

**ROBERTO BARBASA, PETITIONER, VS. HON. ARTEMIO G. TUQUERO,
IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE,
GRACE GUARIN, NESTOR SANGALANG, VICTOR CALLUENG,
RESPONDENTS.**

G.R. No. 163898. December 23, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioner assails the Decision[1] dated July 29, 2003 and the Resolution[2] dated May 21, 2004 of the Court of Appeals in CA-G.R. SP No. 62610, which dismissed his petition for certiorari and denied his motion for reconsideration, respectively. The appellate court had found no reason to reverse the Resolution[3] of the Secretary of Justice ordering the City Prosecutor of Manila to move for the dismissal of Criminal Case No. 336630 against private respondents.

Petitioner avers that he is the president of Push-Thru Marketing, Inc., which leases commercial stalls CS-PL 05, 19 and 30 in Tutuban Center, owned by Tutuban Properties, Inc., (TPI). On June 30, 1999, Angelina Hipolito, merchandising officer of Push-Thru Marketing, received a notice of disconnection of utilities from private respondent Grace Guarin, the Credit and Collection Manager of TPI, for failure of Push-Thru Marketing to settle its outstanding obligations for Common Usage and Service Area (CUSA) charges, utilities, electricity and rentals.

Petitioner settled the charges for CUSA, utilities and electricity, which payment was accepted by private respondent Guarin, but petitioner failed to pay the back rentals. Thus, on July 1, 1999, private respondents Guarin, Nestor Sangalang, engineering manager of TPI, and Victor Callueng, TPI head of security, together with several armed guards, disconnected the electricity in the stalls occupied by Push-Thru Marketing.

Aggrieved, petitioner filed a criminal complaint for Grave Coercion against TPI and its officers, David Go, Robert Castanares, Buddy Mariano, Art Brondial, and herein private respondents before the Office of the City Prosecutor of Manila.[4] The complaint dated July 13, 1999 alleged that TPI and its officers cut off the electricity in petitioner's stalls "in a violent and intimidating manner"[5] and by unnecessarily employing "several armed guards to intimidate and frighten"[6] petitioner and his employees and agents.

The respondents in the criminal complaint filed separate counter-affidavits[7] which presented a common defense: that the July 1, 1999 cutting off of electrical supply was done peacefully; that it was an act performed in the lawful performance of their assigned duties, and in accordance with the covenants set forth in the written agreements previously executed between petitioner and TPI; that petitioner was not present when the alleged acts were committed; and that petitioner had outstanding accumulated unpaid rentals, CUSA billings, electrical and water bills, unpaid interest and penalty charges (from June 1998 to May 1999) in the amount of P267,513.39 for all his rented stalls, as reflected in three Interest-Penalty Reports[8] duly sent to him. Petitioner was likewise given demand letter-notices in writing at least three times wherein it was stated that if he did not settle his arrears in full, electricity would be cut.[9] Of the total amount due from him, petitioner paid only P127,272.18 after

receipt of the third notice. Accordingly, private respondents proceeded with the power cut-off, but only after sending a "Notice of Disconnection of Utilities"[10] to petitioner's stalls informing him of the impending act.

Private respondents also pointed out that aside from the above arrears, petitioner has outstanding accountabilities with respect to "Priority Premium Fees" in the amount of P5,907,013.10.[11]

They likewise stressed that their Agreement[12] with petitioner contains the following stipulations:

CONTRACT OF LEASE
Prime Block Cluster Stall

x x x x

PRIORITY PREMIUM

: P *2,367,750.00

x x x x

RENT PER MONTH

: P *****378.00 per sq. m

(Plus P*****37.80 10% VAT)

x x x x

OTHER FEES AND EXPENSES CHARGEABLE

TO THE LESSEE:

x x x x

B.

COMMON USAGE AND SERVICE AREA (CUSA) CHARGES

Minimum rate of P190.00/sq. m./mo. to cover expenses stipulated in Section 6 hereof, subject to periodic review and adjustment to reflect actual expenses.

