

JORGE B. NAVARRA, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, SAMUEL NAMANAMA, FELIXBERTO LAZARO AND DANILO MEDINA, RESPONDENTS.

G.R. No. 176291. December 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The petition is one for certiorari.

Far East Network of Integrated Circuit Subcontractors Corporation (FENICS) leased the premises of Food Terminal, Inc. (FTI) in Taguig, Metro Manila from 1995 up to 2002.

It appears that before the expiration of the lease contract or on the night of September 16, 2002, armed elements of the FTI took over the FTI premises in Taguig, Metro Manila and forced two building custodians to leave following which the gates were welded, drawing FENICS' president- herein petitioner Jorge B. Navarra to file before public respondent, Office of the Ombudsman, a complaint for grave coercion, malicious mischief, and/or grave threats against herein private respondents Samuel Namanama (Namanama, head of FTI's legal department) and Danilo Medina (Medina, FTI's Senior Manager) along with Felixberto Lazaro (FTI's Legal Assistant).

The pertinent portions of petitioner's affidavit read:

x x x [On September 16, 2002] Gerry informed me that our people had already been ejected from our premises and that they could not re-enter through the welded gates. Armed FTI policemen were guarding the perimeters and FTI employees had forcibly opened the doors to our building and had gone inside. x x x

In the morning of September 17, the employees working in our compound were not allowed to enter the FENICS compound and were forced to stay outside the gates. xxx I went to the group of FTI policemen who were positioned near Gate 1 and inquired from them why they welded our gates and prevented our people from entering our place of work. They replied that they were acting on orders from FTI higher-ups. I inquired on what grounds the FTI management had ordered the take-over of our compound without a court order. They replied that FENICS owed unpaid rentals to FTI and that "matagal nang plano ng aming management na gawin ito." x x x

Then, I walked to Gate 2 which was not welded but which was guarded from both the outside and the inside by FTI policemen without nameplates and FTI employees in civilian clothes. x x x I talked to the security guards occupying the FENICS guard house inside Gate 2. I asked him if he could allow me to enter thru Gate 2. He replied that his orders were not to allow anyone to go in, except FTI personnel. I asked what the FTI personnel were doing inside. He said he did not know. I asked him who went inside. He mentioned the name of Mr. [Felixberto] Lazaro as the only person he knew because he was the leader of the group. x x x

x x x x

[At about 2:00 PM, a van] arrived and was heading towards Gate 2. [The driver was signaled] to stop and

identify himself. x x x A man got out and he was asked his named. He identified himself as Danny Medin[a] of FTI Legal Department. [He was asked] why the FENICS premises were padlocked and repossessed by FTI. Danny Medin[a] replied that "FENICS owed rentals to FTI." He was asked what he and the people [with] him would be doing inside FENICS. Danny Medin[a] answered that they were taking inventories. I told him that FENICS personnel should be present to ensure that things would be done correctly. Danny answered that the barangay was with them.[1]

The pertinent portions of the affidavit of petitioner's witness Freddie San Juan, a FENICS employee, read:

x x x Nang bandang mga alas 8:30 ng gabi ng [ika-16 ng Septiyebre 2002], x x x may isang sasakyan ang Fuji Reynolds na lumalabas sa aming Gate 1 kaya binuksan ng kasama kong si Jun Abalajen ang gate nang biglang dumating at pumasok sa nakabukas na gate ang maraming taong naka-uniporme ng FTI police na may dalang mga baril at shotgun at hinarangan ang L-300 na kasalukuyang minamaneho palabas na sana ng gate.

x x x Pinatigil ang sasakyan at pinalabas ang driver. Kinuha ang papel ng registration na pinakita ng driver at hindi na binalik pagkatapos sigawan ang driver na lisanin na ang lugar. Sinabi ng driver na may mga kargamento siyang kailangan ihatid sa mga proyekto ng Fuji Reynolds ngunit siya ay pinilit na pinalabas ng mga armadong FTI police. Mahigit kumulang sa tatumpo (30) katao silang lahat.

