Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 9, 2020** *which reads as follows:*

"G.R. No. 227648 – (Ensons Commercial Corporation, *Petitioner,* **v. Philippine National Railways and Jose Maria Sarasola II,** *Respondents.***)** – This petition for *certiorari*[1] (petition) under Rule 65 of the Rules of Court (Rules) seeks to reverse and set aside the Decision[2] dated 27 November 2015 and Resolution[3] dated 25 August 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 97981 affirming with modification the Amended Decision[4] dated 21 October 2011of Branch 42, Regional Trial Court (RTC) of Manila in Civil Case No. 04-111094.

Antecedents

On 19 October 1988, Ensons Commercial Corporation (petitioner) entered into a Contract of Lease[5] with Philippine National Railways (PNR) allowing the former, as lessee, to occupy a portion of PNR's property located in Pandacan, Manila. The lease contract had a lifetime of twenty (20) years commencing on 01 October 1988 and ending on 01 October 2008. The contract further provided that within the first six (6) months of the term of the lease contract, petitioner shall dismantle the existing warehouse and construct a new one with an area of three thousand seven hundred fifty (3,750) square meters and costing no less than Php5,000,000.00.[6] Pursuant thereto, petitioner constructed a new warehouse.[7]

- over – nine (9) pages ...

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1 *Rollo*, pp. 03-12.
2 *Id.* at 20-33; Penned by CA Associate Justice Myra V. Garcia-Fernandez with Associate Justices Romeo F. Barza and Pedro B. Corales, concurring.
3 *Id.* at 34-37.
4 *Id.* at 137-143.
5 *Id.* at 105-108.
6 *Id.* at 105.
7 *Id.* at 21.

During the first few years of the contract, petitioner claimed that it was earning a decent profit and had a substantial number of clients because of its location and accessibility. In 1997, it experienced a huge drop in the number of its clients because the main road became inaccessible to ten-wheeler trucks and other hauling vehicles due to the influx of informal settlers. Petitioner demanded that PNR clear the subject premises of informal settlers and comply with its obligation[8] under the contract of lease to guarantee a right of way. It likewise requested for a moratorium on its payments and a two-year extension of the lease contract pending PNR's action on its demand and request.[9]

Petitioner subsequently suspended payment of its rentals on the ground that the leased premises had been rendered useless for the purpose it was intended, as PNR had failed to remove the informal settlers. PNR later denied petitioner's request for a moratorium and demanded payment of back rentals. In February 2003, petitioner served a Notice of Pre-Termination of the Lease Contract to PNR, which rejected the same. Consequently, petitioner filed a complaint for specific performance with damages.[10]

For its part, PNR and Jose Maria Sarasola II, the former General Manager[11] of PNR, (collectively, respondents) explained that the proposed extension of the term of the lease contract was rejected because petitioner reported the obstruction in the passageway only on 15 September 1999. They also maintain that the lease contract did not specifically provide for the maintenance of a right of way; hence, the rejection of the request for moratorium for lack of legal basis. Petitioner failed to prove that the road leading to the leased premises became inaccessible due to squatters and that it lost a number of clients. Finally, PNR insisted that the duty to clear the leased premises of informal settlers devolved upon petitioner.[12]

Ruling of the RTC

On 21 October 2011, the RTC rendered its Amended Decision,[13] the dispositive portion of which reads:

> "WHEREFORE, plaintiff is hereby ordered to pay defendant Philippine National Railways actual damages in the

8 18. That the LESSOR shall guarantee a right of way, access and passage to the area subject of this lease agreement;
9 *Id.* at 21-22.
10 *Id.* at 22.
11 *Id.* at 113.
12 *Id.* at 23-24.
13 *Id.* at 137-143.

> form of back rents from October 1998 up to September 2009 in the amount of P4,920,246.61. Plaintiff is also ordered to pay a surcharge of 1% a month on the said amount as stipulated under paragraph 5 of the lease contract. Plaintiff is likewise ordered to pay rent to defendant from October 2009 up until plaintiff shall have actually vacated the premises, plus surcharges for late payment of 1% a month pursuant to the lease contract.
>
> SO ORDERED.[14]

The RTC held that the contract was clear and left no room for doubt as to the intent of the parties – for PNR to ensure that the area leading to the subject property was free of structures that would hamper the free flow of vehicles and goods to the leased premises, as the nature of petitioner's business, which was to furnish warehouse facilities to its clients, necessitated an unrestrained and unhampered access to the warehouse.[15] Unfortunately, petitioner was unable to establish the presence of illegal structures or informal settlers on the subject property and that it suffered actual damages. Hence, it must pay the rent stipulated in the contract.[16]

Aggrieved, petitioner appealed to the CA.

