left therein, but by virtue of the filing of the Petition for Certiorari with the then Court of Appeals and the Restraining Order issued in connection therewith, respondent Sheriff was not able to remove a six-door freezer, a centralized air-conditioning unit with two blowers, a water tank and a water pump. These remain as the only controverted

items.

On December 27, 1976, respondent Appellate Court affirmed the Order authorizing removal of those items but required the posting of a bond corresponding to the cost of repairing the damage to be caused to the leased premises by reason of such removal. We quote the dispositive portion of respondent Court's Decision:

"WHEREFORE, the order of respondent Judge dated September 27, 1976 (Annex N) is hereby upheld, subject to the qualification that before the private respondent shall be given possession of the remaining items, to wit, the freezers, air-conditioners, water tank and water pump, he shall be required to put up a performance bond or some other under taking in an amount to be ascertained by the respondent Judge, corresponding to the cost of repairing the damage caused to the leased premises by reason of the installation and removal of said items. The writ of preliminary injunction in this case shall be deemed lifted only after such undertaking or performance bond shall have been filed and approved by respondent Judge. There shall be no costs."

Petitioner moved for reconsideration but the Appellate Court denied the same. Hence, this Petition with the following errors assigned:

I

"Respondent Court of Appeals erred when it granted private respondent the right to with-draw improvements from the leased premises introduced by private respondent in bad faith and without the written consent of the lessor (petitioner) having been first obtained despite numerous legal precedence enunciated by this Honorable Supreme Court in several cases sustaining the view that improvements introduced by a lessee within the leased premises contrary to an agreement with the lessor that prior consent must first be obtained before such introduction cannot be removed by lessee much less is the costs thereof reimbursed.

II

Moreover, even assuming that the private respondent could remove the improvements even though he introduced the same without the prior written consent of the petitioner, still the Honorable respondent Court of Appeals erred in authorizing the removal of the said improvements because the same was granted despite a clear showing that the removal of the improvements would result in injury to the premises.

III

While the Honorable Court of Appeals concedes private respondent's obligation to restore the premises to its original state and this is a confirmation of the fact that injury to the premises would be sustained if the re-moval is effected, the Honorable Court of Appeals erred when it merely required the undertaking to be limited to the restoration cost occasioned by the removal of the improve-ments selected by private respondent to the exclusion of all other unauthorized improvements introduced within the leased premises, the removal and the restoration cost which are substantial."

Simply put, the issues are: (1) whether the lessee who introduced unauthorized improvements is entitled to remove them; (2) whether the lessee could remove the im-provements if injury or damage would be sustained by the leased premises; and (3) whether the lessee's undertaking could be limited to the cost of repairing the damage caused to the leased premises by reason of the installation and removal of the items sought to be withdrawn. These issues were not litigated before the Trial Court nor were they touched upon in the questioned Order of September 27, 1976; the Trial Court, in said Order, merely held that the items sought to be taken out are not permanent in nature, and hence, may be removed.

Nonetheless, in the interest of settling this controversy, we affirm the ruling of respondent Appellate Court upholding, with qualification, the assailed Order of September 27, 1976. It correctly applied paragraph 5 of the

Addendum to the Contract of Lease,[3] reading:

"5. Lessee is hereby given the right to remove all the improvements that he may introduce in the leased premises provided the Lessee shall restore it in the original condition, wear and tear excluded, and provided further that should the Lessee shall fail to remove the improvements which he may introduce there-on within a reasonable time, Lessor shall be given the right to retain the same on the expiration of the Lease, without prejudice to Lessor requiring Lessee to remove the same."

As observed by the Appellate Court, private respondent is given the right to remove "all improvements that he may introduce in the leased premises" without qualifying whether the improvements contemplated are permanent or not.

Petitioner contends, however, that the above proviso should be read in conjunction with paragraph 9 of the Lease Contract requiring prior written consent of the lessor before the lessee may introduce improvements. Said paragraph 9 stipulates:

"NINTH - LESSEE shall not make any alterations, improvements or additions on the leased premises without the prior written consent of OWNER. All such alterations, improvements or additions made with the OWNER's consent shall upon termination of the lease, belong to the OWNER who shall acquire all the rights thereto without reimbursing LESSEE therefor, unless the OWNER elects to compel LESSEE to remove them forthwith, in which event LESSEE shall undertake such removal at his own expense, restoring the premises in the same condition in which he received them from OWNER."

By the very tenor of the foregoing provision, permanent improvements are being referred to. There would be no point to demand written consent by the lessor prior to the installation of removable improvements by the lessee. Of note, as found during the ocular inspection by the Trial Court, the improvements introduced by private respondent did not partake of the nature of permanent improvements and could be easily removed from the building, hence, the Order authorizing their removal. Principally governing the controversy, therefore, is Paragraph 5, which authorizes removal of all improvements provided that the leased premises were restored to their original condition. The Appellate Court has provided petitioner with the necessary safeguard by requiring the posting of a performance bond or undertaking to that effect prior to removal. The interests of the lessor, therefore, are sufficiently protected. Private respondent-lessee, for his part, has always been willing to undertake the necessary repairs to restore the premises to their original condition. Necessarily and justly, too, as found by respondent Appellate Court, those repairs should be limited to the cost of repairing the damaged caused by reason of removal, and to restore the premises to its original condition. To hold otherwise, as petitioner contends, would be to expand unduly the concept of lease.

It should also be observed that, as stressed by private respondent, the premises, originally for an office and display room, were leased specifically for a restaurant business and for a kitchen. The facilities introduced and sought to be removed, therefore, were indispensable to keep that business going. Petitioner-lessor should have known that those improvements had, of necessity, to be introduced to make them suitable to the use for which the lease was intended. But independently of the foregoing, and more importantly, is the finding of fact of the Appellate Court, which is binding on us, that the controverted improvements were not permanent. Under the contract of the parties, therefore, which is the law between them, those improvements may be removed.

WHEREFORE, finding the judgment under review in accordance with law and the evidence, the same is hereby affirmed.

Costs against petitioner.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] pp. 15-16, CA Rollo.

[2] pp. 22-28, *ibid.*

[3] Annex "I", Answer of Respondent, Court of Appeals, p. 75, CA Rollo.

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