

**MURLI SADHWANI, GOBIND SADHWANI, HARESH SADHWANI, AND
NARESH SADHWANI, PETITIONERS, VS. THE HONORABLE COURT OF
APPEALS, ORIENT ELECTRONICS CORP., HOMOBONO SAWIT,
(REPRESENTED BY...**

G.R. No. 128119. October 17, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review, filed by Murli Sadhwani, Gobind Sadhwani, Haresh Sadhwani and Naresh Sadhwani, of the decision dated August 13, 1996 of the Court of Appeals, reversing the decision of the Regional Trial Court, Branch 164, Pasig, Metro Manila rendered in petitioners' favor and the resolution dated February 18, 1997 denying petitioners' motion for reconsideration. The facts are as follows:

Respondent Homobono Sawit was the registered owner of a 2,030 square-meter lot, located at No. 102 E. Rodriguez, Ugong, Pasig, Metro Manila, on which two buildings are built. Under a contract effective from June 16, 1981 to June 15, 1986, Sawit leased his property to respondent Orient Electronics Corporation (Orient Electronics). By agreement of the parties, the lease was subsequently extended to June 14, 1989. Among other things, the lessor gave the lessee, herein respondent Orient Electronics, the right of first refusal in the event the lessor decided to sell his property. The contract provided:

The LESSEE hereby expressly recognizes the absolute right of LESSOR to sell the leased property to any person or entity at any time. However, the LESSEE is hereby given the right of FIRST REFUSAL. This contract is binding with whoever is [the] new owner.

In addition, respondent Orient Electronics was granted the right to sublease the property. Accordingly, it entered into a contract with petitioners Sadhwanis, first, on June 18, 1984 for the sublease of one building and again, on November 17, 1987, for the sublease of the other building, for periods coinciding with the date of expiration of the Sawit-Orient lease contract. The whereas clauses of the two contracts of sublease in pertinent parts recited:

WHEREAS, the SUB-LESSOR is the lessee in a Contract of Lease dated . . . with MR. HOMOBONO SAWIT as lessor, a copy of which is attached herewith as Annex "A" and made an integral part hereof.

WHEREAS, under the Contract of Lease, the lessee therein, SUB-LESSOR herein, has the right to sublease the . . . building of the property situated at 102 E. Rodriguez Ave., Pasig, Metro Manila, more particularly described as follows:

WHEREAS, the SUB-LESSOR wishes to sublease said building to the SUB-LESSEE and the SUB-LESSEE wishes to sublease the same from the SUB-LESSOR.

In December 1988, i.e., six (6) months before the expiration of both the lease and sublease contracts, respondent Sawit sold his property to respondent Silver Swan Manufacturing Co., Inc. (Silver Swan Mfg.). Petitioners protested the sale, claiming they had the right of first refusal because their contracts of sublease with Orient

Electronics expressly incorporated the Sawit-Orient lease contract as “integral part” of such contracts. They further claimed that in a meeting with the representatives of respondents Sawit, Orient Electronics, and Silver Swan Mfg., it was agreed upon that petitioners could buy back the property from Silver Swan Mfg. for the same price which the latter had paid in the amount of P4.5 million, provided another property could be found for Silver Swan Mfg. As nothing materialized out of the alleged agreement, petitioners alleged that they had to bring this action for the annulment of contract of sale, cancellation of title and specific performance.

The action was brought against respondents Orient Electronics, Sawit and Silver Swan Mfg. in the Regional Trial Court of Pasig, Metro Manila. Respondent Orient Electronics was declared in default because while it filed an answer, it failed to serve a copy on petitioners. Orient Electronics appealed the order to the Court of Appeals, but its appeal was dismissed on February 28, 1991.

On June 3, 1994, the trial court[1] rendered judgment sustaining petitioners’ claim of right of first refusal. It held that the parties’ intention, as revealed particularly in the whereas clauses of the sublease contracts, was to assign the entire lease, with all the rights and obligations of respondent Orient Electronics, to the petitioners as sublessees. Accordingly, the trial court ordered respondent Silver Swan Mfg. to execute a deed of absolute sale over the subleased property in favor of petitioners within 30 days from receipt of the decision and to pay moral and exemplary damages as well as attorney’s fees. Orient Electronics was absolved from civil liability to the petitioners.