Ruling of the CA

In its Decision[17] dated 27 November 2015, the CA found that petitioner failed to prove that respondents breached the provisions of the contract of lease. Thus, petitioner had no valid reason to suspend the payment of rentals under Article (Art.) 1658[18] of the Civil Code.[19] Hence, the judgment of the RTC was affirmed with modification, thus:

> **WHEREFORE**, the appeal is **DENIED**. The amended decision dated October 21, 2011 of the Regional Trial Court of Manila, Branch 42 in Civil Case No. 04-111094 is **MODIFIED**. Plaintiff-appellant Ensons Commercial Corporation is ordered to pay defendants-appellees Philippine National Railways and Jose Maria Sarasola II monthly rentals in the amount of P2,862,352.22, and the accrued rentals based on the stipulated rent from November 2008 until the plaintiff-appellant actually

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14 *Id.* at 143; underscoring removed.
15 *Id.* at unnumbered page after p. 139.
16 *Rollo,* pp. 140-142.
17 *Id.* at 20-33.
18 ARTICLE 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.
19 *Id.* at 30.

> vacates the leased premises, with interest thereon at six percent (6%) [*per annum*].
>
> **SO ORDERED.**[20]

The CA found that petitioner failed and/or refused to pay rent starting October 1999. Thus, it should make rental payments of Php1,463,303.78 from October 1999 to October 2003, plus Php1,399,048.44 from November 2003 (not October 2004) to October 2008 or a total of Php2,862,352.22.[21]

Dissatisfied with the findings of the CA, both parties filed their respective motions for reconsideration. In its Resolution[22] dated 25 August 2016, the CA denied the motion filed by petitioner while respondents' motion was partially granted, but only insofar as the imposition of interest is concerned:

> **WHEREFORE,** the motion for reconsideration of plaintiff-appellant is **DENIED**. The motion for partial reconsideration of defendants-appellees is **PARTIALLY GRANTED**. Plaintiff-appellant Ensons Commercial Corporation is ordered to pay defendants-appellees Philippine National Railways and Jose Maria Sarasola II monthly rentals in the amount of P2,862,352.22, and the accrued rentals based on the stipulated rent from November 2008 until the plaintiff-appellant actually vacates the leased premises, with interest thereon at twelve (12%) [*per annum*] from October 1999 to June 30, 2013 and six percent (6%) [*per annum*] from July 1, 2013 until amount is fully paid.
>
> **SO ORDERED.**[23]

Hence, this petition.

Issue

The issue for this Court's resolution is whether or not the CA erred in issuing the assailed decision and resolution ordering the payment of back rentals.

Ruling of the Court

The Court finds the petition without merit.

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20 *Id.* at 32.
21 *Id.* at 30-31.
22 *Id.* at 34-37.
23 *Id.* at 36.

Petitioner resorted to a wrong mode of appeal

The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45 of the Rules, which is different from a petition for *certiorari* under Rule 65. As provided in Rule 45, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case.[24]

A special civil action under Rule 65, on the other hand, is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy, and adequate remedy in the ordinary course of law. [25] *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45.[26]

This Court, in accordance with the liberal spirit pervading the Rules and in the interest of justice, has the discretion to treat a petition for *certiorari* as a petition for review on *certiorari* under Rule 45, especially if filed within the reglementary period for filing a petition for review. [27] In this case, however, We find no reason to deviate from the general rule.

Petitioner received the Resolution[28] denying its motion for reconsideration on 07 September 2016. Instead of filing a petition for review with this Court within fifteen (15) days from receipt thereof, or until 22 September 2016, it filed a petition for *certiorari* on 07 November 2016, or sixty (60) days from receipt of said Resolution. Petitioner allowed the period to lapse without filing an appeal. *Certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. Where the rules prescribe a particular remedy for the vindication of rights, the parties should avail of such remedies. Accordingly,

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24 *Albor v. Court of Appeals*, G.R. No. 196598, 17 January 2018.
25 *Id.*
26 *Id.*
27 *Land Bank of the Phils. v. Continental Watchman Agency Inc.*, G.R. No. 136114, 22 January 2004; 465 Phil. 607-618 (2004).
28 *Rollo*, pp. 34-47.

adoption of an improper remedy already warrants outright dismissal of this petition.[29]

Even if the Court treats the instant petition as a petition for review on *certiorari* under Rule 45, the same would still be denied for raising questions of fact since it essentially assails the appreciation of the testimonial and documentary evidence by the RTC and the CA. As a rule, the Court is not a trier of facts. Thus, the petition is procedurally infirm.[30]

Petitioner's imputation of grave abuse of discretion cannot be sustained

Petitioner imputes grave abuse of discretion on the part of the RTC and the CA when they disregarded the fact of existence of informal settlers on the subject property. Petitioner also claims the CA gravely abused its discretion when it failed to apply the provisions of the contract of lease between the parties.[31]

The arguments are bereft of merit.

