

COUNTRY BANKERS INSURANCE CORPORATION AND ENRIQUE SY, PETITIONERS, VS. COURT OF APPEALS AND OSCAR VENTANILLA ENTERPRISES CORPORATION, RESPONDENTS.

G.R. No. 85161. September 09, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Petitioners seek a review on certiorari of the decision of the Court of Appeals in CA-G.R. CV No. 09504 "Enrique Sy and Country Bankers Insurance Corporation v. Oscar Ventanilla Enterprises Corporation" affirming in toto the decision of the Regional Trial Court, Cabanatuan City, Branch XXV, to wit:

"WHEREFORE, the complaint of the plaintiff Enrique F. Sy is dismissed, and on the counterclaim of the defendant O. Ventanilla Enterprises Corporation, judgment is hereby rendered:

‘1. Declaring as lawful, the cancellation and termination of the Lease Agreement (Exh. A) and the defendant's re-entry and repossession of the Avenue, Broadway and Capitol theaters under lease on February 11, 1980;

‘2. Declaring as lawful, the forfeiture clause under paragraph 12 of the said Lease Agreement, and confirming the forfeiture of the plaintiff's remaining cash deposit of P290,000.00 in favor of the defendant thereunder, as of February 11, 1980;

‘3. Ordering the plaintiff to pay the defendant the sum of P289,534.78, representing arrears in rentals, unremitted amounts for amusement tax delinquency and accrued interest thereon, with further interest on said amounts at the rate of 12% per annum (per lease agreement) from December 1, 1980 until the same is fully paid;

‘4. Ordering the plaintiff to pay the defendant the amount of P100,000.00, representing the P10,000.00 portion of the monthly lease rental which were not deducted from the cash deposit of the plaintiff from February to November, 1980, after the forfeiture of the said cash deposit on February 11, 1980, with interest thereon at the rate of 12% per annum on each of the said monthly amounts of P10,000.00 from the time the same became due until it is paid;

‘5. Ordering the plaintiff to pay the defendant through the injunction bond, the sum of P100,000.00, representing the P10,000.00 monthly increase in rentals which the defendant failed to realize from February to November 1980 resulting from the injunction, with legal interest thereon from the finality of this decision until fully paid;

‘6. Ordering the plaintiff to pay to the defendant the sum equivalent to ten per centum (10%) of the above-mentioned amounts of P289,534.78, P100,000.00 and P100,000.00, as and for attorney's fees; and

‘7. Ordering the plaintiff to pay the costs.'" (pp. 94-95, Rollo)

The antecedent facts of the case are as follows:

Respondent Oscar Ventanilla Enterprises Corporation (OVEC), as lessor, and the petitioner Enrique F. Sy, as

lessee, entered into a lease agreement over the Avenue, Broadway and Capitol Theaters and the land on which they are situated in Cabanatuan City, including their air-conditioning systems, projectors and accessories needed for showing the films or motion pictures. The term of the lease was for six (6) years commencing from June 13, 1977 and ending June 12, 1983. After more than two (2) years of operation of the Avenue, Broadway and Capitol Theaters, the lessor OVEC made demands for the repossession of the said leased properties in view of the Sy's arrears in monthly rentals and non-payment of amusement taxes. On August 8, 1979, OVEC and Sy had a conference and by reason of Sy's request for reconsideration of OVEC's demand for re-possession of the three (3) theaters, the former was allowed to continue operating the leased premises upon his conformity to certain conditions imposed by the latter in a supplemental agreement dated August 13, 1979.

In pursuance of their latter agreement, Sy's arrears in rental in the amount of P125,455.76 (as of July 31, 1979) was reduced to P71,028.91 as of December 31, 1979. However, the accrued amusement tax liability of the three (3) theaters to the City Government of Cabanatuan City had accumulated to P84,000.00 despite the fact that Sy had been deducting the amount of P4,000.00 from his monthly rental with the obligation to remit the said deductions to the city government. Hence, letters of demand dated January 7, 1980 and February 3, 1980 were sent to Sy demanding payment of the arrears in rentals and amusement tax delinquency. The latter demand was with warning that OVEC will re-enter and repossess the Avenue, Broadway and Capital Theaters on February 11, 1980 in pursuance of the pertinent provisions of their lease contract of June 11, 1977 and their supplemental letter-agreement of August 13, 1979. But notwithstanding the said demands and warnings Sy failed to pay the above-mentioned amounts in full. Consequently, OVEC padlocked the gates of the three theaters under lease and took possession thereof in the morning of February 11, 1980 by posting its men around the premises of the said movie houses and preventing the lessee's employees from entering the same.

Sy, through his counsel, filed the present action for reformation of the lease agreement, damages and injunction late in the afternoon of the same day. And by virtue of a restraining order dated February 12, 1980 followed by an order directing the issuance of a writ of preliminary injunction issued in said case, Sy regained possession and operation of the Avenue, Broadway and Capital theaters.

