

CERTIFIED CLUBS, INC., PETITIONER, VS. COURT OF APPEALS, INSTITUTIONAL FOOD SERVICES, INC., RESPONDENTS.

G.R. No. L-47695. May 07, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Review on Certiorari, petitioner seeks a reversal of the Decision of respondent Court of Appeals affirming, with modification, the judgment of the Court of First Instance of Manila, Branch XIX, awarding damages to private respondent.

The facts reveal that petitioner, Certified Clubs, Inc., is the lessee of the building known as the VIP Building, located at the corner of Plaza Ferguson and Roxas Boulevard, Manila. Private respondent, Institutional Food Services, Inc., runs a restaurant business known as the "Alta Vista Restaurant and Supper Club".

Two sub-lease agreements were entered into between petitioner and private respondent, the first on June 16, 1965 for the seventh floor, and the second in May, 1968 for the sixth floor of the VIP Building, "with complete airconditioning equipment". Both agreements had the same stipulations. Private respondent, as sub-lessee had also agreed to comply with all the terms and conditions of the main Lease Agreement.

The provisions of the Sub-lease Agreements pertinent to the present controversy read as follows:

"1. Subject and Term. The Sub-lessor hereby subleases to Sublessee and the Sublessee hereby subleases from Sublessor the entire top-Seventh Floor of the V.I.P. Building, with complete air conditioning equipment and facilities for connection of kitchen and other restaurant equipment, water and electrical connections, complete toilet and sanitary facilities, and two passenger elevators and one service elevator, for a period or term of four (4) years renewable at the option of Sublessee for another period of four years, and, if warranted by the Lease Contract of Building by Sublessor, a second renewal of another four years, upon notice by Sublessee in writing of at least two (2) months before the current lease period expires, it being hereby agreed that the Sublessee may terminate this contract upon two (2) months' notice given in writing at any time during the second year of the existence of this Sublease Agreement and Sublessor may likewise terminate this contract because of Sublessee's breach on thirty (30) days written notice to Sublessee.

It is hereby further agreed that this Sublease Agreement shall be effective on whichever is the earlier of the first or sixteenth of the month following the expiration of forty-five (45) days from notice of Sublessor to Sublessee that the elevators in the building are installed and are functioning normally, the air conditioning with compressor is running sufficient to cool the entire 7th floor and the partitions of the kitchen of the 7[th] floor are properly placed. The notice to be sent by the Sublessor and the verification and acceptance of the premises by the Sublessee shall be attached to this Contract and form an integral part hereof to definitely establish the effective date hereof.

"x x x x x x x x

"4. Improvements and alterations. The sublessor grants the sublessee the right to make at its own cost and

expense, such changes, improvements alterations and additions to the premises provided they are not of a kind and character that will impair the structural strength or increase fire hazard of the building of which the premises are a part, and the plans thereof are first submitted and approved in writing by the sublessor. In case the parties cannot agree on such alterations, the same shall be submitted to an architect chosen by Sublessor and paid by Sublessee, and such alterations shall then be made according to his directing and under his supervision. Upon the termination of this sublease, all changes, additions, alterations, repairs or improvements made or placed on the building or premises by the sublessee shall remain and become the property of the sublessor as a further consideration of this lease, except however that any movable furniture, shelves, counter, mirrors, appliances and equipment and fixtures placed thereon by the sublessee which do not actually become a part of the building or premises may be removed by the sublessee.

"5. Repairs. The sublessee assumes all duties and obligations with relation to the premises and building and the improvements that may hereafter be made thereon, the maintenance and operation thereof, and also the use and manner of use thereof, as if the sublessee is owner, so that no matter from what source arising except from force majeure or faulty construction, if anything shall be ordered or required to be done or omitted to be done thereon, shall be done and fulfilled at the sole expense and responsibilities of the sublessee and without any expense, liability or obligation whatsoever to or on Sublessor.

"x x x x x x x x

"12. Indemnity. The sublessor shall not be liable to the sublessee or its agent, employees, customer, or visitors for any damage caused to it or their persons or property on or about the building or premises subleased from fire, water, steam, gas, rain or electricity which may flow or leak from or into the premises or from any cause whatsoever. The sublessee agrees and undertakes to hold sublessor harmless and indemnified from all such loss, damage, liability or expense. This sublease shall not be affected nor shall there be any abatement in or of the rent by reason of any failure of water supply, gas supply, electric current, telephone, air conditioning or elevator service. In case such failure shall arise from or be due to negligence on the part of the sublessor repairs shall be made as soon as possible by sublessor to prevent any possible damage caused by the same. (*All italics supplied*).

