

MANUEL MALLARI AND MILLIE MALLARI, PETITIONERS, VS. REBECCA ALSOL, RESPONDENT

G.R. NO. 150866. March 06, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 9 August 2001 Decision[2] and 12 November 2001 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 52681. The Court of Appeals affirmed with modification the 8 November 1995 Decision[4] of the Regional Trial Court of Cabanatuan City, Nueva Ecija, Branch 27 ("trial court") in Civil Case No. 870-AF.

The Antecedent Facts

Stalls No. 7 and 8 of the Supermarket Section of the Cabanatuan City Public Market were awarded to and occupied by Abelardo Mallari ("Abelardo"), father of Manuel Mallari ("Manuel") and Rebecca Alsol ("respondent"). Before Abelardo's death on 16 July 1986, he gave the stalls to Manuel and respondent. Manuel and his wife Millie Mallari ("petitioners") occupied Stall No. 7 while respondent and her husband Zacarias Alsol occupied Stall No. 8.

In July 1988, respondent's daughter became sick and the Alsol family had to stay in Manila for two months for the medical treatment. They returned to Cabanatuan City in September 1988 only to find out that petitioners were already occupying Stall No. 8. The partition between Stalls No. 7 and 8 had been removed and respondent's merchandise and things were already gone. Petitioners refused respondent's demand to vacate Stall No. 8.

Respondent sought the help of the City Market Committee ("Committee"). On 5 May 1989, the Committee passed Kapasiyahan Blg. 1, s-1989 granting Stall No. 7 to Manuel and Stall No. 8 to respondent. On 4 June 1990, respondent and the City Government of Cabanatuan ("City Government"), represented by City Mayor Honorato C. Perez ("Mayor Perez"), executed a Contract of Lease ("Lease Contract"). The Lease Contract granted respondent the right to occupy Stall No. 8 for a monthly rental of P316 subject to increase or decrease in accordance with the rules and ordinances of the City Government.

However, petitioners still refused to vacate Stall No. 8. Instead, they filed an action for annulment of the Lease Contract before the Regional Trial Court of Cabanatuan City, Branch 29 ("Branch 29"). The case was docketed as Civil Case No. 789-AF. In its Order of 25 May 1990, Branch 29 dismissed the case for non-exhaustion of administrative remedies and on the additional ground that the Committee is not the proper party to the case.[5]

On 17 October 1990, respondent filed an action for recovery and possession before the trial court. On 8 November 1995, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against the defendants, by:

- a) Declaring the plaintiff as the rightful awardee of Stall No. 8, Building A, Cabanatuan Public Market and ordering the defendants, or any person acting in their behalf, to vacate said Stall No. 8 and relinquish the possession thereof to the plaintiff;
- b) Condemning the defendants to pay to the plaintiff the sum of P18,000.00, representing the value of the merchandize [sic] and items taken by the defendants from said Stall No. 8;
- c) Ordering the defendants to pay to the plaintiff the following amounts:
 - (1) P10,000.00 - as attorney's fees; and
 - (2) P20,000.00 - as exemplary and punitive damages; and
- d) Awarding costs in favor of the plaintiff.

SO ORDERED.[6]

Petitioners appealed the trial court's Decision to the Court of Appeals.

The Ruling of the Court of Appeals

In its 9 August 2001 Decision, the Court of Appeals partly granted the appeal and affirmed the trial court's Decision with modification. The Court of Appeals sustained respondent's right to occupy Stall No. 8 by virtue of the Lease Contract she entered with the City Government. However, the Court of Appeals deleted the award of actual damages amounting to P18,000 in favor of respondent on the ground that there was no sufficient proof of the loss. The Court of Appeals also deleted the award of exemplary damages to respondent amounting to P20,000.

Petitioners moved for reconsideration of the Court of Appeals's Decision. In its 12 November 2001 Resolution, the Court of Appeals denied the motion for reconsideration for lack of merit.

Hence, the petition before this Court.

The Issues

Petitioners raise the following issues:

1. Whether respondent is the proper awardee of Stall No. 8.
2. Whether the Lease Contract executed between respondent and the City Government is valid.
3. Whether respondent is entitled to attorney's fees.

The Ruling of This Court

The petition has no merit.

Ruling on Whether Respondent is the Proper Awardee of Stall No. 8 is Premature

The Court of Appeals pointed out that when the Committee awarded Stall No. 8 to respondent, petitioners filed an appeal before the Secretary of Finance questioning the award. In their appeal, petitioners alleged that respondent failed to comply with the conditions set by the Committee. The appeal was still pending when the Court of Appeals promulgated the assailed Decision. Petitioners admitted in their Memorandum the pendency of the appeal.[7] Hence, the Court may not at this time rule on whether respondent is the proper awardee of Stall No. 8. Any resolution on this question will preempt whatever ruling the Secretary of Finance may issue on the pending appeal.