As first cause of action, Sy alleged that the amount of deposit — P600,000.00 as agreed upon, P300,000.00 of which was to be paid on June 13, 1977 and the balance on December 13, 1977 — was too big; and that OVEC had assured him that said forfeiture will not come to pass. By way of second cause of action, Sy sought to recover from OVEC the sums of P100,000.00 which Sy allegedly spent in making "major repairs" on Broadway Theater and the application of which to Sy's due rentals; (2) P48,000.00 covering the cost of electrical current allegedly used by OVEC in its alleged "illegal connection" to Capitol Theater and (3) P31,000.00 also for the cost of electrical current allegedly used by OVEC for its alleged "illegal connection" to Broadway Theater and for damages suffered by Sy as a result of such connection. Under the third cause of action, it is alleged in the complaint that on February 11, 1980, OVEC had the three theaters padlocked with the use of force, and that as a result, Sy suffered damages at the rate of P5,000.00 a day, in view of his failure to go thru the contracts he had entered into with movie and booking companies for the showing of movies at ABC. As fourth cause of action, Sy prayed for the issuance of a restraining order/preliminary injunction to enjoin OVEC and all persons employed by it from entering and taking possession of the three theaters, conditioned upon Sy's filing of a P500,000.00 bond supplied by Country Bankers Insurance Corporation (CBISCO).

OVEC, on the other hand, alleged in its answer by way of counterclaims, that by reason of Sy's violation of the terms of the subject lease agreement, OVEC became authorized to enter and possess the three theaters in question and to terminate said agreement and the balance of the deposits given by Sy to OVEC had thus become forfeited; that OVEC would be losing P50,000.00 for every month that the possession and operation of said three theaters

remain with Sy and that OVEC incurred P500,000.00 for attorney's service.

The trial court arrived at the conclusions that Sy is not entitled to the reformation of the lease agreement; that the repossession of the leased premises by OVEC after the cancellation and termination of the lease was in accordance with the stipulation of the parties in the said agreement and the law applicable thereto and that the consequent forfeiture of Sy's cash deposit in favor of OVEC was clearly agreed upon by them in the lease agreement. The trial court further concluded that Sy was not entitled to the writ of preliminary injunction issued in his favor after the commencement of the action and that the injunction bond filed by Sy is liable for whatever damages OVEC may have suffered by reason of the injunction.

On the counterclaim of OVEC, the trial court found that the said lessor was deprived of the possession and enjoyment of the leased premises and also suffered damages as a result of the filing of the case by Sy and his violation of the terms and conditions of the lease agreement. Hence, it held that OVEC is entitled to recover the said damages in addition to the arrears in rentals and amusement tax delinquency of Sy and the accrued interest thereon. From the evidence presented, it found that as of the end of November, 1980, when OVEC finally regained the possession of the three (3) theaters under lease, Sy's unpaid rentals and amusement tax liability amounted to P289,534.78. In addition, it held that Sy was under obligation to pay P10,000.00 every month from February to November, 1980 or the total amount of P100,000.00 with interest on each amount of P10,000.00 from the time the same became due. This P10,000.00 portion of the monthly lease rental was supposed to come from the remaining cash deposit of Sy but with the consequent forfeiture of the remaining cash deposit of P290,000.00, there was no more cash deposit from which said amount could be deducted. Further, it adjudged Sy to pay attorney's fees equivalent to 10% of the amounts above-mentioned.

Finally, the trial court held Sy through the injunction bond liable to pay the sum of P10,000.00 every month from February to November, 1980. The amount represents the supposed increase in rental from P50,000.00 to P60,000.00 in view of the offer of one RTG Productions, Inc. to lease the three theaters involved for P60,000.00 a month.

From this decision of the trial court, Sy and CBISCO appealed the decision in toto while OVEC appealed insofar as the decision failed to hold the injunction bond liable for all damages awarded by the trial court.

The respondent Court of Appeals found no ambiguity in the provisions of the lease agreement. It held that the provisions are fair and reasonable and therefore, should be respected and enforced as the law between the parties. It held that the cancellation or termination of the agreement prior to its expiration period is justified as it was brought about by Sy's own default in his compliance with the terms of the agreement and not "motivated by fraud or greed." It also affirmed the award to OVEC of the amount of P100,000.00 chargeable against the injunction bond posted by CBISCO, which was soundly and amply justified by the trial court.

The respondent Court likewise found no merit in OVEC's appeal and held that the trial court did not err in not charging and holding the injunction bond posted by Sy liable for all the awards as the undertaking of CBISCO under the bond referred only to damages which OVEC may suffer as a result of the injunction.

From this decision, CBISCO and Sy filed this instant petition on the following grounds:

"A

"PRIVATE RESPONDENT SHOULD NOT BE ALLOWED TO UNJUSTLY ENRICH OR BE BENEFITTED AT THE EXPENSE OF THE PETITIONERS.

"B

"RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN NOT SETTING OFF THE P100,000.00 SUPPOSED DAMAGE RESULTING FROM THE INJUNCTION AGAINST THE P290,000.00 REMAINING CASH DEPOSIT OF PETITIONER ENRIQUE SY.

