

SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS. HONORABLE COURT OF APPEALS AND SUBIC INTERNATIONAL HOTEL CORPORATION, RESPONDENTS.

G.R. No. 192885. July 04, 2012

Ponente: PERALTA, J.

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PERALTA, J.:

This is to resolve the petition for certiorari under Rule 65 of the Rules of Court, dated August 2, 2010, of petitioner Subic Bay Metropolitan Authority (SBMA), seeking to reverse and set aside the Decision[1] dated January 21, 2010 of the Court of Appeals (CA), which affirmed the Decision[2] dated March 22, 2006 of the Regional Trial Court (RTC), Branch 74, Olongapo City.

The antecedent facts, as found by the RTC and the CA follow.

Petitioner SBMA is a government agency organized and established under Republic Act (R.A.) No. 7227 to develop the Subic Special Economic and Freeport Zone into a self-sustaining industrial, commercial and investment center. On the other hand, private respondent Subic International Hotel, Corporation (private respondent) is one of the locators of the Freeport Zone.[3]

On December 1, 1992 and June 8, 1993, petitioner and private respondent entered into two separate lease agreements whereby the private respondent undertook to help petitioner in the development and rehabilitation of the Subic Naval Base by taking over abandoned barracks and constructing hotel and restaurant facilities that will accommodate the needs of the growing number of businessmen and tourists in the Freeport Zone. The two agreements were later consolidated into a Lease and Development Agreement.[4] Section 6.1 of the said Agreement stipulated for the payment of service fees, which pertain to the proportionate share of the private respondent in the costs that the petitioner may incur in the provision of services, maintenance and operation of common facilities computed at \$0.10 per square meter of the gross land area of the leased property.

Subsequently, upon a conduct of lease compliance audit, the SBMA Internal Audit Department found out that private respondent and other Freeport locators have not been charged for service fees. Thus, on August 25, 2005, petitioner issued private respondent a billing statement for accrued service fees in the amount of Two Hundred Sixty-Five Thousand Fifty-Three Dollars and Fifty Cents (\$265,053.50). This led to a series of conciliation and clarificatory meetings between the parties. Consequently, the SBMA Board decided to waive the payment of future service fees and advised private respondent to lodge its protest for the payment of accumulated service fees to the accounting department.

Private respondent then formally requested for the reconsideration of the billing for accumulated service fees alleging that the services for which the billing was supposed to be based were not actually provided by petitioner but by independent contractors.

On the other hand, petitioner clarified that service fees also include other services which indirectly redound to the

benefit of the tenants. Petitioner reasoned that it has a clear legal right to impose service fees under Section 13 (a) (3) of R.A. No. 7227, which does not specifically pertain to garbage collection, electricity, telephone, and water service alone but to other services such as fire protection, maintenance of common areas, police protection, and other services of similar nature.

Thus, private respondent filed a Petition for Declaratory Relief with the RTC, Branch 74, Olongapo City, praying for the determination by the Court whether petitioner has the right to collect for the accumulated service fees from the private respondent. The parties submitted a Joint Stipulation of Facts and filed a Motion for Summary Judgment.[5]

The RTC rendered its Decision dated March 22, 2006 in favor of the private respondent and declared that petitioner has no legal right under Section 6.3 of the Lease and Development Agreement to enforce the collection of previous billings for fixed service fees. The dispositive portion of the decision is as follows:

WHEREFORE, in view of the foregoing considerations, the instant Motion for Summary Judgment is granted and this Decision is hereby rendered on the basis of the Joint Stipulation of Facts and applicable laws and jurisprudence declaring that respondent Subic Bay Metropolitan Authority has no legal right under Section 6.3 of the Lease and Development Agreement dated 24 November 1996, to enforce the collection of previous billings for Fixed Service Fees at the rate of US\$0.10 per square meter per month of the leased property covering the period from 01 December 1996 up to 08 February 2001 in the total amount of US\$307,874.04.

SO DECIDED.[6]

The motion for reconsideration was denied in an Order[7] dated May 31, 2006. Aggrieved, petitioner appealed to the CA, however, the latter, in its Decision dated January 21, 2010, affirmed the March 22, 2006 decision of the RTC, thus:

WHEREFORE, the appeal is DISMISSED. The Decision dated March 22, 2006 of the RTC, Branch 74, Olongapo City, in Civil Case No. 137-0-04, is AFFIRMED.