Validity of the Lease Contract

Respondent and the City Government executed the Lease Contract on 4 June 1990 prior to petitioners' filing of appeal before the Secretary of Finance. The pendency of the appeal does not affect the validity of the lease. As the Court of Appeals ruled, the Lease Contract remains valid until revoked by the City Government or annulled by the proper court in a proper action.

Petitioners insist that the Lease Contract is not valid because the City Treasurer should have signed the Lease Contract and not Mayor Perez. Petitioners allege that the Court of Appeals erred in applying Republic Act No. 7160[8] ("RA 7160"), otherwise known as the Local Government Code of 1991, which took effect on 1 January 1992 or long after the execution of the Lease Contract on 4 June 1990. Petitioners further allege that granting Mayor Perez has the authority to sign the Lease Contract, Mayor Perez did not appear before the notary public who notarized the Lease Contract. Hence, the Lease Contract did not produce any right in favor of respondent.

The Court agrees with petitioners that RA 7160 is not the applicable law. Instead, the Court of Appeals should have applied Batas Pambansa Blg. 337[9] ("BP 337") or the old Local Government Code. Still, even under BP 337, city mayors have the authority to sign contracts on behalf of city governments.

Under Section 171(2), Article One, Chapter 3 of BP 337, the powers and duties of the city mayor are as follows:

Sec. 171. Chief Executive; Compensation, Powers and Duties.

x x x x

(2) The city mayor shall:

- (a) Take care that the laws of the Philippines and the ordinances and resolutions of the city are duly observed and enforced;
- (b) Maintain peace and order in the city, and in pursuance thereof, he shall be entitled to possess and carry the necessary firearms within its territorial jurisdiction, subject to existing rules and regulations on the possession and carrying of firearms;
- (c) Prepare and submit to the sangguniang panlungsod the annual budget of the city for the ensuing calendar year on the date and in the manner provided and prescribed by law;
- (d) See to it that executive officers and employees of the city faithfully discharge their respective duties, and for the purpose, cause, if necessary, the institution and filing of appropriate criminal or administrative action;
- (e) Furnish the sangguniang panlungsod from time to time, such information and recommend such measures as he shall deem appropriate or necessary;
- (f) Examine the books, records, and papers of all offices, officers, agents or employees of the city;
- (g) Represent the city in its business transactions, and sign all warrants drawn on the city treasury and all bonds, contracts and obligations of the city;
- (h) Appoint, in accordance with civil service law, rules and regulations, all officers and employees of the city, whose appointments are not otherwise provided in this Code;
- (i) Cause to be instituted judicial proceedings to recover property and funds of the city wherever found, and cause to be defended all suits against the city, or otherwise protect its interests;
- (j) As soon as possible but not later than March 31 of each year, prepare and submit to the Ministry of Local Government an annual report covering the operation of the city government during the preceding calendar year;

- (k) Ensure that all taxes and other revenues of the city are collected, and the city funds applied in accordance with law or ordinance to the payment and settlement of the city expenses and obligations;
- (l) Exempt, upon the recommendation of the superintendent of city schools, deserving but financially disadvantaged students from the payment of tuition and other school fees or any part thereof;
- (m) Take such emergency measures as may be necessary to protect the public from fires, prevent and mitigate the effects of floods, storms, earthquakes and other public calamities;
- (n) Grant or refuse to grant, pursuant to law, city licenses or permits, and revoke the same for violation of law or ordinance or the conditions upon which they are granted;
- (o) Require owners of houses, buildings or other structures constructed without the necessary permit or in violation of existing law or ordinance, to remove or demolish such houses, buildings or structures within thirty days, or cause its removal or demolition at the expense of the owner;
- (p) Grant permits to hold benefits, excepting prohibited games of chance, for public and charitable purposes without requiring approval of the Ministry of Social Services and Development;
- (q) Act on the commutation of vacation, sick and maternity leaves and of trips outside the city of chiefs of offices appointed by him;
- (r) Initiate appropriate action or proceedings against any national government official or employee rendering service within the city to draw the attention of the corresponding superior officer to the dereliction of the official or employee involved;
- (s) Authorize payment of medical attendance, necessary transportation, subsistence, and hospital fees of officials and employees of the city who suffer any injury arising out of or in the course of their employment. Absence in such cases shall not be charged against any leave credit;
- (t) Approve the commutation of such transportation allowances as may be authorized by law for chiefs of offices;
- (u) Direct the preparation and formulation of the development plan and program of the city, and upon approval of the sangguniang panlungsod, direct and supervise the implementation and execution of the same;
- (v) Call a meeting of any or all of the officers and employees of the city; and
- (w) Perform such other duties and exercise such other powers as may be prescribed by law or ordinance. (Emphasis supplied)

