

EUFEMIA ALMEDA and ROMEL ALMEDA, Petitioners, vs. BATHALA MARKETING INDUSTRIES, INC., Respondent.*G.R. No. 150806. January 28, 2008*

Ponente: NACHURA, J.

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This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, of the Decision[1] of the Court of Appeals (CA), dated September 3, 2001, in CA-G.R. CV No. 67784, and its Resolution[2] dated November 19, 2001. The assailed Decision affirmed with modification the Decision[3] of the Regional Trial Court (RTC), Makati City, Branch 136, dated May 9, 2000 in Civil Case No. 98-411.

Sometime in May 1997, respondent Bathala Marketing Industries, Inc., as lessee, represented by its president Ramon H. Garcia, renewed its Contract of Lease[4] with Ponciano L. Almeda (Ponciano), as lessor, husband of petitioner Eufemia and father of petitioner Romel Almeda. Under the said contract, Ponciano agreed to lease a portion of the Almeda Compound, located at 2208 Pasong Tamo Street, Makati City, consisting of 7,348.25 square meters, for a monthly rental of P1,107,348.69, for a term of four (4) years from May 1, 1997 unless sooner terminated as provided in the contract.[5] The contract of lease contained the following pertinent provisions which gave rise to the instant case:

SIXTH – It is expressly understood by the parties hereto that the rental rate stipulated is based on the present rate of assessment on the property, and that in case the assessment should hereafter be increased or any new tax, charge or burden be imposed by authorities on the lot and building where the leased premises are located, LESSEE shall pay, when the rental herein provided becomes due, the additional rental or charge corresponding to the portion hereby leased; provided, however, that in the event that the present assessment or tax on said property should be reduced, LESSEE shall be entitled to reduction in the stipulated rental, likewise in proportion to the portion leased by him;

SEVENTH – In case an extraordinary inflation or devaluation of Philippine Currency should supervene, the value of Philippine peso at the time of the establishment of the obligation shall be the basis of payment;[6]

During the effectivity of the contract, Ponciano died. Thereafter, respondent dealt with petitioners. In a letter[7] dated December 29, 1997, petitioners advised respondent that the former shall assess and collect Value Added Tax (VAT) on its monthly rentals. In response, respondent contended that VAT may not be imposed as the rentals fixed in the contract of lease were supposed to include the VAT therein, considering that their contract was executed on May 1, 1997 when the VAT law had long been in effect.[8]

On January 26, 1998, respondent received another letter from petitioners informing the former that its monthly rental should be increased by 73% pursuant to condition No. 7 of the contract and Article 1250 of the Civil Code. Respondent opposed petitioners' demand and insisted that there was no extraordinary inflation to warrant the application of Article 1250 in light of the pronouncement of this Court in various cases.[9]

Respondent refused to pay the VAT and adjusted rentals as demanded by petitioners but continued to pay the

stipulated amount set forth in their contract.

On February 18, 1998, respondent instituted an action for declaratory relief for purposes of determining the correct interpretation of condition Nos. 6 and 7 of the lease contract to prevent damage and prejudice.[10] The case was docketed as Civil Case No. 98-411 before the RTC of Makati.

On March 10, 1998, petitioners in turn filed an action for ejectment, rescission and damages against respondent for failure of the latter to vacate the premises after the demand made by the former.[11] Before respondent could file an answer, petitioners filed a Notice of Dismissal.[12] They subsequently refiled the complaint before the Metropolitan Trial Court of Makati; the case was raffled to Branch 139 and was docketed as Civil Case No. 53596.

Petitioners later moved for the dismissal of the declaratory relief case for being an improper remedy considering that respondent was already in breach of the obligation and that the case would not end the litigation and settle the rights of the parties. The trial court, however, was not persuaded, and consequently, denied the motion.

