

MERCURY DRUG CORPORATION, PETITIONER, VS. REPUBLIC SURETY AND INSURANCE COMPANY, INC., RESPONDENT.

G.R. NO. 164728. November 23, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated April 21, 2004 of the Court of Appeals in CA-G.R. CV No. 70727, which had affirmed the Decisions dated August 11, 2000[2] and February 27, 2001[3] of the Regional Trial Court (RTC), Branch 23, Manila. Also assailed is the Resolution[4] of the Court of Appeals dated July 14, 2004, which had denied petitioner's motion for reconsideration.

The pertinent facts of the case are as follows:

On January 27, 1995, respondent Republic Surety and Insurance Company, Inc. (hereafter, Surety) leased to petitioner Mercury Drug Corporation (Mercury), for a period of 10 years, the ground floor of Franlour Koh Building located at Padre Faura St., Manila. Mercury acknowledged in the lease contract that the leased premises were in good and tenantable condition on presentation by the Surety of a certification[5] dated September 27, 1994 from Civil and Structural Engineer Serafin S. Policarpio that the building was structurally sound. Several months later, the architectural department of Mercury reported that the building was structurally unsound and posed great risk to the occupants. On May 10, 1996, Mercury informed Surety of these findings. Surety immediately replied that said findings were erroneous. Mercury consulted Civil and Structural Engineer Fernando N. Enriquez, who reported the following:

x x x x

III. INSPECTION FINDINGS AT GROUND FLOOR AREAS

- Hairline cracks on perimeter chb walls[.]
- Two wooden post[s] were damaged and cannot be subjected to axial load.
- From ground to second floor level the three wooden posts are infested by termites.
- Existing steel beam and wooden posts connection was found to be defective and structurally unsafe.

IV. REMEDIAL MEASURES

- All damaged wooden post and floor beams affected by termites shall be replace[d] with good lumber (yakal).
- The entire structure shall be reinforced by installing structural steel columns and beams.
- Additional columns shall rest on new foundations.
- All existing perimeter walls shall be demolished and replaced with new chb walls.
- Estimated cost to reinforced the existing building shall be as follows: (Excluding cost of Renovation)

x x x x

TOTAL COST P7,167,000.00[6]

Mercury referred the matter to Engr. Policarpio, who made the following report to the City Engineer's Office:

x x x x

III. INSPECTION FINDINGS AT GROUND FLOOR AREAS

- Hairline cracks on perimeter CHB walls.
- Wooden girts were not properly anchored to wooden columns and rested only on the concrete hollow blocks wall.
- Some wooden posts were hollow caused by termites infection (sic) which will eventually fail due to inadequacy of the column to hold the bending and axial loads.
- Existing steel beams and wooden posts connection were found to be defective and structurally unsafe, caused by the said termite infection (sic).
- Wooden floor joist at second floor were not properly spaced, causing the floor to vibrate and sag.

Though the three storey building is newly renovated, the structural condition at the ground floor is posing a great risk on the occupants, neighboring building and to the passers by and not only to human but it is also a fire hazard since the building is made of wood.

In view of the above, I am superseding my first certification dated September 24, 1994 and I am recommending the immediate demolition of the building to avoid the possible collapse of the building and the fire hazard.[7]

On February 21, 1997, Mercury informed Surety of the findings of Engr. Policarpio and that it was suspending payment of the rentals until Surety undertook the necessary structural repairs on the building. In September 1997, Surety repaired and remodeled the ground floor. Thereafter, Mercury asked Surety to secure a certification on the structural integrity of the building from the City Engineer's Office as it could not determine by mere visual inspection whether the repair done was adequate. However, Surety failed to secure the certification so Mercury continued to suspend its rental payments. This prompted Surety to file against Mercury, a Complaint[8] dated September 3, 1998 for a sum of money before the RTC, Branch 23, Manila.

In its answer, Mercury admitted not paying the rentals but justified it on the ground of the alleged failure of Surety to undertake the necessary repairs and to present a certification from the City Engineer attesting to the structural integrity of the building.

During the pre-trial conference, the parties entered into an express stipulation that the only issue to be resolved was whether Mercury was justified in suspending its rental payments. Trial on the merits ensued.

On August 11, 2000, the trial court found that Surety made the necessary repairs which generally strengthened the building as testified to by Engineer Joseph Reyes, the District Building Inspector in the Office of the Building Official of Manila City. The trial court held that Mercury was obligated to pay the rentals in accordance with the lease contract. The decretal portion of the decision reads:

WHEREFORE, premises considered judgment is hereby rendered ordering defendant Mercury to pay plaintiff:

a)

The sum of [P]720,000.00 plus interest thereon at the rate of 1% per month from February 1, 1997 until full payment representing rental due for the period covering February 1, 1997 to January 31, 1998;

b)

The sum of [P]900,000.00 plus interest thereon at the rate of 1% per month from February 1, 1998 until full payment representing rental due for the period covering February 1, 1998 to January 31, 1999;

c)

The sum of [P]162,000.00, the amount equivalent to 10% of the rentals to be paid by defendant Mercury which is due the government by way of Expanded Value Added Tax; and

d) The sum of [P]100,000.00 as attorney's fees.

With cost against defendant Mercury.

SO ORDERED.[9]

Mercury moved for reconsideration but it was denied. Subsequently, Surety filed a Supplemental Complaint[10] dated September 15, 2000 alleging that after the filing of the original complaint, rentals for the period February 1, 1999 to January 31, 2001 became due and payable. On February 27, 2001, the trial court rendered a decision on the supplemental complaint, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendant Mercury to pay plaintiff:

a)

The sum of P900,000.00 plus interest thereon at the rate of 1% per month from February 1, 1999 until full payment representing rental due for the period covering February 1, 1999 to January 31, 2000;

b)

The sum of P900,000.00 plus interest thereon at the rate of 1% per month from February 1, 2000 until full payment representing rental due for the period covering February 1, 2000 to January 31, 2001; and

c)

The further sum of P180,000.00, the amount equivalent to 10% of the rentals to be paid by defendant Mercury which is due the government by way of Expanded Value Added Tax.