C. INDIVIDUAL UTILITIES
ELECTRIC CONSUMPTION

: metered + reasonable service
charge (meter to be provided
by the LESSOR, for the
account of the LESSEE)

OTHER SERVICES

: metered and/or reasonable
service charge

x x x x

7. PAYMENTS

x x x x

In cases where payments made by the LESSEE for any given month is not sufficient to cover all outstanding obligations for said period, the order of priority in the application of the payments made is as follows:

- a. Penalties
- b. Interests
- c. Insurance
- d. CUSA Charges
- e. Rent
- f. Priority Premium

x x x x

21. PENALTY CLAUSE

x x x x

It is also expressly agreed that in case the LESSEE fails to pay at any time the installments on the priority premium, lease rentals or CUSA and utility charges corresponding to a total of three (3) months, even if not consecutively incurred, the LESSOR is hereby granted the option to cut off power and other utility services to the LESSEE until full payment of said charges, expenses, penalty and interest is made, without prejudice to any other remedies provided under this Contract, including the termination of this Contract.

x x x x (Emphasis supplied.)

Petitioner filed his Reply Affidavit,[13] claiming that Go, Castanares, Mariano, Brondial, Guarin and Sangalang, while not personally present at the scene at the time, were to be held liable as the authors of the criminal design since they were the ones who ordered the cutting off of petitioner's electricity. Petitioner admitted that none of the armed personnel drew his gun, much more aimed or fired it, but insisted that he was unduly prevented from using electricity to the detriment of his business and his person. He claimed that the officers of TPI were unable to show the amount and extent of his unpaid bills; that as to the electric bills, the same were paid; and that there was an ongoing negotiation with respect to the matter of rentals and for reformation of the lease agreements.[14]

The Office of the City Prosecutor of Manila, through Prosecutor Venus D. Marzan, dismissed the complaint against David Go, Roberto Castanares, Buddy Mariano and Art Brondial but found probable cause against private respondents Grace Guarin, Nestor Sangalang and Victor Callueng. On January 13, 2000, an Information[15] for grave coercion was filed in court, but proceedings therein were deferred when the private respondents filed an appeal to the Secretary of Justice.

On August 23, 2000, the Secretary of Justice reversed the City Prosecutor's Resolution, as follows:

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor is directed to move, with leave of court, for the dismissal of Criminal Case No. 336630 of the Metropolitan Trial Court of Manila and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.[16]

His motion for reconsideration having been denied, petitioner assailed the Resolution of the Secretary of Justice before the Court of Appeals through a petition for certiorari, which was, however, dismissed by the appellate court for lack of merit. The appellate court likewise denied his motion for reconsideration. Hence this petition.

Petitioner raises the sole issue of whether private respondents' act of disconnecting the supply of electricity to

petitioner's stalls and the manner by which it was carried out constitute grave coercion.

After carefully considering petitioner's appeal, we are in agreement to deny it for utter lack of merit.

The crime of grave coercion has three elements: (a) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his or her will, be it right or wrong; (b) that the prevention or compulsion is effected by violence, either by material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party; and (c) that the person who restrains the will and liberty of another has no right to do so; in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.[17]

Petitioner's appeal gives us no sufficient reason to deviate from what has already been found by the Secretary of Justice and the Court of Appeals.

The records show that there was no violence, force or the display of it as would produce intimidation upon petitioner's employees when the cutting off of petitioner's electricity was effected. On the contrary, it was done peacefully and after written notice to petitioner was sent. We do not subscribe to petitioner's claim that the presence of armed guards were calculated to intimidate him or his employees. Rather, we are more inclined to believe that the guards were there to prevent any untoward or violent event from occurring in the exercise of TPI's rights under the lease agreements. If the respondents desired a violent result, they would have gone there unannounced or cut petitioner's electricity through less desirable and conspicuous means.

It is likewise clear from the penalty clause in the Contracts of Lease entered into by the parties that TPI is given the option to cut off power and other utility services in petitioner's stalls in case petitioner fails to pay at any time the installments on the priority premium, lease rentals or CUSA and utility charges corresponding to a total of three months until full payment of said charges, expenses, penalty and interest is made.[18] The stipulation under said clause is clear; there is no ambiguity in what is stated. There could be no grave coercion in the private respondents' act of exercising in behalf of TPI a right afforded to TPI under the solemn and unequivocal covenants of a contract to which petitioner had agreed and which he did execute and sign.

