

**FOOD FEST LAND, INC. AND JOYFOODS CORPORATION,
PETITIONERS, VS. ROMUALDO C. SIAPNO, TEODORO C. SIAPNO, JR.
AND FELIPE C. SIAPNO, RESPONDENTS.**

G.R. No. 226088. February 27, 2019

Ponente: PERALTA, J.

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PERALTA, J.:

At bench is an appeal[1] from the Decision[2] dated January 6, 2016 and the Resolution[3] dated July 22, 2016 of the Court of Appeals (CA) in CA- G.R. CV No. 101302, affirming the Decision and Resolution, dated February 20, 2013 and July 5, 2013, respectively, of the Regional Trial Court (RTC), Branch 41, Dagupan City in Civil Case No. 2009-0084-D.

The facts.

The Contract of Lease

Respondents Romualdo C. Siapno, Teodoro C. Siapno and Felipe C. Siapno are the registered owners[4] of a 521-square-meter parcel of land (subject land) in Dagupan City.

On April 14, 1997, respondents entered into a Contract of Lease[5] involving the subject land with petitioner Food Fest Land, Inc. (Food Fest), a local corporation who wanted to use such land as the site of a fastfood restaurant.[6] The contract has the following particulars —

- The term of the lease shall be fifteen (15) years.[7] On the third (3rd) year of the lease, however, Food Fest shall have the right to pre-terminate the lease.[8]
- During the subsistence of the lease, Food Fest shall have the right to use the subject land for such lawful purposes, including but not limited to the operation of a restaurant business therein.[9]
- In consideration therefor, Food Fest shall pay respondents rent in the following amounts:[10]
- For the first year, the rate of rent shall be P43,901.00 per month.[11]
- For the succeeding years, however, the rate of monthly rent shall escalate by 10% annually. They are payable within the first ten (10) days of the following month.

In addition to the foregoing, the Contract of Lease also featured a non- waiver clause:[12]

16. NON-WAIVER- The failure of the parties to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any rights or remedy that said party may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants hereof which shall continue to be in full force and effect. No waiver by the parties of any of their rights under this Contract of Lease shall be deemed to have been made unless expressed in writing and signed by the party concerned. [13]

Pursuant to the Contract of Lease, Food Fest proceeded to build and operate its restaurant within the subject land.

In October 1998, Food Fest assigned all its rights and obligations under the Contract of Lease unto one Tucky Foods, Inc. (Tucky Foods).[14] In September 2001, Tucky Foods assigned all the said rights and obligations under such contract to petitioner Joyfoods Corporation (Joyfoods).[15]

Payment of Rentals and Pre-Termination of the Lease

From the first up to the fifth year of the lease,[16] Food Fest and its assignees paid rent at the monthly rate prescribed for under the Contract of Lease.[17] The rental escalation clause in the said contract, which -requires the annual escalation of monthly rent by 10%, was consistently observed on the second to the fifth year.

Thus, by the fifth year of the lease,[18] Joyfoods was paying the respondents a monthly rent of P64,275.45.

The rental escalation clause, however, was not observed during the sixth up to the tenth year of the lease. For the sixth up to ninth year of the lease,[19] respondents continued to receive rent at the rate of P64,275.45 per month.[20] On the tenth year of the lease,[21] on the other hand, respondents were paid rent at the rate of P68,774.71 per month.[22]

At the start of the eleventh year of the lease,[23] however, respondents called the attention of Food Fest and Joyfoods regarding its intent to enforce the rental escalation clause of the Contract of Lease for the said year.[24] Accordingly, respondents informed Food Fest and Joyfoods that the rent for the eleventh year of the lease shall be P113,867.89 per month, unless such amount is renegotiated.

In reply, Food Fest and Joyfoods, on June 27, 2007, sent to respondents a letter[25] wherein they acknowledged that the applicable rate of rent following the Contract of Lease would indeed be P113,867.89 per month, but proposed that the same be reduced to only P80,000.00 per month. The proposal was rejected by the respondents.