SO ORDERED.[8]

According to the CA, the records show that petitioner did not actually provide most of the services enumerated in the Lease and Development Agreement and that the obligation involved in the agreement was reciprocal in nature; therefore, private respondent's obligation to pay was dependent upon petitioner's performance of its reciprocal duty to provide the agreed service, and since petitioner failed to perform its part of the deal, it cannot exact compliance from private respondent of its duty to pay.

A motion for reconsideration was filed, but it was denied. Hence, the present petition.

This Court finds this petition unmeritorious.

The core of the issue is the entitlement of SBMA to Service Fees as contained in the Lease and Development Agreement. Sections 6.1, 6.2 and 6.3 of the said Agreement provide that:

SECTION 6. SERVICE FEES

6.1 Definition. Tenant, its Subsidiaries, assignees, transferees or operators shall, for the entire Term of this Lease, and without any set-off, counterclaim or deduction therefrom, pay or cause to be paid, to Landlord as "Additional Rent," its proportional share (based on the Gross Land Area of the Property) of (i) all costs which Landlord may incur in providing services or in maintaining and operating facilities which directly or indirectly benefit or serve the Property or Tenant or any of its Subsidiaries, assignees, transferees or operators, and (ii) any other similar fees or charges assessed on a non-discriminatory basis. Said costs shall be referred herein as

“Service Fees” and are hereby defined to include but not be limited to a proportional share of the following costs incurred by Landlord: water, electricity, gas and telephone service; garbage removal; security; police protection; fire protection; insurance; landscaping; cost of maintaining common areas; public services befitting SBF investors generally; janitorial, sanitation and cleaning services; fees for professional services; charges under maintenance and service contracts; all maintenance and repair costs; any equipment rental; depreciation of the cost of capital improvements made to reduce Service Fees or limit increases therein; and any and all other costs of operation, whether ordinary or extraordinary. An invoice or certificate for service fees or other charges delivered by Landlord to Tenant shall be conclusive as to the amount of any such fees or charges payable by Tenant if no protest challenging the basis or amount thereof is filed with Landlord within five (5) days from receipt of such invoice or certificate. Notwithstanding any such protest, Tenant shall pay the amount reflected on such invoice or certificate pending resolution of such protest.

6.2 Estimated Service Fees. As frequently as Landlord shall deem appropriate, Landlord may give Tenant notice of Landlord's estimate of Service Fees for the then – current fiscal year (“Estimated Service Fees). Tenant shall pay throughout the Term, as Additional Rent hereunder, together with any Base Rent payment due, such instalments of Estimated Service Fees as and when Landlord may reasonably require. The amount by which Estimated Service Fees actually paid to Landlord for any year exceed actual Service Fees for such year shall be applied by Landlord to the cost of services to be rendered in future periods. The amount by which Estimated Service Fees actually paid to Landlord for any year are less than actual Service Fees for such year shall be paid by Tenant to Landlord within ten (10) days of notice thereof from Landlord.

6.3 Service Fees Fixed for Five Years. Notwithstanding the foregoing, Landlord and Tenant agree that Service Fees (excluding electricity, water, gas, sewer and telephone services) shall be (i) US\$0.10 per square meter per month of the Gross Land Area of the Property on or prior to December 31, 1998, and (ii) US\$0.1242 per square meter per month of the Gross Land Area of the Property between January 1, 1999 and December 31, 2000. Payment of Service Fees shall commence on 1 December 1996.

In assailing the decision of the CA, petitioner alleges that the same was made with grave abuse of discretion amounting to lack of and/or excess of jurisdiction because the payment of “Service Fees” is not dependent on the actual rendition of the services enumerated therein as the said fees comprise of the tenant's proportionate share for all the costs which petitioner as landlord may incur in providing, maintaining or operating the facilities. This is misleading.

The Lease and Development Agreement entered into by petitioner and private respondent contains a definition of “service fees” and in that provision, the CA was correct in ruling that service fees pertain to the proportionate share of the tenant in the costs of the enumerated services which include the maintenance and operation of facilities which directly or indirectly benefit or serve the leased property or the tenant, or any of its subsidiaries, assignees, transferees or operators. Clearly, if the intention is the contrary, there would have been no need to enumerate what would constitute services covered by the “service fees.” Even logic dictates that before anyone is entitled to collect service fees, one must have actually rendered a service. As correctly pointed out by the CA, petitioner did not provide most of the services enumerated in the Lease and Development Agreement, thus:

A close scrutiny of the records shows that respondent-appellant did not actually provide most of the services enumerated in the lease agreement. In the case of water, electricity, telephone and cable television services in the leased property, petitioner-appellee engaged the services of private service providers to furnish the mentioned necessities. The same holds true with other services like janitorial, security, ground maintenance and garbage collection services. Petitioner-appellee contracted a private security agency for its security needs, hired employees to take charge of ground maintenance and engaged a contractor to haul its scrap materials. For fire protection services, petitioner-appellee is billed accordingly whenever said service is extended. Thus, the concerned departments of SBMA issued certifications, attesting to the fact that no security, janitorial and garbage collection services were extended to petitioner-appellee.[9]

As such, petitioner, not having rendered actual service cannot demand from private respondent its proportionate share of costs which were not really incurred. Petitioner's claim that the nature of "service fees" is that of an additional rent for the property or a separate consideration aside from the regular base rent, as shown by the fact that it is based on the gross land area of the property and the obligation to pay this amount arises upon the actual use, occupancy and enjoyment of the leased property is illogical. If that is the case, why would the contracting parties assign the term "service fees" to replace "additional rent" if the latter is the real intention? In its Comment[10] dated November 5, 2010, private respondent properly observed the flawed reasoning of petitioner by stating that the very reason why the amount is called "service fees" is that it is a fee imposed by the government for services actually rendered.

Petitioner also raises the argument that the CA seriously erred in rendering the decision which virtually nullified and/or struck down the provision of the Lease and Development Agreement pertaining to service fees, hence, resulting to the alteration or amendment of the Lease and Development Agreement. The CA did no such thing. The said court merely interpreted the questioned provisions of the contract. In doing so, the CA thus ruled:

Finally, it is well settled that the decisive factor in evaluating an agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. For this reason, documentary and parole evidence may be submitted and admitted to prove such intention.

Here, the attendant circumstances suggest that respondent-appellant is not entitled to service fees. It acknowledged its failure to furnish the agreed services and impliedly admitted that it is not in the position to demand for the payment of service fees when it approved the proposal for the waiver of future service fees and advised petitioner-appellee to contest the charges for accumulated service fees. Thereafter, respondent-appellant moved for the amendment of the contract, inserting a provision for the waiver of future service fees. Prior to that, the concerned departments of SBMA issued their respective certifications that they did not extend any service to petitioner-appellee.[11]

From the above findings of the CA, it is apparent that the questioned provisions of the contract are reciprocal in nature. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.[12] They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other.[13] For one party to demand the performance of the obligation of the other party, the former must also perform its own obligation. Accordingly, petitioner, not having provided the services that would require the payment of service fees as stipulated in the Lease Development Agreement, is not entitled to collect the same.

Based on all of the above disquisitions, it is therefore clear that the CA did not commit any grave abuse of discretion in affirming the decision of the RTC. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment as patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[14]

WHEREFORE, the petition for certiorari dated August 2, 2010 of petitioner Subic Bay Metropolitan Authority is hereby DISMISSED for lack of merit.

SO ORDERED.

Velasco, Jr., (Chairperson), Mendoza, Reyes,[*] and Perlas-Bernabe, JJ., concur.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Normandie B. Pizarro and Florito S. Macalino, concurring; rollo, pp. 22-32.

[2] Penned by Judge Ramon S. Caguioa; id. at 35-38.

[3] Rollo, p. 22.

[4] Id. at 60-107.

[5] Id. at 42-45.

[6] Id. at 38.

[7] Id. at 40.

[8] Id. at 32.

[9] Id. at 29-30.

[10] Rollo, pp. 194-209.

[11] Id. at 31-32.

[12] Jaime G. Ong v. CA, 369 Phil. 243, 252, citing Areola v. Court of Appeals, G.R. No. 95641, September 22, 1994, 236 SCRA 643.

[13] Id.

[14] Tan v. Spouses Antazo, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342, citing Office of the Ombudsman v. Magno, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287, citing Microsoft Corporation v. Best Deal Computer Center Corporation, 438 Phil. 408, 414 (2002); Suliguin v. Commission on Elections, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; Natalia Realty, Inc. v. Court of Appeals, 440 Phil. 1, 19-20 (2002); Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr., 512 Phil. 729, 733-734 (2005), citing Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755, 786 (2003); Duero v. Court of Appeals, 424 Phil. 12, 20 (2002), citing Cuison v. Court of Appeals, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

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