As held by this Court in a previous case which we find instructive:

Contracts constitute the law between the parties. They must be read together and interpreted in a manner that reconciles and gives life to all of them. The intent of the parties, as shown by the clear language used, prevails over post facto explanations that find no support from the words employed by the parties or from their contemporary and subsequent acts showing their understanding of such contracts.[19]

We could not see how the Office of the City Prosecutor of Manila, through Prosecutor Venus D. Marzan, could have made a finding of probable cause to file a criminal case for grave coercion against private respondents, in light of the evidence then and now prevailing, which will show that there was a mutual agreement, in a contract of lease, that provided for the cutting off of electricity as an acceptable penalty for failure to abide faithfully with what has been covenanted. Although the propriety of its exercise may be the subject of controversy, mere resort to it may not so readily expose the lessor TPI to a charge of grave coercion. Considering that petitioner owed TPI the total amount of more than P5 million, which was undisputed, we find that the resort to the penalty clause under the lease agreements was justified. As held in *Pryce Corporation v. Philippine Amusement and Gaming Corporation*:

A penal clause is "an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled."

Quite common in lease contracts, this clause functions to strengthen the coercive force of the obligation and to provide, in effect, for what could be the liquidated damages resulting from a breach. There is nothing immoral or illegal in such indemnity/penalty clause, absent any showing that it was forced upon or fraudulently foisted on the obligor.[20] (Emphasis supplied.)

In this connection, counsels must be reminded that equally important, as their duty to clients, is their duty as officers of the court to see to it that the orderly administration of justice is not unduly impeded or delayed. Counsel needs to advise a client, ordinarily a layman unaccustomed to the intricacies and vagaries of the law, concerning the objective merit of his case. If counsel finds that his client's cause lacks merit, then it is his bounden duty to advise accordingly. Indeed a lawyer's oath to uphold the cause of justice may supersede his duty to his client's cause; for such fealty to ethical concerns is indispensable to the success of the rule of law.[21]

WHEREFORE, the instant petition is DENIED. The Decision dated July 29, 2003 and the Resolution dated May 21, 2004 of the Court of Appeals in CA-G.R. SP No. 62610 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 32-38. Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Perlita J. Tria Tirona and Rosalinda Asuncion-Vicente concurring.

[2] Id. at 28-31. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Perlita J. Tria Tirona and Noel G. Tijam concurring.

[3] Id. at 41-44. Dated August 23, 2000.

[4] Id. at 74-75.

[5] Id. at 21.

[6] Id. at 23.

[7] Id. at 83-99.

[8] Id. at 424-426.

[9] Id. at 86.

[10] Id. at 428-430.

[11] Records, Vol. I, p. 436.

[12] Rollo, pp. 326-384.

[13] Id. at 101-105.

[14] A civil case was ultimately filed by the petitioner against the private respondents with respect to the matter of rentals, but the status of the same is unclear. As far as the records reveal, an injunction against the private respondents was issued, but only after the petitioner's electricity was already cut. The determination of the legality or illegality, therefore, of the cutting off of petitioner's electricity could not be made to rest on the subsequent issuance of the injunction.

[15] CA rollo, p. 100.

[16] Id. at 154.

[17] *People v. De Lara*, G.R. No. 124703, June 27, 2000, 334 SCRA 414, 433-434; *People v. Villamar*, G.R. No. 121175, November 4, 1998, 298 SCRA 398, 405; *Timoner v. People*, No. L-62050, November 25, 1983, 125 SCRA 830, 834.

[18] Rollo, pp. 340-341.

[19] *Cruz v. Court of Appeals*, G.R. No. 126713, July 27, 1998, 293 SCRA 239, 243.

[20] G.R. No. 157480, May 6, 2005, 458 SCRA 164, 180-181.

[21] Cf. *Cobb-Perez vs. Lantin*, No. L-22320, July 29, 1968, 24 SCRA 291, 298.

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