On July 4, 2007, Joyfoods sent to respondents another letter[26] wherein it proposed the amount of P85,000.00 as monthly rental for the eleventh and twelfth years of the lease. But this too was met with rejection by the respondents.

On October 27, 2008, during the lease's twelfth year, Joyfoods sent to respondents a letter[27] conveying its intent to pre-terminate the lease. In the letter, Joyfoods stated that "due to severe and irreversible business losses" it will cease its operations on the 29th of November 2008 and will turnover the subject land to the respondents on the 13th of December 2008.[28]

The Complaint and the Rulings of the RTC and the CA

On April 20, 2009, respondents lodged before the RTC of Dagupan City a Complaint[29] for sum of money against Food Fest and Joyfoods. In it, respondents mainly seek payment of the sum of P988,907.74 from Food Fest and Joyfoods - which sum respondents refer to as the "escalation for the years 2007 and 2008." [30] In essence, the sum P988,907.74 was supposed to represent the balance between the amount of rent due under the Contract of Lease for the period beginning from the lease's eleventh year of up to its pre-termination, on one hand, and the amount of rent that was actually paid by Food Fest and Joyfoods during the said period, on the other (unpaid balance).

On February 20, 2013, the RTC rendered a Decision[31] in favor of respondents, ordering Food Fest and Joyfoods to, among others, pay respondents the unpaid balance in the amount of P988,907.74. Food Fest and Joyfoods filed a Motion for Reconsideration, but such motion was denied by the RTC via a Resolution[32] dated July 5, 2013.

Food Fest and Joyfoods appealed to the CA.

On January 6, 2016, the CA rendered a Decision[33] dismissing such appeal and affirming the decision of the

RTC. Food Fest and Joyfoods moved for a reconsideration, but the CA was steadfast.[34]

Hence, this appeal.

The Present Appeal[35]

In substance, Food Fest and Joyfoods admit the existence of an unpaid balance under the Contract of Lease. They, however, deviate from the decisions of the RTC and the CA on two (2) points:

First. Food Fest and Joyfoods challenge with the amount of the unpaid balance awarded by the RTC and the CA. Instead of the sum of P988,907.74 claimed by the respondents, Food Fest and Joyfoods assert that the proper award should have been just for P382,055.22.

Food Fest and Joyfoods allege that the rental escalation clause of the Contract of Lease — by reason of an unwritten agreement between Joyfoods and the respondents — was actually suspended indefinitely beginning from the sixth year of the lease. Hence, according to Food Fest and Joyfoods, the monthly rent payable from the sixth year of the lease onwards is no longer determined by the stipulations of the Contract of Lease, but by negotiation between Joyfoods and respondents.

For the eleventh and twelfth year of the lease, Food Fest and Joyfoods aver that respondents and Joyfoods had actually come to an agreement fixing the monthly rentals thereon at P90,000.00 per month. Such agreement was precipitated, say Food Fest and Joyfoods, by Joyfoods' letter dated July 4, 2007 to respondents. To recall, it is in such letter that Joyfoods proposed the amount of P85,000.00 as monthly rental for the eleventh and twelfth year of the lease.

Food Fest and Joyfoods assert that the respondents replied to the July 4, 2007 letter and made a counter-proposal of P90,000.00 monthly rent for the eleventh and twelfth years of the lease. The counter-proposal was supposedly handwritten by the respondents in the July 4, 2007 letter, which they then sent back via facsimile to Joyfoods. And Joyfoods, apparently, agreed to this counter-proposal.

