

EMILIO BUGATTI, PETITIONER, VS. COURT OF APPEALS AND SPOUSES BEN BAGUILAT AND MARIA BAGUILAT, RESPONDENTS.*G.R. No. 138113. October 17, 2000*

Ponente: GONZAGA-REYES, J.

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Before us is a petition for review on certiorari of the August 7, 1998 Decision of the Court of Appeals in CA-G.R. CV No. 48900, reversing the July 15, 1994 Decision of the Regional Trial Court in Civil Case No. 348.

The present case traces its origins to an action for recovery of possession and damages filed by respondents Ben and Maria Baguilat on July 11, 1989, with the Regional Trial Court of Lagawe, Ifugao against petitioner Emilio Bugatti.[1] In their complaint, respondents alleged that they are the owners of a parcel of land situated in Lagawa, Ifugao and that sometime in December, 1987, petitioner offered to lease their land. According to respondents, they discussed the terms and conditions of the lease with petitioner, particularly that petitioner will lease a portion of respondents' land for a period of nine (9) years in return for a monthly rental of P500.00; that petitioner will construct a building on such land, the cost of which shall not exceed P40,000.00; that respondents shall reimburse petitioner for the cost of the building by applying the rentals thereto; that after petitioner is fully reimbursed for the costs of construction in the amount of P40,000.00, he shall continue to pay the monthly rental of P500.00 for the duration of the lease; that upon the termination of the lease, the building shall belong to respondents. It was agreed by petitioner and respondents that the aforesaid terms and conditions should be included in a written contract of lease to be prepared by petitioner and presented to respondents for their approval. However, even before preparing the contract of lease, petitioner occupied respondents' land and began construction on January 18, 1988. Immediately objecting to the construction, respondent Maria Baguilat demanded that the contract of lease should first be signed. However, petitioner assured respondents that he was preparing the contract. Sometime in March, 1988, petitioner finally presented the lease contract to respondents but it did not contain the terms and conditions previously agreed upon. Respondents insisted that petitioner re-draft the contract in accordance with their discussions. The revised document, presented to respondents sometime in April, 1988, contained counter-proposals. Respondents refused to accede to such counter-proposals. Despite the fact that no contract was signed by the parties, petitioner continued to occupy respondents' land.

In an effort to resolve their differences, respondents resorted to extrajudicial measures, such as asking the Barangay Captain to mediate in the hopes of arriving at an amicable settlement. However, petitioner was not receptive and he walked out of the proceedings before the Barangay Captain. Respondents then sent petitioner a demand letter dated November 23, 1988, asking him to vacate their property. Again, petitioner did not heed respondents' demands. Subsequent efforts of respondents to resolve the conflict proved equally futile. Eventually, respondents obtained the services of counsel - Atty. Evelyn S. Dunuan, who sent petitioner a letter asking him to desist from introducing any further improvements upon respondents' property. Upon obtaining a certification from the Barangay Captain, respondents filed the present case with the Regional Trial Court for recovery of the land in question and damages.[2]

Contrary to respondents' contentions, petitioner asserts that the lease contract which he prepared in fact embodied the terms and conditions agreed upon, except for the cost of the building. Petitioner claimed that respondents had agreed to the following terms - to lease their entire property to him for a period of nine (9) years at a monthly rental of P500.00; that petitioner would construct a building of strong materials on respondents' property, without any limit as to the cost of construction; that it was later on decided by the parties to extend the period of the lease since the cost of the building had exceeded the total amount of rentals for the nine year period; that the new lease period would begin from the opening of petitioner's business, and would continue at least until the recovery by petitioner of the full amount incurred by him in the construction of the building; that petitioner will only pay rentals when he has been fully reimbursed for construction costs; and finally, that upon the expiration of the lease contract, respondents would own the building.