On April 17, 1970, however private respondent terminated the lease and on June 29, 1970 it filed the Complaint below in Civil Case No. 80212 predicated on the following causes of action: "(1) defendant failed to comply with its obligation to provide an adequate air conditioning system for the leased premises, as a consequence of which, plaintiff suffered actual damages in the amount of P110,345.15 representing the cost of electric fans, the rental of window type air conditioners, and the cost of acquisition and installation of a package air conditioning system; (2) the construction of the windows and the ceilings of the leased premises is defective so that rain water leaked into said premises causing damages to plaintiff's furniture and rugs the amount of P11,739.23; (3) as a consequence of the repeated breakdown in the air conditioning system and the leaking of water into the leased premises, plaintiff's customers refrained from patronizing its restaurant - thus, plaintiff failed to realize net profits amounting to not less than P300,000.00; (4) termination of the lease contracts well short of the stipulated period due to defendant's non-compliance with their terms resulted in plaintiff's failure fully recover the cost of improvements it introduced in the leased premises, amounting to P91,653.56; and (5) defendant acted in gross and evident bad faith in refusing to comply with its plainly valid, just and demandable obligation — compelling plaintiff, by way of protecting itself and its interest, to retain the services of counsel for a fee and incur other expenses of litigation incident to the suit."

In its Answer, petitioner denied liability invoking the provisions of the Lease Agreements and counterclaimed for (1) P141,995.87, with interest, representing unpaid rental and utility charges; (2) P138,000.00 representing rental for the unexpired portion of the sub-lease contract; (3) the value of the permanent leasehold improvements which private respondent allegedly removed from the leased premises; and (4) attorney's fees and cost of litigation.

Private respondent denied liability on the Counterclaim.

After trial on the merits, the Trial Court rendered a Decision ordering:

"1.

the defendant (petitioner herein) to pay plaintiff (private respondent in this case) the amount of P110,345.15 due to stoppage and insufficiency of the air conditioning units plus P11,739.23 damages due to water leakage;

"2.

the plaintiff (private respondent) to pay the defendant (petitioner) the difference between P141,995.87 the amount of rentals and utility charges and P91,653.56 the value of leasehold improvements;

"3.

the plaintiff (private respondent) and the defendant (petitioner) to shoulder the cost of the suit equally. (p. 3, Private respondent's Brief).

Resolving the appeal by both petitioner and private respondent, respondent Court of Appeals promulgated its Decision with the following dispositive portion:

"WHEREFORE, with the modification that the unpaid rentals and utility charges in the amount of P141,995.85 is reduced by twenty-five percent (25%), the decision appealed from is AFFIRMED in all other respects.

"SO ORDERED." (p. 4, *ibid.*)

Before us, petitioner seeks a review premised on the following assigned errors:

I

"The Court of Appeals erred in upholding the right of private respondent to damages and in denying to the petitioner the value of leasehold improvements.

II

"The Court of Appeals erred in reducing the amount of unpaid rentals and utility charges due to the petitioner and in not awarding the sum of P138,000 representing rentals for the unexpired portion of the term of the lease contract over the entire sixth floor."

Petitioner argues that the awards to the private respondent were in utter disregard of the pertinent terms and stipulations of the Lease Agreements, as well as the established jurisprudence on the matter; that private respondent had agreed "to shoulder and pay for any and all costs of repairs and maintenance of the building and parts thereof, including the elevators and the air conditioning system"; in other words, that private respondent is equally responsible for the use and preservation on the leased premises under the express terms of the contract, which is the law between the parties.

Considering, however, the factual findings of both the Trial Court and respondent Appellate Court that the defects in the airconditioning system, windows, roof and ceilings arose from faulty construction, and that petitioner had neglected its duty to make the necessary repairs, which findings are not within the domain of this Court to ravish barring the applicability of recognized exceptions, it has to be held that the exceptions provided for in the contract rather than its general provisions determine the respective liabilities of the parties herein so that petitioner must be

held answerable for damages. This, under the basic principle that those who in the performance of their obligation are guilty of negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages (Article 1170, Civil Code).

It is true that paragraph 5 of the Sublease Agreement on repairs (*supra*), one of the provisions on which petitioner relies, specifically provides that the sublessee assumes all obligations for maintenance and operation as if the sublessee is owner. One of the exceptions to the assumption of duties and obligations, however, is where the thing "required to be done" arises from "faulty construction." It was apparent that the central airconditioning was faultily constructed, hence, the frequent breakdowns that private respondent experienced, something that it could ill afford considering the nature of its restaurant business. It was, therefore, incumbent on petitioner to have made the necessary repairs and to have maintained the airconditioning unit in running and satisfactory condition. It must not be lost sight of either that under the Agreements, it was petitioner which was obliged to provide the leased premises with complete airconditioning facilities. In fact, the acceptance of the leased premises by private respondent was pre-conditioned on "the airconditioning with compressor is running sufficient to cool the entire 7[th] floor." The cost of acquisition and installation of the package-type airconditioners, therefore, should be for petitioner's account and it should reimburse said cost to respondent. To make private respondent shoulder the repairs of the entire centralized airconditioning system from the ground floor and all other storeys occupied by others is neither equitable nor just.