Food Fest and Joyfoods point out that when the rate of monthly rent for the eleventh and twelfth year is reckoned at P90,000.00, the unpaid balance would have amounted only to P382,055.22, to wit:

A. Amount of rent rightfully due under for the period beginning from the lease's eleventh year of up to its pre-termination (18 months)

$P90,000.00 \times 18 \text{ months} =$
P1,620,000.00

B. Amount of rent actually paid by Food Fest and Joyfoods during the same period

$P 68,774.71 \times 18 \text{ months} =$
P1,237,944.78

UNPAID BALANCE (A-B)

$P1,620,000.00 - P1,237,944.78 =$
P382,055.22

Second. Food Fest and Joyfoods also disagree with their respective liabilities for the unpaid balance as held by the RTC and the CA. Food Fest and Joyfoods submit that both of them cannot be held liable for the said balance, in light of Food Fest's assignment of its rights and obligations under the Contract of Lease to Tucky Foods in 1998 and of Tucky Foods' assignment of the same rights and obligations to Joyfoods in 2001. Under such

circumstances, it is postulated that the liability for the unpaid balance now solely rests with Joyfoods.

Our Ruling

We deny the appeal. We affirm the decision of the CA.

I

We reject the challenge against the amount of the unpaid balance awarded by the RTC and the CA.

Food Fest and Joyfoods' position pegging the unpaid balance at P382,055.22 is problematic. It proceeds from a factual assumption that contradicts the actual factual findings of the RTC and the CA. As is apparent from their arguments, Food Fest and Joyfoods' position is hinged on the existence of two purported (2) agreements between the respondents and Joyfoods, to wit:

- An agreement suspending indefinitely the rental escalation clause of the Contract of Lease (first agreement); and
- An agreement fixing the rate of rent for the lease's eleventh and twelfth year at P 90,000 per month (second agreement).

Such an assumption, however, was already rebuffed by the RTC and the CA. Both courts did not consider the first and second agreements as established facts, mainly because they found that the existence of such agreements is not supported by any credible evidence on record.[36]

Accordingly, the RTC and the CA found nothing that could bar the respondents from enforcing and applying the rental escalation clause for the eleventh and twelfth years of the lease.[37]

We are not inclined to review - much less disturb -the foregoing factual findings of the RTC and the CA, knowing fully well our limitations as an appellate court and the proper office of appeals by certiorari.[38] This Court, as has often been said, is not a trier of facts.[39] In an appeal by certiorari, such as the instant case, We generally defer to the factual findings of lower courts and confine our review exclusively to the assigned errors of law. Though this norm is by no means absolute, it bears to stress that any deviation therefrom is only ever taken under defined circumstances — such as when the factual finding of the trial court is reversed by the CA on appeal, or when such finding is "manifestly mistaken, absurd, or impossible" or the same is otherwise "grounded entirely on speculation, surmises, or conjectures" or in instances where there has been grave abuse of discretion.[40] None of such circumstances, however, affect the factual determinations in discussion.

All in all, We find no cogent reason to overturn the RTC and the CA's determination negating the existence of the first and second agreements due to lack of credible proof. Without such agreements, Food Fest and Joyfoods' challenge against the amount of the unpaid balance inevitably loses its potency. We, therefore, cannot accept such challenge and must instead sustain the amount of unpaid balance awarded by the RTC and the CA.

II

We also reject the plea to limit liability for the unpaid balance solely with Joyfoods.

Food Fest and Joyfoods' plea is, in substance, an invocation of the concept of novation - particularly, novation of an obligation by the substitution of the person of the debtor. Their basic assertion is that the assignment by Food Fest of its rights and obligations under the Contract of Lease to Tucky Foods, and the assignment by Tucky Foods of the same rights and obligations to Joyfoods, ought to have resulted in Food Fest's release from its obligations under the Contract of Lease and its substitution therein by Joyfoods.

We do not agree.