Respondents Sawit and Silver Swan Mfg. appealed to the Court of Appeals which, on August 13, 1996, reversed the decision of the trial court and dismissed the complaint.[2] The appellate court ruled that there was no assignment of Orient Electronics’ right of first refusal to the petitioners and that, even if there was, the right to buy the property was forfeited by petitioners by their failure to pay P4 million unconditionally and instead making a counteroffer of P3.5 million. Petitioners moved for a reconsideration of the decision, but their motion was denied in a resolution dated February 18, 1997 of the Court of Appeals. Hence, this petition.

Petitioners contend:

I.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT DIRECTING SEPARATE APPELLANTS SAWIT AND SILVER SWAN TO ATTACH TO THEIR APPEAL BRIEFS, A COPY OF THE TRIAL COURT’S DECISION IN COMPLIANCE WITH THE RULES.

II.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT ENFORCING PETITIONERS’ RIGHT OF FIRST REFUSAL.

III.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RESCINDING THE SALE BY SAWIT TO SILVER SWAN OF THE LEASED PREMISES SUBJECT OF THE RIGHT OF FIRST REFUSAL AND IN NOT FINDING SAWIT AND SILVER SWAN TO BE IN BAD FAITH.

IV.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT ORDERING SAWIT TO SELL THE PROPERTY TO THE PETITIONERS AT THE PURCHASE PRICE OF P4 MILLION WITHOUT INTEREST.

V.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT AFFIRMING THE JUDGMENT OF THE TRIAL COURT EXCEPT AS MODIFIED BY THE FOREGOING ASSIGNED ERRORS IN ACCORDANCE WITH JURISPRUDENCE.

The assignment of errors raise three basic issues, namely: (1) whether the Court of Appeals erred in not dismissing the appeal of Sawit and Silver Swan Mfg. because of their failure to append a copy of the trial court's decision to their respective appellants' briefs, (2) whether the Court of Appeals erred in holding that petitioners did not have the right of first refusal and in not ordering respondent Sawit to sell the said property to them, and (3) whether nevertheless petitioners were offered by Homobono Sawit the property in question but, in bad faith, the latter sold the property to Silver Swan Mfg.

First. Petitioners point out that respondents Sawit and Silver Swan Mfg. failed to append a copy of the trial court's decision to their appeal briefs in the Court of Appeals as required in Rule 46, §16(h) of the Rules of Court,[3] but despite the fact that they called the attention of the Court of Appeals to this failure, the appellate court did nothing. This provision states:

SEC. 16. Contents of appellant's brief. - The appellant's brief shall contain in the order herein indicated the following:

. . . .

(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or order appealed from.

Petitioners contend that the appellate court should have required respondents Sawit and Silver Swan Mfg. to comply with this provision and, in the event they failed to do so, dismiss their appeals. On the other hand, respondent Silver Swan Mfg. argues that this requirement is a superfluity because anyway the original record of the trial court, containing a copy of its decision, was elevated to the Court of Appeals.

We find both contentions to be without merit, although we hold that the Court of Appeals committed no reversible error in doing nothing about petitioners' complaint, it appearing that respondent Silver Swan Mfg. immediately responded by submitting a copy of the trial court's decision.

The provision in question is not new, being Rule 46, §16(h) of the 1964 Rules of Court. The only difference between the present provision and its counterpart in the 1964 Rules being as to the cases in which appeal was "not brought by record on appeal." Under the 1964 Rules, in the generality of cases, the appeal was by record on appeal.[4] The only instances where appeal was not by record on appeal were (1) in certiorari, prohibition mandamus, quo warranto and employee's liability cases,[5] (2) in habeas corpus cases[6] and (3) in cases decided by the Social Security Commission and the then Court of Agrarian Relations.[7] In such cases, instead of a record on appeal, the original record of the case was transmitted to the appellate court.

When the Judiciary Reorganization Act of 1980[8] took effect on August 14, 1981, the rule was reversed. Instead of record on appeal, the general requirement is that the original record shall be transmitted. The only instances in which records on appeal in lieu of the original records are filed in the Court of Appeals are in appeals in special

proceedings and in cases where multiple appeals are allowed.[9]

But whether under the 1964 Rules or the present one, a copy of the appealed decision is made available to the appellate court because it is contained either in the record on appeal or in the original record transmitted to it. It is therefore error for respondent Silver Swan Mfg. to contend that the requirement that a copy of the decision must be appended to the brief of the appellant is a superfluity because anyway in appeals not brought by record on appeal the original record is transmitted to the Court of Appeals. As far as the appellate court is concerned, the requirement in Rule 46, §16 is for its convenience. But it is appellee's counsel who may have need for a copy of the decision and it is for him that the requirement is made. Appellee's counsel needs a copy of the trial court's decision to enable him to prepare his brief.