And while paragraph 4 of the sub-lease agreement provides that improvements made on the building by the sub-lessee shall remain and become the property of the sub-lessor as a further consideration of the lease, the package-type airconditioners were not permanent fixtures of the building, witness the fact that private respondent's creditor was able to remove them from the premises and repossess them. Private respondent installed them temporarily to remedy the airconditioning problem which was doing havoc to its business. And as respondent Appellate Court had found, "the fact that they were taken out in the premises by private respondent's creditor is of no moment, it not appearing that private respondent was credited with their value as of the time they were removed therefrom." No unjust enrichment on the part of private respondent resulted therefrom at the expense of the petitioner.

The water leakage, too, must be traced to faulty construction and petitioner's neglect to make prompt repairs, resulting in damage to private respondent's furniture, equipment and rugs, in the amount of P11,739.23 representing the expenses for cleaning and depreciation charges. Although under the "free and harmless" clause in paragraph 12 of the Agreements (*supra*), the sublessor was not to be liable to the sublessee for "any loss, damage, liability or expense" arising from "water . . . rain . . . or leak from or into the premises or from any cause whatsoever", the same provision requires the sublessor, "in case such failure shall arise from or be due to negligence on the part of the sublessor, repairs shall be made as soon as possible by sublessor to prevent any possible damage caused by the same". Petitioner's negligence and failure to effect the necessary repairs notwithstanding consistent, complaints on the part of private respondent for it to do so, were found as a fact by both the Trial Court and the Appellate Court. The fact of faulty construction is further supported by petitioner's own admission in its Answer that it is the subject of litigation between itself and the architect of the building. Besides, even without the exception provided for, it is the legal duty of the sublessor to make all the necessary repairs on the leased premises and to maintain the sublessee in the peaceful and adequate enjoyment of the lease.

"ART. 1654. The lessor is obliged:

- (1) To deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended;
- (2) To make on the same during the lease all the necessary repairs in order to keep it suitable for the use to

which it has been devoted, unless there is a stipulation to the contrary;

(3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract."

As to the other leasehold improvements introduced by private respondent in the amount of P91,653.56 with the expectation to recover their costs through continued operation of its restaurant business, respondent Appellate Court did not err either in ordering petitioner to pay the value thereof. Petitioner contends that these improvements became part of the leased premises pursuant to paragraph 1 of the lease agreements, *supra*. As found by the Trial Court, however, there was no clear, sufficient and convincing evidence that the improvements which petitioner had removed from the building actually became part of the building to warrant retention by petitioner under said provision. Moreover, as private respondent explicitly stated in its letter of termination, "the termination of the Agreements shall be without prejudice to (its) right to claim x x x the cost of leasehold improvements in the amount of P91,653.56".

Further, as opined by respondent Appellate Court, the provision would have been applicable if the period of the sublease had continued up to its expiration, for then private respondent could have recovered their cost through its continued operation. As it is, however, private respondent was compelled to terminate the lease prematurely for failure of petitioner sub-lessor to comply with its obligation of adequately maintaining the leased premises for the use intended.

Nor can petitioner be held to be entitled to rentals for the unexpired period of the lease. Said rentals are governed by Article 1659 of the Civil Code, reading:

"ART. 1659. If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force."

By its act of terminating the contract, private respondent had chosen rescission of the contract and indemnification for damages. The early termination of the sub-lease by private respondent was for a valid and legal cause, particularly, the breach by petitioner of its contract with private respondent. In fact, the evidence discloses that private respondent, on September 2, 1969, was already compelled to "hold in abeyance the payment of (its) rentals until its legitimate complaints shall have been acted upon, to insure the continuity of its operations". Private respondent had also complied with the required 2-month written notice of termination provided for in paragraph 1 of the Sub-lease Agreements, thus:

"x x x 'the Sublessee may terminate this contract upon two (2) months notice given in writing at any time during the second year of the existence of this Sublease Agreement and Sublessor may likewise terminate this contract because of Sublessee's breach on sixty (60) days written notice to sublessee.'"

We likewise find that the reduction by the Appellate Court of the amount of unpaid rentals and utility charges due the petitioner by twenty five (25%) percent is proper notwithstanding the provision in paragraph 12 of the Agreements (*supra*) that the "sub-lease shall not be affected nor shall there be any abatement in or of the rent by reason of any failure of water supply, . . . airconditioning or elevator service." For, explicitly excepted in the same provision is where "such failure shall arise from or be due to negligence on the part of sublessor" to make the repairs "as soon as possible", which negligence on petitioner's part has been found as a fact. Justice and equity uphold a proportionate reduction owing to petitioner's failure to discharge its duty to make the necessary repairs, which prevented private respondent from adequate enjoyment of the lease.

WHEREFORE, the judgment under review is hereby affirmed, with costs to be divided equally between petitioner

and private respondent.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, Gancayco, and Sarmiento, JJ., concur.
Feliciano, J., took no part.

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