"C

"RESPONDENT COURT OF APPEALS FURTHER COMMITTED SERIOUS ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN NOT DISMISSING PRIVATE RESPONDENT'S COUNTERCLAIM FOR FAILURE TO PAY THE NECESSARY DOCKET FEE." (p. 10, Rollo)

We find no merit in petitioners' argument that the forfeiture clause stipulated in the lease agreement would unjustly enrich the respondent OVEC at the expense of Sy and CBISCO - contrary to law, morals, good customs, public order or public policy. A provision which calls for the forfeiture of the remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions of the agreement is a penal clause that may be validly entered into. 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. (Eduardo P. Caguioa, Comments and Cases on Civil Law, Vol. IV, First Edition, pp. 199-200) As a general rule, in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance. This is specifically provided for in Article 1226, par. 1, New Civil Code. In such case, proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded (Article 1228, New Civil Code). However, there are exceptions to the rule that the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance with the principal obligation. They are first, when there is a stipulation to the contrary; second, when the obligor is sued for refusal to pay the agreed penalty; and third, when the obligor is guilty of fraud (Article 1226, par. 1, New Civil Code). It is evident that in all said cases, the purpose of the penalty is to punish the obligor. Therefore, the obligee can recover from the obligor not only the penalty but also the damages resulting from the non-fulfillment or defective performance of the principal obligation.

In the case at bar, inasmuch as the forfeiture clause provides that the deposit shall be deemed forfeited, without prejudice to any other obligation still owing by the lessee to the lessor, the penalty cannot substitute for the P100,000.00 supposed damage resulting from the issuance of the injunction against the P290,000.00 remaining cash deposit. This supposed damage suffered by OVEC was the alleged P10,000.00 a month increase in rental (from P50,000.00 to P60,000.00), which OVEC failed to realize for ten months from February to November, 1980 in the total sum of P100,000.00. This opportunity cost which was duly proven before the trial court, was correctly made chargeable by the said court against the injunction bond posted by CBISCO. The undertaking assumed by CBISCO under subject injunction refers to "all such damages as such party may sustain by reason of the injunction if the Court should finally decide that the Plaintiff was/were not entitled thereto." (Rollo, p. 101) Thus, the respondent Court correctly sustained the trial court in holding that the bond shall and may answer only for damages which OVEC may suffer as a result of the injunction. The arrears in rental, the unremitted amounts of the amusement tax delinquency, the amount of P100,000.00 (P10,000.00 portions of each monthly rental which were not deducted from plaintiff's cash deposit from February to November, 1980 after the forfeiture of said cash deposit on February 11, 1980) and attorney's fees which were all charged against Sy were correctly considered by the respondent Court as damages which OVEC sustained not as a result of the injunction.

There is likewise no merit to the claim of petitioners that respondent Court committed serious error of law and

grave abuse of discretion in not dismissing private respondent's counterclaim for failure to pay the necessary docket fee, which is an issue raised for the first time in this petition. Petitioners rely on the rule in *Manchester Development Corporation v. Court of Appeals*, G.R. No. 75919, May 7, 1987, 149 SCRA 562 to the effect that all the proceedings held in connection with a case where the correct docket fees are not paid should be peremptorily be considered null and void because, for all legal purposes, the trial court never acquired jurisdiction over the case. It should be remembered however, that in *Davao Light and Power Co., Inc. v. Dinopol*, G.R. 75195, August 19, 1988, 164 SCRA 748, this Court took note of the fact that the assailed order of the trial court was issued prior to the resolution in the *Manchester* case and held that its strict application to the case at bar would therefore be unduly harsh. Thus, We allowed the amendment of the complaint by specifying the amount of damages within a non-extendible period of five (5) days from notice and the reassessment of the filing fees. Then, in *Sun Insurance Office, Ltd. v. Asuncion*, G.R. 79937-38, February 3, 1989, 170 SCRA 274, We held that where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.

Nevertheless, OVEC's counterclaims are compulsory so no docket fees are required as the following circumstances are present: (a) they arise out of or are necessarily connected with the transaction or occurrence that is subject matter of the opposing party's claim; (b) they do not require for their adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim (see *Javier v. Intermediate Appellate Court*, G.R. 75379, March 31, 1989, 171 SCRA 605). Whether the respective claims asserted by the parties arise out of the same contract or transaction within the limitation on counterclaims imposed by the statutes depends on a consideration of all the facts brought forth by the parties and on a determination of whether there is some legal or equitable relationship between the ground of recovery alleged in the counterclaim and the matters alleged as the cause of action by the plaintiff (80 C.J.S. 48). As the counterclaims of OVEC arise from or are necessarily connected with the facts alleged in the complaint for reformation of instrument of Sy, it is clear that said counterclaims are compulsory.

ACCORDINGLY, finding no merit in the grounds relied upon by petitioners in their petition, the same is hereby DENIED and the decision dated June 15, 1988 and the resolution dated September 21, 1988, both of the respondent Court of Appeals are AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Griño-Aquino, JJ., concur.

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