Nagtanong kami kung bakit nila ginagawa iyon. Sinagot lang kami na utos ng mga Boss nila (at kasama na doon ang isang Attorney Samuel Namanama). Natakot na rin ako dahil sa dami nilang mga armado, may dalang mga shotgun, at sabay-sabay na nagsisigawan. Pinilit nila kaming pina-alis sabay ang panakot na may masamang mangyayari sa amin dahil bubuksan at papasukin na nila ang loob ng aming opisina. x x x Nakita ko rin na ang kasama kong si Jun Abalajen ay pilit ding pinalabas at pilit pang kinukuha ang kanyang bisikleta.

Pagkalabas namin, agad ni-welding nila ang paikot na steel bar sa poste ng aming Gate 1. x x x

Noong nasa labas kami ng gate dahil napilitang lumabas at natakot na baka kami ay saktan o barilin, sinabi ko sa mga FTI police na huwag sanang magkasakitan dahil pareho lang kaming lahat na ginagampanan ang aming katungkulan. Nilista ko sa isang papel ang mga pangalan ng ilan sa kanila na may mga pangalan sa kanilang uniporme. x x x Habang sinusulat ko ang mga pangalan ng ilan sa kanila, biglang inagaw sa aking kamay ang aking papel ng isang FTI policeman na walang nameplate o namepatch sa dibdib. Wala akong magawa dahil bigla niyang ginawa iyon AT NARINIG KO NA MAY NAGPAPUTOK NG BARIL SA LOOB NG FENICS COMPOUND. x x x

x x x x

Magdamag kaming nagbantay sa labas. Kinabukasan sa umaga ng ika-17 ng Septiyembre, dumating ang mga empleyadong pumapasok sa FENICS compound ngunit sinalubong sila ng mga FTI police x x x.[2] (Capitalization in the original)

Donato Abalajen, another witness of petitioner, executed another affidavit substantially corroborating that of Freddie de Juan.[3]

Neither petitioner nor FENICS employees had thereafter been allowed to enter the FTI premises.

Upon the other hand, private respondents claimed that, among other things, they acted under the orders of their superiors, and that FTI was merely exercising its right under a Compromise Agreement forged between FTI and FENICS wherein FENICS undertook to pay the outstanding obligation of a previous lessee of FTI, the pertinent portion of which Compromise Agreement reads:

x x x x

In the event that FENICS shall default in at least three (3) consecutive monthly amortization payments on its

rental arrearages or one (1) semestral or annual payment of its current rentals, FTI shall be entitled to rescind the lease contract without need of judicial action or intervention and all unpaid rentals, including unpaid arrearages shall automatically be considered due and demandable plus interest of one (1%) percent per month commencing from due date.[4]

x x x x (Underscoring supplied)

Private respondents also cited Article 21 of the lease contract between FTI and FENICS which provides:

It is expressly agreed that if the rent hereby stipulated shall be unpaid after becoming payable, whether formally demanded or not, or if any covenant herein contravened shall not be performed or observed, then in any of said cases, it shall be lawful for the LESSOR to re-enter the leased premises and the lease shall automatically terminated, without prejudice, however, to the right of action of the LESSOR with respect to any covenant herein contained. The LESSOR shall in such case, be entitled likewise to forfeit improvements on the leased premises without any obligation to pay the value thereof.[5] (Underscoring supplied)

By Resolution of February 22, 2005, Graft Investigation and Prosecution Officer Janet Cabigas-Vejerano found probable cause to hale private respondents into court for grave coercion under Article 286 of the Revised Penal Code[6] under the following disquisition:

The strong assertion by the respondents that FENICS property was voluntarily opened to them cannot stand in the light of the surrounding circumstances that precipitated the take-over of FENICS premises. The undeniable facts, to wit: the circumstance of nighttime, the overwhelming number of armed respondents as against two (2) caretakers of FENICS marching at the compound, their failure to notify complainant of the date of actual repossession, and their lack of any court order authorizing their action, convince this Office that respondents truly abused their authority. This notwithstanding any rightful claim that FTI may have over the subject property. No man is above the law. It is elementary even to some respondents from the FTI legal department that any such kind of repossession requires a court order to be implemented by the proper officer of the court, or at the very least a notice to the party concerned, provisions in their contract notwithstanding, The purported witness, a Barangay Tanod, did not even submit his account of what actually transpired. He would have then attested to whether FENICS was indeed invited to observe the inventory undertaken. It is unfortunate that respondents, who are government employees at that, took the matter into their own hands.