SO ORDERED.[11]

Mercury elevated the case to the Court of Appeals, which affirmed the decisions of the trial court. The appellate court held that Mercury cannot invoke Article 1658[12] of the Civil Code because under the lease contract, Mercury obligated itself to undertake all repairs and remodeling to maintain the premises in good state. According to the appellate court, there was no showing of fraud on the part of Surety, hence, Mercury cannot renege on its obligations under the contract. The appellate court also upheld the trial court's findings on the structural soundness of the leased premises.

Mercury now comes before us raising the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY MISAPPREHENDED SUBSTANTIAL FACTS IN STATING THAT MERCURY IS ESTOPPED IN ITS ACKNOWLEDGMENT THAT THE LEASED PREMISES IS IN GOOD AND TENANTABLE CONDITION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN STATING THAT THE LEASE CONTRACT WAS SOLELY PREPARED BY MERCURY.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY DEVIATED FROM THE ISSUE OF THE CASE AND WHIMSICALLY IGNORED THE REPORT OF THE CITY ENGINEER'S OFFICE OF MANILA.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN STATING THAT THE LEASED PREMISES IS IN GOOD AND TENANTABLE CONDITION.

V.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THE SUSPENSION OF PAYMENT OF RENTALS BY MERCURY AS LEGAL AND JUSTIFIED.

VI.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN AWARDING THE [P]100,000 AS ATTORNEY'S FEES DESPITE THE APPARENT BAD FAITH AND FRAUD EMPLOYED BY SURETY IN FILING THE COMPLAINT.

VII.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE INJUSTICE IN FAVORING SURETY WHICH VIOLATED THE BUILDING CODE [RATHER] THAN MERCURY WHICH IS SUBSERVIENT TO THE CODE.[13]

The issue raised before us is whether the Court of Appeals committed reversible error in ruling that: (1) Mercury is estopped in questioning the tenantable condition of the leased building; (2) the lease contract was solely prepared by Mercury; (3) the building was in good and tenantable condition; (4) the suspension of the rental payments by Mercury was wrong; (5) Surety violated the Building Code; and (6) attorney's fees are proper.

A close scrutiny of the issue will show that what petitioner asks of this Court is to review certain factual questions, which this Court is not empowered to do. This Court's jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals.[14]

Furthermore, factual findings of the trial court, when adopted and confirmed by the Court of Appeals, become final and conclusive and may not be reviewed on appeal except: (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when there is no citation of specific evidence on which the factual findings are based; (7) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record; (8) when the findings of the Court of Appeals are contrary to the findings of the trial court; (9) when the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the Court of Appeals are beyond the issues of the case; and (11) when such findings are contrary to the admissions of both parties.[15]

In any event, we have reviewed the records of this case and find no compelling reason to disturb the findings of both the Court of Appeals and the trial court. We agree with the conclusion of the appellate court that Mercury had shown no sound and legal basis to stop its payment of rentals to Surety, in light of the express agreement of Mercury in the contract of lease that the leased premises were in good and tenantable condition. In fact, Mercury even paid rent for the first two years, and complained only after 16 months from the time the contract was entered into on January 27, 1995.[16] Mercury cannot belatedly question the soundness and structural safety of the building 16 months after it had occupied, possessed and used it for that long period of time. Hence, no fraud, deceit nor bad faith could be attributed to respondent Surety in this case and since Surety was forced to litigate its cause, attorney's fees may be awarded to it.

We are in agreement that the Court of Appeals did not err in holding that petitioner Mercury could not invoke Article 1658[17] of the Civil Code because under the lease contract, Mercury had obligated itself to undertake at its expense all repairs and remodeling as may be required to maintain the premises in good state. Mercury thereafter cannot legally invoke the non-repair by Surety of the premises as a reason not to pay rentals.

Finally, we note that Mercury alleges that the trial court deviated from the issue identified during the pre-trial. Recall, however, that the parties entered into an express stipulation that the only issue to be resolved is whether Mercury was justified in suspending the rental payments. This issue is not limited to whether the building is structurally sound, but includes all other matters pertinent to whether Mercury's nonpayment was justified. A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial.[18] Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.[19] In this petition the condition of the building at the time of the contract's perfection was a material information to resolve the issue of Mercury's liability for rentals claimed by Surety.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated April 21, 2004 of the Court of Appeals in CA-G.R. CV No. 70727 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 145-157. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Salvador J.

Valdez, Jr. and Rebecca De Guia-Salvador concurring.

[2] Id. at 50-56. Penned by Judge Sesonando E. Villon.

[3] Id. at 66-68.

[4] Id. at 173.

[5] Records, pp. 264-265.

[6] Id. at 272.

[7] Id. at 268-269.

[8] Id. at 1-11.

[9] Rollo, p. 56.

[10] Records, pp. 346-347.

[11] Rollo, p. 68.

[12] Art. 1658. The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased.

[13] Rollo, pp. 15-16.

[14] *Amante v. Serwelas*, G.R. No. 143572, September 30, 2005, 471 SCRA 348, 351.

[15] *Cirelos v. Hernandez*, G.R. No. 146523, June 15, 2006, 490 SCRA 625, 635.

[16] Rollo, p. 151.

[17] *Supra* note 12.

[18] *Velasco v. Apostol*, G.R. No. 44588, May 9, 1989, 173 SCRA 228, 232.

[19] Id.

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