However, appellee or his counsel must apply to the appellate court for an order directing the appellant to comply with the rule if the appellant's brief does not contain a copy of the decision appealed from. He must ask the appellate court for such an order before he files his brief, otherwise he will be deemed to have waived his objection.

In the case at bar, petitioners called the appellate court's attention to Silver Swan Mfg. and Sawit's failure to comply with the rule only in petitioners' brief, by way of pointing out that the dispositive portion of the trial court, as quoted in the Sawit's appellant's brief, was not "exactly a verbatim reproduction of the said dispositive portion." The fact that they could say the quotation was not a "verbatim reproduction" could only mean they had access to the trial court's decision. They should have earlier filed a separate motion in the appellate court for an order to respondents Sawit and Silver Swan Mfg. to append to their brief copies of the decision appealed from instead of doing so only in their appellees' brief. The record of the Court of Appeals shows, however, that as soon as this was pointed out by petitioners, respondent Silver Swan Mfg. lost no time submitting a copy of the decision of the trial court. Given this fact, there was nothing else for the Court of Appeals to do.

Second. The ultimate question which this Court must confront is whether under their contracts with Orient Electronics, petitioners have a right of first refusal in the event the leased property was sold. To begin with, it is a fundamental principle in contract law that a contract binds only the parties to it.[10] The right of first refusal was embodied in the contract of lease between respondents Sawit and Orient Electronics. Petitioners were not parties to that contract. While their contracts with respondent Orient Electronics made the lease contract "an integral part" of the contracts of sublease, there is no proof that respondent Sawit consented to an assignment of the lease to the petitioners. What Sawit had agreed to was simply to give Orient Electronics the right to sublease the property. For that matter, Sawit did not have to give his consent to the sublease because under Art. 1650 of the Civil Code, when in the contract of lease there is no express prohibition, the lessee may sublet the thing leased.

The rule is different, however, with respect to assignments of lease. Art. 1649 provides that "the lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary." Petitioners have not cited any provision of the contract of lease between respondents Homobono Sawit and Orient Electronics giving Orient Electronics the right to assign the contract. Petitioners' efforts to bind respondent Sawit by invoking a whereas clause in their contracts with Orient Electronics must thus fail. For the fact is that respondent Sawit is not a party to those contracts.

Indeed, the consent of the lessor is necessary because the assignment of lease would involve the transfer not only of rights but also of obligations. Such assignment would constitute novation by the substitution of one of the parties, i.e., the lessee.[11]

There is no evidence in this case to show that respondent Sawit subsequently agreed to a substitution of petitioners in place of respondent Orient Electronics as lessees of the premises. Petitioners claim that Jose

Protacio collected the rentals from them in behalf of respondent Sawit. They cite the following testimony of Protacio:[12]

Yes, Sir, I used to help him [Sawit] when he asked me to collect rentals from his tenant Orient Electronics Corporation which is incidentally also one of my clients.

As respondent Silver Swan Mfg. points out in its comment,[13] however, Protacio never stated that in collecting rentals from petitioners he was acting in behalf of respondent Sawit. What he stated was that he collected rents from Orient Electronics for Sawit.

It is true Protacio said that Orient Electronics was also his client but it would be reading things into his statement to say that after Orient Electronics had subleased the property to petitioners, he continued collecting rents for Sawit. The rents from petitioners were payable to Orient Electronics and if Protacio collected rents from petitioners, the presumption is that he did so in behalf of Orient Electronics, which was his client. At all events, petitioners should have presented receipts issued to them for payments made by them for possible indication of the party in whose behalf the collection was made. For their failure to show otherwise, petitioners must be presumed to have paid their rent to Orient Electronics, as their lessor.