Under Article 286 of the Revised Penal Code (RPC) the crime of Grave Coercion in "imposed upon any person who, without any authority of law, shall, by means of violence, threats, or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong."

On the other hand, Grave Threats under Article 282, RPC, is imposed upon "any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime."

x x x x

While it may be true that FTI had the right to collect payment for the outstanding obligation of the company complainant represents, the immediate actual and imminent force employed by the respondents to compel complainants caretakers to leave their posts at FENICS, and to prevent complainant as President of FENICS as well as all other officers and employees of FENICS from entering the compound, truly amount to coercion.

Notably, the presence of conspiracy in the present case is clear as it is founded on a firm basis by sizing up the concerted action of all the respondents who have common criminal design and purpose, which is to repossess the FENICS compound, and they in fact succeeded.[7] (Citation omitted)

The Ombudsman, on recommendation of Over-all Deputy Ombudsman Margarito P. Gervacio, Jr., dismissed

petitioner's complaint, however, by Order of September 1, 2005.[8]

In dismissing the complaint, public respondent held:

Records show that respondent Namanama sent several demand letters to Mr. Jorge Navarra, the herein complainant, reminding the latter of their indebtedness to FTI and at the same time warning him that in case of non-payment, FTI would resort to a more drastic action.

In the same token, [in] the Compromise Agreement entered into between the FTI and FENICS there is a proviso which states:

8. In the event that FENICS shall default in at least three (3) consecutive monthly amortization payments on its rental arrearages or one (1) semestral or annual payment of its current rentals, FTI shall be entitled to rescind the lease contracts without need of judicial action or intervention and all unpaid rentals..."

In like manner, respondent Lazaro made mention that not only FENICS refused to comply with the terms agreed upon in its Compromise Agreement with FTI but also subleased a portion of the leased premises without approval of FTI.

On their entering FENICS premises, respondent Lorenzo [sic] argued that they only exercised their authority to re-enter the premises because FENICS refused to pay its rentals and due to its blatant violations of the terms and conditions of their Contract of Lease.

Indeed, while respondent may have acted in such a way, the same could be said to have been done in good faith and without any intention of doing harm against their adversaries.

From the narrations given by the parties to this case, it has been established that FENICS had been indebted to FTI in an aggregate sum of more than P35M and the check it paid the latter even bounced; [a]lso FENICS even subleased its leased premises in violation of its contract of lease. Thus, the long delay in its payment of its obligation to FTI could also be said to have caused the latter undue injury. To resort to court at that time could even prolong the situation inasmuch as court processes nowadays are also delayed. Hence, in order to protect FTI's interest, respondents herein have to resort to some extraordinary measures as what was done under the circumstances.[9]

x x x x

In like manner, and except for his bare allegations/arguments, complainant-movant failed to substantiate his claims. For one, why did he sign the Compromise Agreement if the same is a mere draft considering that in the agreement, it has been specifically mentioned that FENICS had agreed to pay P12,551,841.82 to FTI? Logic would dictate that no one could ever affix his signature on a document, more particularly that which would create an obligation on his part, if FENICS has not been indebted to FTI. (Italics in the original, underscoring supplied.)

Hence, the present petition for review, petitioner arguing as follows:

All the elements of Grave Coercion were extant.

That a person prevented another from doing something not prohibited by law, or that he compelled him to do something against his will, be it right or wrong. - In this case, Private Respondents prevented Petitioner and his employees from entering their own premises. They had also compelled Petitioner's caretakers to leave the premises against their will.

That the prevention or compulsion be effected by violence, either by material force or such display of force as would produce intimidation and control of the will of the offended party. - In this case, when Private Respondents entered the FENICS compound in the evening, they had a contingent of about 20-30 armed

personnel as against Petitioner's two (2) caretakers. They forced their way into the gates, threatened the caretakers and a driver, admittedly destroyed one padlock and welded the gates to prevent entry.