Novation is the extinguishment of an obligation by its modification and replacement by a subsequent one. It takes

place when an obligation is modified in any of the following ways: (a) by changing its object or principal conditions, (b) by substituting the person of the debtor, or (c) by subrogating a third person in the rights of the creditor.[41] In such instances, the obligation ceases to exist as a new one — bearing the modifications agreed upon — takes its place. Novation is, thus, a juridical act of dual function— for as it extinguishes an obligation, it also creates a new one in lieu of the old.[42]

Novation of an obligation by substituting the person of the debtor, as the term suggests, entails the replacement of the debtor by a third person. When validly made, it releases the debtor from the obligation which is then assumed by the third person as the new debtor. To validly effect such kind of novation, however, it is not enough for the debtor to merely assign his debt to a third person, or for the latter to assume the debt of the former; the consent of the creditor to the substitution of the debtor is essential and must be had. As Article 1293 of the Civil Code provides:

ARTICLE 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.[43]

In *De Cortes v. Venturanza*,[44] We explained the rationale of this requirement:

x x x A personal novation by substitution of another in place of the debtor may be effected with or without the knowledge of the debtor but not without the consent of the creditor (Art. 1205, Civil Code [now Art. 1293, New Civil Code]). This is the legal provision applicable to the case at bar. The reason for the requirement that the creditor give his consent to the substitution is obvious. The substitution of another in place of the debtor may prevent or delay the fulfillment or performance of the obligation by reason of the inability or insolvency of the new debtor; hence, the consent of the creditor is necessary. This kind of substitution may take place without the knowledge of the debtor when a third party assumes the obligation of the debtor with the consent of the creditor. The novation effected in this way is called *expromision*. Substitution may also take place when the debtor offers and the creditor accepts a third party who assumes the obligation of the debtor. The novation made in this manner is called *delegacion*. (Ali. 1206, Civil Code [now Art. 1295, New Civil Code]). In these two modes of substitution, the consent of the creditor is always required. x x x."[45]

The consent of the creditor to the substitution of a debtor, as a rule, may be given expressly or impliedly.[46] As can be observed, the law does not require that the creditor's consent to the substitution to come at a particular time or in a particular form.[47] What it only demands is that the consent of the creditor be given one way or another.[48] This notwithstanding, there is also nothing that precludes the parties in an obligation, pursuant to their freedom to contract,[49] to agree to a specific form by which the creditor's consent to any potential novation should be expressed. Once an agreement is reached that subjects the creditor's consent to certain formal requirements, such requirements naturally become binding upon the parties.[50]

Going back to the instant case, We find that the established facts do not permit the conclusion that novation had taken place.

First. The settled facts do not show that respondents had expressly consented in writing to the substitution of Food Fest by Joyfoods. The consent of respondents to such substitution has to be in writing, in light of the non-waiver clause of the Contract of Lease. As can be recalled, the non-waiver clause of the Contract of Lease required the parties thereto to express any waiver of their rights under said contract in writing lest their waiver be considered null, viz.:

16. NON-WAIVER - The failure of the parties to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any rights or remedy that said party may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms,

conditions and covenants hereof which shall continue to be in full force and effect. No waiver by the parties of any of their rights under this Contract of Lease shall be deemed to have been made unless expressed in writing and signed by the party concerned.[51]

Respondents' consent to the substitution of Food Fest falls within the ambit of the foregoing clause, because a novation by the substitution of the person of the debtor implies a waiver on the part of the creditor of his right to enforce the obligation as against the original debtor.[52] This correlation has been made in the case of *Testate Estate of Lazaro Mota v. Serra*:[53]

It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of a new debtor. This consent must be given expressly for the reason that, since novation extinguishes the personality of the first debtor who is to be substituted by a new one, it implies on the part of the creditor a waiver of the right that he had before the novation which waiver must be express under the principle that *renuntiatio non praesumitur*, recognized by the law in declaring that a waiver of right may not be performed unless the will to waive is indisputably shown by him who holds the right.[54]

Verily, without the consent of the respondents — conveyed in the form required under the Contract of Lease — there can be no substitution of Food Fest by Joyfoods. On this score alone, Food Fest and Joyfoods' plea is dismissible.