Petitioners claim that they spent P400,000.00 in repairing the damaged portion of one of the subleased buildings which had been destroyed by fire. Again, not only is there no document to prove this allegation but even if it is true, the Court cannot see how this could show that petitioners had become the primary lessee since the repair of the leased property is not an obligation of lessee but of the lessor.[14]

Petitioners also cite the recent decision in *Equatorial Development, Inc. v. Mayfair Theater*[15] to support their claim of right. In the *Equatorial* case, the Court upheld the right of first refusal expressly granted to Mayfair Theater as lessee of a property after finding that the property had been improperly sold by the owner-lessor, Carmelo and Bauermann, Inc. to a third party (*Equatorial Development, Inc.*). But in that case, there was no dispute as to the existence of the right of first refusal of Mayfair Theater. On the other hand, in this case, the existence of the right is doubtful. As already stated, there was no assignment to the petitioners of either the Sawit-Orient lease contract or the right of first refusal which was solely granted to respondent Orient Electronics. Hence, the remedy of rescission, which was successfully invoked by Mayfair Theater in that case, is not available to herein petitioners. It is noteworthy that the party to whom the right of first refusal was given in this case (Orient Electronics) did not invoke this right or seek the rescission of the sale to respondent Silver Swan Mfg. nor did it join cause with petitioners in bringing this case.

Third. Petitioners claim that respondent Sawit's sister-in-law Lydia Sawit offered to sell the property to them for P4 million late in 1987. They claim that they offered to buy the property for P3.5 million and that Lydia Sawit promised to consider their offer. They further allege that when they did not hear from Lydia Sawit, they called her up in the United States on December 3 and 6, 1988 and they were advised by her to directly communicate their offer to Sawit, but when they did so, they were ignored. Petitioners contend that because the negotiation between them and respondent Sawit was going on at the time the property was sold to respondent Silver Swan Mfg., respondents Sawit and Silver Swan Mfg. acted in bad faith. The sale of the property to respondent Silver Swan Mfg. should be rescinded and respondent Sawit should be ordered to sell the property to them for P4 million without interest.

On this point, the Court of Appeals held that even if there was no assignment of lease, respondent Sawit nonetheless offered to sell his property to petitioners for P4 million, but because petitioners were willing to give only P3.5 million for the property, petitioners forfeited whatever option had been extended to them by respondent Sawit.

It is really unnecessary to pass upon this claim because there is nothing in the record to show that either Protacio or Lydia Sawit was authorized to negotiate the sale of the property by Sawit. As petitioners themselves state in their petition,[16] Lydia Sawit told them to communicate their counter offer directly to respondent Sawit himself. This could only mean either that Lydia Sawit was not respondent Sawit's agent or that if she was, her agency had already been terminated when petitioners made their counteroffer. The fact that respondent Sawit ignored their offer could only mean that he was not interested in selling the property to the petitioners.

Indeed, the alleged offer made to petitioners rests solely on their allegation. But mere allegation or claim is not proof. Aside from the testimony of petitioner Gobind Sadhwani, there is no other proof that Lydia Sawit offered the property to them for P4 million. As the party claiming affirmative reliefs from the courts of law, it is incumbent upon the petitioners to convincingly prove their claim. They failed to do so.

WHEREFORE, the petition is DENIED for lack of merit and the decision of the Court of Appeals is AFFIRMED. SO ORDERED.

Regalado (Chairman), and Torres, Jr., JJ., concur.

Puno, J., No part. Personal relationship to one of the parties.

[1] Per Judge Apolonio R. Chavez, Jr.

[2] Per Justice Ruben T. Reyes and concurred in by Justices Fidel P. Purisima and Conrado M. Vasquez, Jr.

[3] Now Rule 44, §13(h) of the 1997 Rules of Civil Procedure.

[4] Rule 41, §3.

[5] Id., §17.

[6] Id., §21.

[7] Id., §23.

[8] B.P. Blg. 129.

[9] B.P. Blg. 129, §39.

[10] Civil Code, Art. 1311.

[11] Vda. e Hijos de Pio Barretto y Cia. v. Sevilla, Inc., 62 Phil. 593 (1935); Bangayan v. Court of Appeals, G.R. No. 123581, Aug. 29, 1997.

[12] T.S.N., p. 6, Aug. 30, 1993.

[13] Rollo, pp. 186-187.

[14] Art. 1654(2).

[15] G.R. No. 106063, November 21, 1996.

[16] Rollo, p. 24.

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