Petitioner claims that when he first submitted a draft of the lease contract to respondent Maria Baguilat, she did not voice out any objection thereto. About two weeks later, Maria Baguilat told petitioner that she had lost the draft. Petitioner then submitted a second draft, but respondents refused to accept it because it did not conform to the terms and conditions agreed upon. Petitioner told respondents to wait until the building was completely finished before he submitted another draft of the lease contract so that the price of the building could be incorporated therein.

Petitioner claims that respondents did not object to the fact that he had started construction before the signing of the lease contract. On the contrary, petitioner alleges that he felt that respondents had agreed to his proposals and that they had actually given him verbal permission to begin erecting the building. According to petitioner, respondents did not express their disapproval of the ongoing construction during any of their several visits to the construction site. He claims that Ben Baguilat even assisted him in the levelling of the construction area; that Maria Baguilat made suggestions as to the kind of materials that might be used; and that when petitioner informed Maria Baguilat that he had already spent more than P90,000.00 for the construction, she advised him to keep all his receipts in order to serve as a basis for the computation of the total costs of the building. Petitioner further claims that when the building was completed in June, 1988, respondent Ben Baguilat invited him and his wife to their house for the drafting of the contract. However, when petitioner told respondents that his expenses had reached P120,000.00, they pretended to be shocked and refused to sign the lease contract.[3]

The trial court[4] held that no contract of lease was perfected between the parties since the element of consent was missing. The drafting of the contract - a task entrusted to petitioner - was deemed by respondents as a condition precedent to the perfection of the lease contract and consequently, to any construction activity upon their land. Although petitioner submitted two drafts, they did not contain the terms and conditions spoken of by the parties during their negotiations and were accordingly rejected by respondents. However, despite the absence of a perfected contract and in total disregard of respondents' repeated objections, petitioner occupied respondents' land and commenced construction thereon, making him a builder in bad faith. The decretal portion of the trial court's decision provides -

WHEREFORE, premises considered, the Court hereby render[s] judgment ordering the defendant as follows, to wit:

1)

To vacate the plaintiff's land including the building thereon which is forfeited to the plaintiffs by virtue of this decision;

2)

To pay plaintiffs the sum of Twenty One Thousand (P21,000.00) Pesos by way of damages representing the

estimated cost of the building, and the reasonable compensation for the unjustified occupation and use by defendant of plaintiffs' land for a period of more than six (6) years;

3)

To pay plaintiffs the sum of Fourteen Thousand (P14,000.00) Pesos as attorney's fees, and

4)

To pay the cost.

No pronouncement as to moral and exemplary damages as no evidence was introduced to prove the same.

SO ORDERED.[5]

Reversing the trial court's decision, the Court of Appeals[6] sustained the view that there was in fact a perfected contract of lease between the parties, which was for a period of nine years, beginning on January, 1988.[7] Accordingly, the appellate court held that petitioner was in good faith when he acquired possession of the land and started construction thereon, and that he is entitled to reimbursement for the value of the improvements introduced upon the subject property, pursuant to article 1678 of the Civil Code and principles of equity.[8] However, since the lease terminated on January, 1997, petitioner must vacate the property. The decretal portion of the assailed decision states -

WHEREFORE, in view of the foregoing, the decision dated July 15, 1994 of the Regional Trial Court in Lagawe, Ifugao (Branch 14) in Civil Case No. 348 is hereby REVERSED and SET ASIDE. The defendant-appellant and all persons claiming rights under him are hereby ordered to immediately vacate the subject property and surrender the possession thereof to the plaintiffs-appellees, and to pay to them (plaintiffs-appellees) rentals in arrears in accordance with the fair rental value or reasonable compensation for the use and occupation of the property, which monthly sum should be computed from January, 1988 until he has completely vacated the subject property. On the other hand, the plaintiffs-appellees are ordered to pay the value of the improvement introduced by the defendant-appellant. Further, the awards of attorney's fees and costs are hereby DELETED. Consequently, let this case be REMANDED to the Regional Trial Court for the determination of the current market value of the improvements made by the defendant-appellant on the subject property, in accordance with Article 1678 of the New Civil Code, and the fair rental value thereof. No pronouncement as to costs.