That the person that restrained the will and liberty of another had not the authority of law or the right to do so (that the restraint shall not be made under authority of law or in the exercise of a lawful right.) - In this case, the possessor of the FENICS compound exhibited its opposition to any takeover. Certainly, Private Respondents had no right to enter the compound and evict the occupants against their will. They had no court order to evict the existing occupants.[10] (*Italics in the original*)

The Court finds for petitioner.

Ordinarily, the Court does not interfere with the Ombudsman's determination of whether probable cause exists, except when the Ombudsman commits grave abuse of discretion.[11]

"Probable cause" is defined as "such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." [12]

For grave coercion to lie, the following elements must be established:

1) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; 2) that the prevention or compulsion is effected by violence, threats, or intimidation; and 3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.[13]

In the case at bar, the affidavits of petitioner and his witnesses *prima facie* show that the elements of grave coercion are present.

Whether FENICS is indebted to FTI is immaterial. It is elementary that in no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto, and that he who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court if the holder should refuse to deliver the thing.[14]

In *United States v. Mena*, [15] the Court, affirming the conviction of therein respondent for coercion under Article 497 of the old Penal Code, rejected the defense that he owned the carabaos which he forced therein complaining witness to release. It held:

The defendant was not clothed with any judicial or administrative authority, and it is a maxim of the law that no man is authorized to take the law into his own hands and enforce his rights with threats of violence, except in certain well-defined cases, where one acts in the necessary defense of one's life, liberty, or property, against unlawful aggression, and manifestly the defendant can not successfully maintain that his action was taken in defense of life, liberty or property. The carabaos were in the possession of the complaining witness for the purpose of turning them over to the justice of the peace; the defendant denied the right of the complaining witness to this possession and claimed the absolute right to possession in himself; but in forcibly depriving the complaining witness of possession of the carabaos the defendant was not acting in defense of his right to the possession of the carabaos from unlawful aggression, but rather asserting his right to take the possession from another, and thus he himself became the aggressor.[16]

Private respondents Namanama and Medina cite the ruling in *University of the Philippines v. de los Angeles* [17] in which this Court, noting therein petitioner's right to rescind the contract - subject of the case, held:

x x x [T]he law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured

by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages.[18]

Private respondents' citation of the above-said ruling is misplaced. Unlike in the present case, that case did not allege an act by which therein petitioner employed violence, threats, or intimidation to compel therein respondent to relinquish possession of the premises subject of the agreement.

As to good faith and lack of "any intention of doing harm against their adversaries" which public respondent ascribes to private respondents, these are matters of defense which are better ventilated during the trial than during the preliminary investigation.[19]

In fine, public respondent committed grave abuse of discretion in dismissing petitioner's complaint.

WHEREFORE, the petition is GRANTED. The Order of the Ombudsman dated September 1, 2005 is SET ASIDE, and the Ombudsman is ORDERED to file an Information for Grave Coercion under Article 286 of the Revised Penal Code against private respondents.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., concur.

[1] Ombudsman records, pp. 3-4.

[2] Id. at 6-7.

[3] Id. at 9-10.

[4] Id. at 234.

[5] Id. at 228.

[6] Id. at 360-385.

[7] Id. at 380-382.

[8] Id. at 438-448.

[9] Id. at 407-409.

[10] Rollo, pp. 27-28.

[11] *Tentangco v. Ombudsman*, G.R. No. 156427, January 20, 2006, 479 SCRA 249, 253.

[12] Vide RULES OF COURT, Rule 112, Section 1; *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 96.

[13] REVISED PENAL CODE, Article 286; *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 97.

[14] Vide CIVIL CODE, Article 536.

[15] 11 Phil. 543 (1908).

[16] Id. at 545-546.

[17] G.R. No. L-28602, September 29, 1970, 35 SCRA 102.

[18] Id. at 107.

[19] Vide Presidential Commission on Good Government v. Desierto, G.R. No. 132120, February 10, 2003, 397 SCRA 171, 190.

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