After trial on the merits, on May 9, 2000, the RTC ruled in favor of respondent and against petitioners. The pertinent portion of the decision reads:

WHEREFORE, premises considered, this Court renders judgment on the case as follows:

- 1) declaring that plaintiff is not liable for the payment of Value-Added Tax (VAT) of 10% of the rent for [the] use of the leased premises;
- 2) declaring that plaintiff is not liable for the payment of any rental adjustment, there being no [extraordinary] inflation or devaluation, as provided in the Seventh Condition of the lease contract, to justify the same;
- 3) holding defendants liable to plaintiff for the total amount of P1,119,102.19, said amount representing payments erroneously made by plaintiff as VAT charges and rental adjustment for the months of January, February and March, 1999; and
- 4) holding defendants liable to plaintiff for the amount of P1,107,348.69, said amount representing the balance of plaintiff's rental deposit still with defendants.

SO ORDERED.[13]

The trial court denied petitioners their right to pass on to respondent the burden of paying the VAT since it was not a new tax that would call for the application of the sixth clause of the contract. The court, likewise, denied their right to collect the demanded increase in rental, there being no extraordinary inflation or devaluation as provided for in the seventh clause of the contract. Because of the payment made by respondent of the rental adjustment demanded by petitioners, the court ordered the restitution by the latter to the former of the amounts paid, notwithstanding the well-established rule that in an action for declaratory relief, other than a declaration of rights and obligations, affirmative reliefs are not sought by or awarded to the parties.

Petitioners elevated the aforesaid case to the Court of Appeals which affirmed with modification the RTC decision. The fallo reads:

WHEREFORE, premises considered, the present appeal is DISMISSED and the appealed decision in Civil Case No. 98-411 is hereby AFFIRMED with MODIFICATION in that the order for the return of the balance of the rental deposits and of the amounts representing the 10% VAT and rental adjustment, is hereby DELETED.

No pronouncement as to costs.

SO ORDERED.[14]

The appellate court agreed with the conclusions of law and the application of the decisional rules on the matter made by the RTC. However, it found that the trial court exceeded its jurisdiction in granting affirmative relief to the respondent, particularly the restitution of its excess payment.

Petitioners now come before this Court raising the following issues:

I.

WHETHER OR NOT ARTICLE 1250 OF THE NEW CIVIL CODE IS APPLICABLE TO THE CASE AT BAR.

II.

WHETHER OR NOT THE DOCTRINE ENUNCIATED IN FILIPINO PIPE AND FOUNDRY CORP. VS. NAWASA CASE, 161 SCRA 32 AND COMPANION CASES ARE (sic) APPLICABLE IN THE CASE AT BAR.

III.

WHETHER OR NOT IN NOT APPLYING THE DOCTRINE IN THE CASE OF DEL ROSARIO VS. THE SHELL COMPANY OF THE PHILIPPINES, 164 SCRA 562, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED ON A QUESTION OF LAW.

IV.

WHETHER OR NOT THE FINDING OF THE HONORABLE COURT OF APPEALS THAT RESPONDENT IS NOT LIABLE TO PAY THE 10% VALUE ADDED TAX IS IN ACCORDANCE WITH THE MANDATE OF RA 7716.

V.

WHETHER OR NOT DECLARATORY RELIEF IS PROPER SINCE PLAINTIFF-APPELLEE WAS IN BREACH WHEN THE PETITION FOR DECLARATORY RELIEF WAS FILED BEFORE THE TRIAL COURT.

In fine, the issues for our resolution are as follows: 1) whether the action for declaratory relief is proper; 2) whether respondent is liable to pay 10% VAT pursuant to Republic Act (RA) 7716; and 3) whether the amount of rentals due the petitioners should be adjusted by reason of extraordinary inflation or devaluation.

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute, and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute. Corollary is the general rule that such an action must be justified, as no other adequate relief or remedy is available under the circumstances. [15]

Decisional law enumerates the requisites of an action for declaratory relief, as follows: 1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; 2) the terms of said documents and the validity thereof are doubtful and require judicial construction; 3) there must have been no breach of the documents in question; 4) there must be an actual justiciable controversy or the “ripening seeds” of one between persons whose interests are adverse; 5) the issue must be ripe for judicial determination; and 6) adequate relief is not available through other means or other forms of action or

proceeding.[16]

It is beyond cavil that the foregoing requisites are present in the instant case, except that petitioners insist that respondent was already in breach of the contract when the petition was filed.

We do not agree.