Second. Yet, even if we are to set aside the non-waiver clause of the Contract of Lease, Food Fest and Joyfoods' claim of novation is still doomed to fail. This is so because the consent of respondents to the substitution of Food Fest, just the same, cannot be deduced or implied from any of the established acts of the former. Indeed, under the settled facts, the respondents did nothing in the way of releasing Food Fest from its obligations other than, perhaps, its acceptance of rental payments from Joyfoods.

The consent of respondents to the substitution of Food Fest by Joyfoods, however, cannot be presumed from the sole fact that they accepted payments from Joyfoods. It is well settled that mere acceptance by a creditor of payments from a third person for the benefit of the debtor, sans any agreement that the original debtor will also be released from his obligation, does not result in novation but merely the addition of debtors. As *Ajax Marketing Development Corporation v. Court of Appeals*[55] instructs:

The well-settled rule is that novation is never presumed. Novation will not be allowed unless it is clearly shown by express agreement, or by acts of equal import. Thus, to effect an objective novation, it is imperative that the new obligation expressly declare that the old obligation is thereby extinguished, or that the new obligation be on every point incompatible with the new one. In the same vein, to effect a subjective novation by a change in the person of the debtor it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation. There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety.[56]

All things considered, We find no valid reason to overturn the RTC and the CA's ruling holding both Food Fest and Joyfoods liable for the unpaid balance. Under the limited facts of the instant case, no novation by the substitution of the person of debtor can be appreciated. Accordingly, Food Fest cannot be considered as released from its obligations under the Contract of Lease. And Joyfoods' assumption of the debt of Food Fest only made the former a co-debtor of the latter.[57]

WHEREFORE, premises considered, the instant appeal is DENIED. the Decision dated January 6, 2016 and the Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. CV No. 101302 are AFFIRMED.

SO ORDERED.

Leonen, Reyes, Hernando and Carandang, JJ., concur.

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

[1] By way of a Petition for Review on Certiorari under to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Noel G. Tijam (now a retired Associate Justice of the Supreme Court) for the 4th Division of the CA, with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring; rollo, pp. 6-16.

[3] Id. at 17-19.

[4] Covered by Transfer Certificate of Title (TTC) No. 63128.

[5] Rollo, pp. 79-84.

[6] Specifically, a Kentucky Fried Chicken branch.

[7] See Item 2 of the Contract of Lease Under the contract, the term of the lease shall begin either from the start of Food Fest's commercial operations or the lapse of ninety (90) days from the date of turnover of the leased premises, whichever comes first. (Rollo, p. 80).

[8] See Item 2 of the Contract of Lease (Id.).

[9] See Item 4 of the Contract of Lease (Id. at 81).

[10] See Item 3 of the Contract of Lease (Id. at 80).

[11] The amount corresponds to the rent due for the lease of a 399.10-square-meter portion of the subject land. Under the contract, an additional rent was to be charged against Food Fest upon turn-over of the remaining 121.90 square meters. However, it does not appear from the records that an additional rent was ever imposed against Food Fest. The full rent for the first year in the sum of P526,812.00 (P43,901 x 12) was also supposed to be paid in advance by Food Fest upon physical turn-over of the 399.10-square meter portion of the subject land. (Id.)

[12] Rollo, p. 83.

[13] Emphasis supplied.

[14] Id. at 96.

[15] Id. at 97.

[16] According to Food Fest and Joyfoods, such period covers May 20, 1997 up to May 19, 2002. (Id. at 27).

[17] Id.

[18] According to Food Fest and Joyfoods, such period covers May 20, 2001 up to May 19, 2002. (Id.)

[19] From May 20, 2002 up to May 19, 2006.

[20] See rollo, p. 76. (PTO order)

[21] According to Food Fest and Joyfoods, such period covers May 20, 2006 up to May 19, 2007.