SO ORDERED.[9]

Petitioner contends that the Court of Appeals varied the terms of his contract with respondents. In his Memorandum, petitioner summarizes the errors committed by the appellate court and asserts the terms which should have been enforced instead, as follows -

The appellate court correctly reversed and set aside the decision of the trial court finding for the private respondents as contrary to facts and applicable laws, but committed the error, with due respect, of fixing an [sic] entirely new terms and conditions and imposed the same on the parties, such as:

a) for the petitioner to vacate the premises. But the lease, which was upheld by the appellate court, has not yet expired or terminated;

b) to pay rental or compensation for the petitioner's use of the property to be computed from January, 1988 until petitioner vacated the property. There is no question as to payment of rentals [,] the parties having agreed [to] the sum of P500.00 a month to be deducted from the P120,000 petitioner spent in constructing the building until exhausted, not to be computed from the year January, 1988, but to commence on the date of the completion of the building and start of petitioner's business thereat.

c) the appellate court also ordered the private respondents to pay the value of the building to the petitioner, to [sic] this effect, ordered the case remanded back to the trial court to determine the value of the building or improvement. The agreement of the parties is for the building to be owned by the private respondents after the P120,000 cost of the building is exhausted by the deduction of P500.00 as monthly rental.

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In lieu thereof, it is respectfully prayed that the petitioner and the private respondents be ordered to comply faithfully and in good faith to the terms and conditions of their lease - the petitioner to erect a building on the leased property and completed by him at a cost of P120,000 in March, 1988. Of this amount, the P500.00 monthly rental deducted until exhausted, also to start March, 1988 [-] date petitioner commenced his business thereat. After exhaustion of the P120,000 by way of monthly rentals, private respondents become owners of the building - which are clear and not contrary to law, morals, good customs, public order, and public policy. Lease expires in March, 2008 therefor.[10]

The threshold issue in the present case is whether or not a contract of lease had been perfected. After receiving the testimonial and documentary evidence of both parties, the trial court concluded that no contract of lease existed and ruled in favor of respondents herein. The court explained its decision in this wise -

The Court after a careful evaluation of the foregoing portion of plaintiffs' testimony cannot give its imprimatur to the conclusion reached by defendant to the effect that plaintiffs allowed the defendant to enter into a portion of the land in question and construct a building thereon, for such a conclusion is gratuitous as it does not portray the true intention of the plaintiffs as alluded to by the defendant. A cursory reading of the testimony under consideration indubitably show in its clear and unmistakable terms that it is not a blanket authority or permission for defendant to enter the premises of the land in question, but is subject to proviso or terms and conditions to be embodied in writing in the lease contract, which terms and conditions are elsewhere stated earlier in plaintiffs' evidence. In this regard, it is worthy and interesting to note, that at the inception of the work done by the defendant on the land in question by levelling a portion of it, plaintiffs immediately protested and repeatedly demanded the defendant who assumed to prepare the contract embodying the terms and conditions originally agreed upon for their approval before defendant will start on the construction, which never happened due to the dilatory tactics employed by the defendant, a circumstance which belied defendant's contention that plaintiffs allowed defendant to occupy the land and construct a building thereon even before the approval of the lease contract, which to the mind of this Court, is an orchestrated scheme to dispossess the plaintiffs of their land as evidenced by defendant's maneuvers in successfully delaying by dubious means the finalization of a contract of lease embodying the true terms and conditions agreed upon by the parties, furthermore, defendant instead of preparing the supposed lease contract, and after gaining entry on the land in question and had constructed a building thereon, made counter-proposals which were rejected by plaintiffs.