After petitioners demanded payment of adjusted rentals and in the months that followed, respondent complied with the terms and conditions set forth in their contract of lease by paying the rentals stipulated therein. Respondent religiously fulfilled its obligations to petitioners even during the pendency of the present suit. There is no showing that respondent committed an act constituting a breach of the subject contract of lease. Thus, respondent is not barred from instituting before the trial court the petition for declaratory relief.

Petitioners claim that the instant petition is not proper because a separate action for rescission, ejectment and damages had been commenced before another court; thus, the construction of the subject contractual provisions should be ventilated in the same forum.

We are not convinced.

It is true that in *Panganiban v. Pilipinas Shell Petroleum Corporation*[17] we held that the petition for declaratory relief should be dismissed in view of the pendency of a separate action for unlawful detainer. However, we cannot apply the same ruling to the instant case. In *Panganiban*, the unlawful detainer case had already been resolved by the trial court before the dismissal of the declaratory relief case; and it was petitioner in that case who insisted that the action for declaratory relief be preferred over the action for unlawful detainer. Conversely, in the case at bench, the trial court had not yet resolved the rescission/ejectment case during the pendency of the declaratory relief petition. In fact, the trial court, where the rescission case was on appeal, itself initiated the suspension of the proceedings pending the resolution of the action for declaratory relief.

We are not unmindful of the doctrine enunciated in *Teodoro, Jr. v. Mirasol*[18] where the declaratory relief action was dismissed because the issue therein could be threshed out in the unlawful detainer suit. Yet, again, in that case, there was already a breach of contract at the time of the filing of the declaratory relief petition. This dissimilar factual milieu proscribes the Court from applying *Teodoro* to the instant case.

Given all these attendant circumstances, the Court is disposed to entertain the instant declaratory relief action instead of dismissing it, notwithstanding the pendency of the ejectment/rescission case before the trial court. The resolution of the present petition would write finis to the parties' dispute, as it would settle once and for all the question of the proper interpretation of the two contractual stipulations subject of this controversy.

Now, on the substantive law issues.

Petitioners repeatedly made a demand on respondent for the payment of VAT and for rental adjustment allegedly brought about by extraordinary inflation or devaluation. Both the trial court and the appellate court found no merit in petitioners' claim. We see no reason to depart from such findings.

As to the liability of respondent for the payment of VAT, we cite with approval the ratiocination of the appellate court, viz.:

Clearly, the person primarily liable for the payment of VAT is the lessor who may choose to pass it on to the lessee or absorb the same. Beginning January 1, 1996, the lease of real property in the ordinary course of business, whether for commercial or residential use, when the gross annual receipts exceed P500,000.00, is subject to 10% VAT. Notwithstanding the mandatory payment of the 10% VAT by the lessor, the actual shifting of the said tax burden upon the lessee is clearly optional on the part of the lessor, under the terms of

the statute. The word “may” in the statute, generally speaking, denotes that it is directory in nature. It is generally permissive only and operates to confer discretion. In this case, despite the applicability of the rule under Sec. 99 of the NIRC, as amended by R.A. 7716, granting the lessor the option to pass on to the lessee the 10% VAT, to existing contracts of lease as of January 1, 1996, the original lessor, Ponciano L. Almada did not charge the lessee-appellee the 10% VAT nor provided for its additional imposition when they renewed the contract of lease in May 1997. More significantly, said lessor did not actually collect a 10% VAT on the monthly rental due from the lessee-appellee after the execution of the May 1997 contract of lease. The inevitable implication is that the lessor intended not to avail of the option granted him by law to shift the 10% VAT upon the lessee-appellee. x x x.[19]

In short, petitioners are estopped from shifting to respondent the burden of paying the VAT.

Petitioners’ reliance on the sixth condition of the contract is, likewise, unavailing. This provision clearly states that respondent can only be held liable for new taxes imposed after the effectivity of the contract of lease, that is, after May 1997, and only if they pertain to the lot and the building where the leased premises are located. Considering that RA 7716 took effect in 1994, the VAT cannot be considered as a “new tax” in May 1997, as to fall within the coverage of the sixth stipulation.

Neither can petitioners legitimately demand rental adjustment because of extraordinary inflation or devaluation.