[22] Id.

[23] According to Food Fest and Joyfoods, such period covers May 20, 2007 up to May 19, 2008. (Id.)

[24] Id. at 90.

[25] Id.

[26] Id. at 85.

[27] Id. at 86-87.

[28] Id.

[29] Id. at 89-92.

[30] Id. at 90.

[31] Penned by Presiding Judge Emma M. Torio of Branch 41 of the RTC of Dagupan c;ty. (Id. at 78).

[32] Id. at 161-162.

[33] Id. at 6-16.

[34] Id. at 17-19.

[35] Id. at 24-53.

[36] See rollo, pp. 6-16, 72-78 and 161-162. The first agreement was not considered due to there being no evidence on record proving its existence. In its decision, the CA intimated that the evidence on record was actually certain of only two (2) facts in relation to the suspension of the rental escalation clause of the Contract of Lease: one, that the rental escalation clause had been suspended during the sixth up to the tenth year of the lease, and two, that at the start of the lease's eleventh year, respondents informed Joyfoods regarding its intent to enforce such clause for the said year (see rollo , pp. 11-14) Taking such established facts together, the CA concluded that while the respondents may be said to have acceded to the suspension of the rental escalation clause, such suspension is only temporary and not indefinite as Food Fest and Joyfoods' claim (rollo, p. 14). The CA and the RTC were uniform in finding that the only valid inference that may be drawn from the standing facts is that the respondents only agreed to the suspension of the rental escalation clause insofar as the sixth up to the tenth year of the lease are concerned-but not so for the eleventh and succeeding years (see rollo, pp. 14 and 162).

On the other hand, the second agreement was not considered because the only evidence supporting its existence — i.e., a copy of Joyfoods' July 4, 2007 letter that allegedly contains the respondents' handwritten note counter-proposing the amount of P90,000.00 as monthly rent for the eleventh and twelfth year of the lease — was found to be undeserving of any weight. The CA noted that the letter is unreliable and highly suspect as it was not even proven who actually wrote the said note, much less if the one who wrote it had authority to make such counter-proposal (rollo, p. 14).

[37] See rollo, pp. 14 and 162.

[38] See Section 1 of Rule 45 of the Rules of Court.

[39] Quintos v. Nicolas, 736 Phil. 438, 451 (2014); Angeles v. Pascual, 673 Phil. 499, 505 (20(71); FNCB Finance v. Estavillo, 270 Phil. 630, 633 (1990).

[40] See Microsoft Corporation v. Farajallah, 742 Phil. 775 (2014).

[41] See Article 1291 of the Civil Code.

[42] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. 4, 1991, p. 381.

[43] Emphasis supplied.

[44] 170 Phil. 55 (1977).

[45] Id. at 69-70, citing Rio Grande Oil Co. v. Coleman, 39 O.G. No. 33, 986. (Emphasis supplied; citations omitted).

[46] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume 4, 1991, p. 391, citing Asia Banking Corporation v. Elser, 54 Phil. 994 (1929), Barreto v. Alba, 62 Phil. 593 (1935), and Santisimo Rosario de Malo v. Gemperle, 39 O.G. No. 59, 1410.

[47] De Cortes v. Venturanza, supra note 44, citing Rio Grande Oil Co. v. Coleman, supra note 45.

[48] Id.

[49] Article 1306 of the Civil Code provides:

ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs public order, or public policy.

[50] See Article 1308 of the Civil Code.

[51] Emphasis supplied.

[52] See Testate Estate of Mota v. Serra, 47 Phil. 464, 470 (1925).

[53] Id.

[54] Id. at 469-470. (Emphasis ours).

[55] 318 Phil. 268 (1995).

[56] Id. at 274-275. (Emphasis supplied; citations omitted).

[57] See Servicewide Specialists, Inc. v. Intermediate Appellate Court, 255 Phil. 787 (1989).

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