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With the foregoing as a background, the Court ... is of the considered view, that no contract of lease was perfected and/or consummated [sic] between the parties, ... all that was actually done was a negotiation of an intended lease contract which did not actually materialize due to gross violation committed by the defendant of the terms and conditions set or laid down by the plaintiffs in the course of the negotiation for which reason plaintiffs refused to sign the draft prepared by the defendant. On the issue of perfection, and/or consummation of the alleged contract of lease, the evidence on record speaks loud and clear that in the course of the negotiation defendant volunteered to prepare and deliver to plaintiffs [the contract of lease] for their approval, but instead of preparing the intended contract of lease incorporating the terms and conditions agreed upon, the defendant started the construction of a building on plaintiffs' land in January, 1988, whereupon plaintiff Maria Baguilat immediately protested to defendant demanding that the contract of lease over the property should first be signed by the parties before defendant starts any construction work on the land in question, which was adamantly ignored by the defendant. The fact that defendant deliberately failed to prepare and finalize the

supposed contract, and instead presented counter-proposals in Exhibit "B" constitute in legal contemplation a unilateral abandonment and/or rejection by the defendant of the terms and conditions originally agreed upon, without valid or legal ground which is indicia of his bad faith. xxx[11]

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Even assuming arguendo, that the proposal or offer made by the defendant to construct a building on the land in question where he will later on conduct his business was allowed or permitted by the plaintiffs during the negotiation stage between the parties as the defendant wanted to impress this Court, yet the bare fact as borne out by the evidence remains, that the supposed permission extended to defendant is subject to the condition that the defendant should first prepare and present to the plaintiffs the contract of lease embodying the terms and conditions as proposed for the approval of the plaintiffs, which is clearly a condition precedent to be complied with by the defendant. Hence, the acceptance on the part of the plaintiffs to the offer made by the defendant to lease the property in question is not unqualified and absolute, and a qualified acceptance by express provision of Article 1319 of the New Civil Code constitutes a counter-offer. Incidentally, it has to be stressed that defendant instead of complying with the qualified counter-offer of the plaintiffs, defendant made a counter-proposal (Exhibits "B" and "B-1"), which contained the following, to wit:

- Extension of period or
- Buy the lot upon which it stands (referring to the building), or
- Apply the remaining balance to the adjacent vacant lot, and emphasized in said exhibit, the provision of Articles 445, 447, 448, 453, and 454 of the New Civil Code.[12]

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After a thorough and careful study of the records, the Court finds that the trial court was correct in ruling that no contract of lease was perfected and accordingly, hold that the appellate court committed reversible error in ruling to the contrary.

At the outset, it should be stated that the factual findings of the Court of Appeals are usually binding on the Supreme Court unless there is a showing that: (1) the conclusion is a finding grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd and impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; and (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admission of both parties.[13] We find that the assailed ruling of the appellate court is not borne out by the evidence presented in this case. In support of its conclusion that a contract of lease was perfected, the appellate court offered a lengthy ratiocination based merely on its own interpretation of the transcripts. However, it is a well established principle that the evaluation of the testimonies of witnesses by the trial court is entitled to the highest respect because such court has the direct opportunity to observe the witnesses - their demeanor and manner of testifying - and thus, are in a better position to assess their credibility.[14]

Now, to the merits of the case. We agree with the trial court that when the parties met sometime in the latter part of December, 1997 and in the first week of 1998 in order to discuss the terms and conditions of the lease, they were merely negotiating. A contract undergoes three distinct stages - preparation or negotiation, its perfection, and finally, its consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[15] From the testimonies of respondent Maria Baguilat and petitioner it could clearly be

inferred that it was their intention that such terms and conditions were to be embodied in a lease contract to be prepared by the latter and presented to respondents for their approval before either party could be considered bound by the same. On direct examination, Maria Baguilat testified as follows -

ATTY. DUNUAN: (to the witness)

You mentioned that the defendant came to ask you to permit him to lease your property located at herein Lagawe?

A:

Yes, Ma'm.