Petitioners contend that Article 1250 of the Civil Code does not apply to this case because the contract stipulation speaks of extraordinary inflation or devaluation while the Code speaks of extraordinary inflation or deflation. They insist that the doctrine pronounced in *Del Rosario v. The Shell Company, Phils. Limited*[20] should apply.

Essential to contract construction is the ascertainment of the intention of the contracting parties, and such determination must take into account the contemporaneous and subsequent acts of the parties. This intention, once ascertained, is deemed an integral part of the contract.[21]

While, indeed, condition No. 7 of the contract speaks of “extraordinary inflation or devaluation” as compared to Article 1250’s “extraordinary inflation or deflation,” we find that when the parties used the term “devaluation,” they really did not intend to depart from Article 1250 of the Civil Code. Condition No. 7 of the contract should, thus, be read in harmony with the Civil Code provision.

That this is the intention of the parties is evident from petitioners’ letter[22] dated January 26, 1998, where, in demanding rental adjustment ostensibly based on condition No. 7, petitioners made explicit reference to Article 1250 of the Civil Code, even quoting the law verbatim. Thus, the application of *Del Rosario* is not warranted. Rather, jurisprudential rules on the application of Article 1250 should be considered.

Article 1250 of the Civil Code states:

In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.

Inflation has been defined as the sharp increase of money or credit, or both, without a corresponding increase in business transaction. There is inflation when there is an increase in the volume of money and credit relative to available goods, resulting in a substantial and continuing rise in the general price level.[23] In a number of cases, this Court had provided a discourse on what constitutes extraordinary inflation, thus:

[E]xtraordinary inflation exists when there is a decrease or increase in the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, and such increase or decrease could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties

at the time of the establishment of the obligation.[24]

The factual circumstances obtaining in the present case do not make out a case of extraordinary inflation or devaluation as would justify the application of Article 1250 of the Civil Code. We would like to stress that the erosion of the value of the Philippine peso in the past three or four decades, starting in the mid-sixties, is characteristic of most currencies. And while the Court may take judicial notice of the decline in the purchasing power of the Philippine currency in that span of time, such downward trend of the peso cannot be considered as the extraordinary phenomenon contemplated by Article 1250 of the Civil Code. Furthermore, absent an official pronouncement or declaration by competent authorities of the existence of extraordinary inflation during a given period, the effects of extraordinary inflation are not to be applied. [25]

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 67784, dated September 3, 2001, and its Resolution dated November 19, 2001, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona, and Reyes, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. de los Santos, concurring; rollo, pp. 129-138.

[2] Rollo, p. 185.

[3] Penned by Judge Jose R. Bautista; records, pp. 260-268.

[4] Records, pp. 6-11.

[5] Id. at 6-7.

[6] Id. at 7.

[7] Id. at 202.

[8] Embodied in a letter dated January 12, 1998; id. at 203.

[9] Records, p. 33.

[10] Id. at 1-5.

[11] Id. at 80-84.

[12] Id. at 98-100.

[13] Id. at 267-268.

[14] Rollo, p. 138.

[15] Atlas Consolidated Mining & Development Corporation v. Court of Appeals, G.R. No. 54305, February 14, 1990, 182 SCRA 166, 177.

[16] Jumamil v. Café, G.R. No. 144570, September 21, 2005, 470 SCRA 475, 486-487.

[17] 443 Phil. 753 (2003).

[18] 99 Phil. 150 (1956).

[19] Rollo, p. 134.

[20] No. L-28776, August 19, 1988, 164 SCRA 556.

[21] Lorenzo Shipping Corp. v. BJ Marthel International, Inc., G.R. No. 145483, November 19, 2004, 443 SCRA 163, 175.

[22] Records, p. 29.

[23] Citibank, N.A. v. Sabeniano, G.R. No. 156132, February 6, 2007, 514 SCRA 441, 468.

[24] Citibank, N.A. v. Sabeniano, *supra*, at 468; Telengtan Brothers & Sons, Inc. v. United States Lines, Inc., G.R. No. 132284, February 28, 2006, 483 SCRA 458, 469-470; Filipino Pipe and Foundry Corp. v. NAWASA, No. L-43446, May 3, 1988, 161 SCRA 32, 35.

[25] Telengtan Brothers & Sons, Inc. v. United States Lines, Inc. *supra*, at 470-471.

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