On the other hand, the powers and duties of the city treasurer are enumerated under Section 181(4), Article Five, Chapter 3 of BP 337, thus:

Sec. 181. Appointment, Qualifications, Compensation, Powers and Duties. x x x x

(4) The city treasurer shall:

- (a) Advise the city mayor, the sangguniang panlungsod, other city officials, and the national officers concerned with the disposition of property of the city government;
- (b) Collect taxes throughout the city, including national, provincial and municipal taxes and other revenues authorized by law;
- (c) Take custody of and exercise supervision over all city funds and property, including city buildings and grounds and, subject to the approval of the city mayor, assign rooms to city officers and other public officials who by law are entitled to office space in the city buildings;

- (d) Make annual reports to the mayor of all income disbursements, and acquisition and disposition of all assets of the city during the period, and furnish copies thereof to the sangguniang panlungsod and to all department heads of the city government;
- (e) Take charge of the disbursement of all city and other funds the custody of which may be entrusted to him by law or other competent authority;
- (f) Upon designation by the Minister of Finance, act as treasury fiscal examiner in the city under the administrative authority of the Treasurer of the Philippines in accordance with pertinent rules and regulations;
- (g) Inspect, under the authority of the sangguniang panlungsod, the operation of public utilities belonging to, leased or operated by, the city government, such as telegraph and telephone, land and water transportation, waterworks, electric-light plants, irrigation systems, bonded warehouses, ferries, slaughterhouses, and other commercial and industrial enterprises of the city and all private commercial and industrial establishments within the city in relation to city tax ordinances; and
- (h) Perform such other duties as may be required by law or ordinance.

Applying BP 337, there is nothing in the powers and functions of the city treasurer that gives the city treasurer authority to sign contracts for the city government. Instead, Paragraph (g), Section 171(2), Article One, Chapter 3 of BP 337 clearly provides that the city mayor shall represent the city in its business transactions and sign contracts of the city. Hence, Mayor Perez has the authority to sign the Lease Contract on behalf of the City Government. Even under the Revenue Code of Cabanatuan City of 1974, the authority of the city treasurer is limited to direct and immediate supervision, administration and control over the Cabanatuan public markets and its personnel.[10] The city treasurer has the authority to designate spaces and stalls to vendors,[11] but the authority does not include signing of contracts on behalf of the City Government.

Petitioners also allege that the Lease Contract is not valid because Mayor Perez did not appear before the notary public who notarized the document.

We cannot sustain this argument.

Notarization converts a private document into a public document.[12] However, the non-appearance of the parties before the notary public who notarized the document does not necessarily nullify nor render the parties' transaction void ab initio.[13] Thus:

x x x Article 1358 of the New Civil Code on the necessity of a public document is only for convenience, not for validity or enforceability. Failure to follow the proper form does not invalidate a contract. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected. This is consistent with the basic principle that contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present.[14]

Hence, the Lease Contract is valid despite Mayor Perez's failure to appear before the notary public.

Award of Attorney's Fees

Article 2208 of the Civil Code provides:

- Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
- (1) When exemplary damages are awarded;
 - (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

We agree with the Court of Appeals that the award of attorney's fees is justified. Petitioners refused to vacate and turn over Stall No. 8 to respondent despite respondent's repeated demands and the existence of the Lease Contract between respondent and the City Government. Respondent was left with no recourse but to litigate to protect her interest. Hence, we sustain the award of attorney's fees amounting to P10,000 to respondent.

WHEREFORE, we DENY the petition. We AFFIRM the 9 August 2001 Decision and 12 November 2001 Resolution of the Court of Appeals in CA-G.R. CV No. 52681.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, and Tinga, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Sergio L. Pestaño, concurring. Rollo, pp. 27-32.

[3] Rollo, p. 34.

[4] Penned by Judge Feliciano V. Buenaventura. CA rollo, pp. 32-35.

[5] Records, p. 12.

[6] CA rollo, pp. 34-35.

[7] Rollo, p. 84.

[8] An Act Providing For A Local Government Code of 1991.

[9] An Act Enacting A Local Government Code.

[10] CA rollo, p. 70.

[11] Id.

[12] Gonzales v. Ramos, A.C. No. 6649, 21 June 2005, 460 SCRA 352.

[13] Peñalosa v. Santos, 416 Phil. 12 (2001).

[14] Id. at 29.

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