Q:

When did he come to ask your permission?

A:

Late December, 1987

Q:

Where did he come to ask your permission?

A:

He came to our residence.

Q:

Who were present at the time he came to ask your permission?

A:

My husband and myself were present.

Q:

And what exactly what did the defendant ask from you?

A:

When he came, he ask[ed] if we were the owner[s] of the lot located just beside the public highway and we said "yes".

Q:

What happened next after you informed him that you own the lot just beside the public highway?

A:

Immediately he was asking or pleading if he could construct a little hut there for them to sell;

Q:

What did your husband reply to such request?

A:

We did not give him a definite yes or no. We said we will see first.

Q:

What happen after that?

A:

After a week, he came back asking for our final decision.

Q:

This time what did you say to the request[?]

A:

Because we decided with my husband, because of our relationship by affinity and because we did not like that they'll have a bad comment on us, we decided that we'll permit him.

Q:

What did you tell him?

A:

We said to him that "you can construct a small hut but we are going to set some terms and conditions to be followed: and he said "yes".

Q:

When you said that you will allow him the defendant to construct in the land but you will set some terms and conditions, what did you do after that?

A:

When we permitted him, we discussed some terms and conditions and he acted as the secretary; he wrote down the terms and conditions we wanted to be embodied in the contract [sic].[16]

Upon cross-examination, Maria Baguilat repeatedly emphasized that she and her husband did not give petitioner permission to occupy their property and to start construction thereon until after the written lease contract had met with their approval. As proof of this, when petitioner started constructing upon respondents' land before presenting the written contract to the latter, Maria Baguilat repeatedly made known her objections to petitioner. She testified thus -

A:

We made the agreement first week of January and we advised him to type it within the first week of that month, January, 1988.

Q:

Within the second week of January, 1988, he already went to occupy a portion of your land?

A:

Yes.

Q:

Before he went to occupy a portion of your land, according to your testimony, he asked permission from you to occupy that portion of your land?

A:

That was verbal, when he came to ask permission.

Q:

That permission was given after you gave him permission to prepare the lease agreement or simultaneously?

A:

At the same time.

Q:

So you gave him the authority to prepare the lease agreement at the same time the permission that he was going to occupy that portion, you gave him the permission to occupy the land?

A:

After. We are supposed to sign the contract before he start.

Q:

That was your intention but earlier, you testified that simultaneously you allowed him to occupy a portion of you land?

A:

Yes. Allowed him.

COURT: (to the witness)

Q:

After the first negotiation allowing him to get that paper for typing, did he come to you after that to ask permission to occupy a portion of your land?

A:

After the drafting of the lease contract, he did not come back but he started the work.

Q:

You mean to impress the Court that even though there was no contract, he just went there to occupy a portion of your property without your permission?

A:

Yes.

ATTY. LUMASE:

You stated that he did not come back for permission. You mean there was a first permission?

A:

At the time we made the agreement and he jot it down and he said he will type it, that was the time that we said that you may occupy but we have to sign the lease agreement.

Q:

So at the time he voluntarily offered his services to prepare the lease agreement, he asked you that in the meantime he will occupy that portion of your land and you permitted him?

A:

No, we did not but what he told us is: "I'm going to type this and bring it to you for your signature," no more.

COURT:

Q:

You mean to imply to the Court that you did not give him authority yet to occupy the land in question before the signing of the contract but what you wanted to be done is for you to sign the contract before occupying the premises?

A:

Yes.

ATTY. LUMASE:

Q:

Now, before he brought the typewritten contract, you became aware that he occupied a portion of your land?

A:

Yes.

Q:

You became aware that he occupied the land because you allowed him?

A:

We did not allow. I went to tell him to stop levelling.

Q:

You stated that at the time you permitted him to draft the lease agreement, you permitted him to occupy, now which is which?

A:

There was no permission that he was going to start work before the signing of the contract.

Q:

So what you said a while ago that you permitted him was not correct. May we go over the transcript. Did you permit him or not?

COURT: (to the witness)

Q:

Did you allow him to occupy before the signing?

A:

We did not allow him to start. We allowed him after the contract but before the contract was signed, he started.

ATY. LUMASE:

Q:

How did you come to know that he started? How?

A:

I saw him already levelling the lot.

Q:

And that was the first day when he started to level when you saw him?

A:

No, there was a little part levelled.

Q:

You and your husband went there and saw him levelling?

A:

Yes.

Q:

Aside from defendant, how many were helping, working with them?

A:

There were two.

Q:

After you saw them levelling, you returned to your house?

A:

I told Emilio already, "Why did you start the leveling when there was no contract signed by us?"

Q:

But nevertheless, he started to occupy and made levellings?

A:

Yes, he continued despite my protest.

Q:

So what you did was to make a verbal protest to stop him?

A:

Yes.

Q:

Until after the levelling, you saw that construction materials were brought to the area?

A:

Yes.

Q:

After you saw the materials, you saw that a building started to rise?

A:

Yes.

Q:

All the while you did not make objections?

A:

I was the one always going to him but he still continued the construction.

Q:

So you did not come with a desistance, you did not come to Court to stop him?

A:

I did not. I'm always going to him telling him" please stop the construction" but I did not think of going to Court.

Q:

From the time you saw him levelling and until a building was put up, how many months passed?

A:

That was January-February and early part of March.

Q:

And the building was first put up on what month?

A:

Early part of March.

Q:

When the building was constructed, you saw him occupy it, is it not?

A:

I saw them staying there.

Q:

So from January to March, the contract was not yet prepared by him and you did nothing to have the contract be executed as construction of the building took place?

A:

I always go to him.

Q:

Aside from going to him, you did nothing more?

A:

There was a time I went to a policeman to ask him to stop the construction of Bugatti and he said, "I do not have the order to stop him." I do not know there was supposed to be an order before a policeman could go there, and kept quiet.

Q:

Now, what you did was go to the site and notice the construction and return home. How many times did that happen?

A:

Many times.[17]

[Underscoring supplied]

Aside from their verbal objections, respondents sent petitioner two demand letters. The first one, dated November 23, 1988 and signed and received by petitioner on December 13, 1988, asked him to vacate the property.[18] A second letter dated April 3, 1989 and received by petitioner on the same day demanded that petitioner terminate all construction work upon respondents' property.[19] Respondents' vehement protests against petitioner's construction activities are irreconcilable with the appellate court's finding that the parties had entered into a lease contract. If respondents had considered themselves bound by their discussions with petitioner, the former would not have cause to object to the construction activities upon their land because such would have been in accordance with the alleged terms of the lease. In this regard, neither could petitioner unequivocally declare that respondents' allowed him to commence construction prior to the drafting of the contract of lease. He stated that -

Q:

According to the testimony of Mrs. Maria Baguilat, she said she did not allow you to occupy the land. What can you say to that?

A:

I do not know of such disallowance.

Q:

What is the truth?

A:

I feel there was concurrence to my proposal. In fact and in truth the husband joined in the earth moving.

Q:

That permission to occupy or construct on their land, was it in writing?

A:

Verbal.

Q:

Who between the plaintiffs communicated to you and permitted you to start occupying their land?

A:

I suppose both of them.[20]

In a contract of lease, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite.[21] Being a consensual contract, a lease is perfected at the moment there is a meeting of the minds upon the thing and the cause or consideration which are to constitute the contract.[22] The area of agreement must extend to all points that the parties deem material.[23]

In the case at bar, there is a great degree of divergence between the parties as to the terms of the lease. Respondent Maria Baguilat testified that she and her husband were amenable to leasing out only a portion of their property for a period of nine years to start in January, 1988. A monthly rental of P500.00 was to be set off against the construction costs incurred by petitioner, which costs the parties had agreed to limit to P40,000.00. At the end of the nine year period, ownership and possession of the building would be transferred to respondents.[24]

Meanwhile, petitioner claimed that the agreement with respondents covered the lease of the entire lot, to begin on the date petitioner opened for business thereon. According to petitioner, the lease was initially intended to last for a period of nine years, however, the same was subsequently extended for an indefinite period - up until he is fully reimbursed for the full amount incurred in constructing the building (by virtue of the setting-off of the monthly rental of P500.00 against such expenses). Petitioner insists that during his discussions with respondents no mention was made of any limits upon his construction costs.[25]

The extensive degree of ambiguity, insofar as the terms of the intended contract were concerned, particularly with regard to the area to be leased and the amount to be spent on the building to be constructed by him, was revealed by the uncertain and evasive statements of petitioner during direct examination -

Q:

By the way, you are going to lease their lot. Is that the entire lot?

A:

What is in my mind is the entire lot.

Q:

Did you communicate your desire to lease their lot?

A:

Yes.

Q:

What was their response?

A:

Positive.

Q:

When you said positive, what do you mean?

A:

Yes.

Q:

Who between the plaintiffs, Ben Baguilat and Maria Baguilat, did you communicate your desire about their lot?

A:

Both of them.

Q:

You said while ago, they answered yes. Did the two of them answered [sic] in the affirmative or only one of them?

A:

Not exactly saying yes but the very good things that led to the drafting since both of them were receptive, their answers were inclined- we will enter into that.

Q:

In other words, they are amenable to lease their lot to you?

A:

Yes.

Q:

For how much monthly rental?

A:

500 a month.

Q:

For how many months or years?

Nine years but the nine years later on was amended because the cost of the building was assessed after it was finished and it exceeded the suppose rentals paid for nine years.

Q:

Because it was amended, how long as to the lease of the lot?

A:

Until, subject to the actual amount of expenses is fully paid.

Q:

Do you recall when the lease started to consummate?

A:

On the actual start of business, that was the agreement.

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Q:

According to the testimony of Mrs. Maria Baguilat, she confirms nine years, rentals of P500.00 but according to her, she said what they wanted to lease to you was only a portion of the lot. What can you say to that?

A:

I am not aware of that.

Q:

What was exactly your agreement with regards to the area of the lot?

A:

We have not agreed on the area. I was referring to the lot which is .5 by 20 meters.

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ATTY LUMASE continuing:

Q:

How about the plaintiffs, did they state to you also any particular area they are interested to lease to you?

A:

None. No drawing plan.

Q:

According to Maria Baguilat, she said that the amount of the materials to be used in the construction should not exceed P40,000.00. What can you say to that?

A:

I am not aware.

Q:

You want to impress the Honorable Court, the plaintiffs did not tell you that?

A:

Yes, sir.

Q:

With respect to the amount to be spent in the construction of the improvements on the lease area, what is the particular agreement you had with the plaintiffs regarding the amount?

A:

Originally, it was not touch [sic] in the oral agreement. It was only later on when the construction was being finished. I ran out of money and I tried to borrow from them. I understand I told her I spent that much.[26]

That the area of the property to be leased to petitioner and the amount of the construction costs, which would ultimately determine the period of the lease, remained indeterminate only bolsters the trial court's conclusion that there has been no meeting of minds between the parties insofar as the essential conditions of the proposed contract are concerned. It is difficult to believe that respondents would give petitioner unbridled discretion in determining

such important matters.

It is worth noting that petitioner actually admitted that he made counter-proposals to respondents. Sometime in March, 1988, the first draft of the lease contract was presented by petitioner to respondents and promptly rejected by the latter since it did not embody the terms and conditions as discussed by the parties. Respondents asked petitioner to revise the draft so as to conform to their discussions; however, instead of re-writing the document, petitioner came up with counter-proposals (Exhibit B).[27] Petitioner's acceptance obviously varied the terms of respondents' offer, thus giving rise to a counter-offer. This only proves that the element of consent is wanting, there having been no concurrence of offer and acceptance with respect to the material points of the intended lease.

In retrospect, petitioner's improper intentions have become evident. During negotiations, petitioner led respondents to believe that he was amenable to their terms, but in truth, as clearly shown by the first draft he prepared (Exhibit A) and his counter-proposals (Exhibit B), he harbored his own very different ideas regarding the essential terms and conditions of the proposed lease. Although he was well aware that respondents were withholding their assent to the lease until such time that the contract containing all the material terms and conditions previously discussed by the parties had been drafted by petitioner and presented to them for their approval, petitioner occupied respondents' property and began construction as early as January, 1988. By commencing construction of the building so soon after the negotiations of the parties and before submitting the promised draft to respondents, petitioner wanted to ensure that respondents would no longer be able to back out of the proposed contract.

Petitioner is undoubtedly a builder in bad faith for despite the absence of a perfected contract of lease and in utter disregard of respondents' numerous protests, he continued his construction activities upon respondents' land. Under articles 449[28] and 450[29] of the Civil Code, respondents have the following options: (1) to appropriate what petitioner has built, without any obligation to pay indemnity; (2) to ask petitioner to remove what he has built; or (3) to compel petitioner to pay the value of the land.[30] In addition, respondents are entitled to damages,[31] which shall be equivalent to the fair rental value of the land beginning from January, 1988 until respondents recover possession thereof. This case shall be remanded to the trial court for the determination of the proper amount of rentals.

WHEREFORE, the Petition is GRANTED and the Decision of the Court of Appeals promulgated on August 7, 1998 is hereby SET ASIDE.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] The case was docketed as Civil Case No. 348 and assigned to Branch 14 of the said court.

[2] RTC Decision, 1-3, 10-13.

[3] Ibid., 3-4, 14-17.

[4] The trial court's decision was promulgated on July 15, 1994 by Judge Segundo B. Catral.

[5] RTC Decision, 22-31.

[6] The appeal was docketed as CA - G.R. CV No. 48900 and assigned to the First Division composed of Justices Arturo B. Buena, Chairman; Ramon Mabutas, Jr., ponente; and Hilarion L. Aquino.

[7] CA Decision, 8, 12-17.

- [8] Ibid., 19-22.
- [9] The appellate court's decision was promulgated on August 7, 1998.
- [10] Rollo, 81-82, 84.
- [11] Ibid., 65-70.
- [12] RTC Decision, 24-27.
- [13] *Fule v. Court of Appeals*, 286 SCRA 698 (1998).
- [14] *People v. Baccay*, 284 SCRA 296 (1998).
- [15] *Ang Yu Asuncion v. CA*, 238 SRA 602 (1994).
- [16] TSN, October 7, 1991, 5-6.
- [17] TSN, April 26, 1993, 4-9.
- [18] Exhibit C.
- [19] Exhibit D.
- [20] TSN, June 7, 1993, 11-12.
- [21] Civil Code, art. 1643.
- [22] Vitug, *Compendium of Civil Law and Jurisprudence*, 1993 edition, 653-654.
- [23] *Fule v. Court of Appeals*, *supra.*; *A. Magsaysay, Inc. v. Cebu Portland Cement, Co.*, 100 Phil 351 (1957); Tolentino, *IV Civil Code of the Philippines*, 1991 edition, 447.
- [24] TSN, October 7, 1991, 9-10
- [25] TSN, June 7, 1993, 3-4, 6-8
- [26] Ibid., 3-4, 6-7, 8.
- [27] TSN, October 7, 1991, 14-25; TSN, December 16, 1993, 8.

[28] ART. 449.

He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

[29] ART. 450.

The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

- [30] *De Vera v. Court of Appeals*, 305 SCRA 624 (1999).
- [31] Civil Code, art. 451.

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