Grave abuse of discretion implies such arbitrary, capricious, whimsical, or despotic exercise of judgment as when the assailed order is bereft of any factual and legal justification.[32] The abuse of discretion must be so patent and so gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Mere errors of law are not correctible via petition for *certiorari*.[33]

Both the RTC and the CA found the bare testimonies of petitioner's witnesses, Ignacio Nocom (Nocom), president[34] of petitioner company, and Engr. Roger Tolosa (Engr. Tolosa), insufficient to establish that there was illegal construction leading to the leased premises. Although the Judicial Affidavit of Engr. Tolosa depicted the presence of informal settlers in the subject property, petitioner failed to properly mark, identify, and proffer said pictures in

29 *Albor v. Court of Appeals*, G.R. No. 196598, 17 January 2018.
30 *Macad v. People*, G.R. No. 227366, 01 August 2018.
31 *Rollo*, pp. 08-09.
32 *Tuppil, Jr. v. LBP Service Corp.*, G.R. No. 228407 (Resolution), 10 June 2020.
33 *Local Government Unit of San Mateo, Isabela v. Miguel Vda. De Guerrero*, G.R. No. 214262, 13 February 2019 [Per J. Caguioa].
34 *Rollo*, p. 03.

evidence. Meanwhile, the Appraisal Report offered as evidence by petitioner did not contain the pictures mentioned during the testimonies of the said witnesses. Thus the RTC declared, and We agree, that apart from the plain testimonies of Nocom and Engr. Tolosa, "there is no other proof to support the presence of alleged illegal constructions in the leased premises. The kind, number, and extent of illegal structures and the magnitude of damage to [petitioner] could not therefore be ascertained with reasonable certainty."[35]

Considering that petitioner failed to prove the presence of informal settlers in the subject area, the RTC and the CA correctly decided the case based on the evidence presented before them. As correctly pointed out by the RTC, courts cannot take extrajudicial notice of facts.[36] Since there is nothing whimsical, arbitrary, or capricious in the assailed decisions and resolution, *certiorari* will not lie.

Notably, even if the courts take judicial notice of the presence of informal settlers and illegal structures in the area, petitioner's evidence still falls short of establishing that the presence of these informal settlers and illegal structures would have made petitioner's usage of the subject premises impossible.

Obligation of the lessor

Petitioner claims that respondents failed to comply with its obligation to guarantee an access road, as stated in the contract of lease.

Art. 1654 (3) of the Civil Code provides that the lessor is obliged to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract. Such duty is merely a warranty that the lessee shall not be disturbed in his legal, and not physical, possession.[37] In the case of *Goldstein v. Roces*,[38] the Supreme Court explained the duty of the lessor in keeping the lessee in the peaceful and adequate enjoyment of the lease in this wise:

> [Article] 1554 provides that the lessor is obliged to maintain the lessee in the peaceful enjoyment of the lease during all the time covered by the contract.

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35 *Id.* at 140.
36 *Id.* at 140.
37 *Nakpil v. Manila Towers Development Corp.*, G.R. Nos. 160867 & 160886, 20 September 2006; 533 Phil. 750-773 (2006).
38 G.R. No. 8697, 30 March 1916; 34 Phil. 562-573 (1916).

> Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change, without the least opposition on the part of any one. That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented. The peace would likewise have been disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bartender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he world, of course, have a right of action for the recovery of damages from those who disturbed his peace, but **he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessee's peace.** [Emphasis supplied.]

It does not appear that petitioner was disturbed in its legal possession of the subject property. The alleged presence of the informal settlers and illegal structures in the area are mere acts of trespass or disturbance, not acts which deprived petitioner of its right to peaceably enjoy the leased property. Petitioner, upon noticing the informal settlers and illegal structures, should have instituted legal action against those who had disturbed its physical possession, as provided for in Art. 1664[39] of the Civil Code. Yet, it did not.

Notably, the lessor is not liable for the mere fact of a trespass or trespass in fact made by a third person on the leased property. The lessee's right of action should be directed against the trespasser, not against the lessor.[40] Respondents, thus, cannot be said to have violated paragraph 18[41] of the contract of lease. Considering that petitioner was unable to prove that respondents breached the contract, it had no valid reason to suspend the payment of rentals under Art. 1658 of the Civil

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39 ARTICLE 1664. The lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the thing leased; but the lessee shall have a direct action against the intruder.
There is a mere act of trespass when the third person claims no right whatever.

40 *G.Q. Garments, Inc. v. Miranda*, G.R. No. 161722, 20 July 2006; 528 Phil. 341-364 (2006).

41 18. That the LESSOR shall guarantee a right of way, access and passage to the area subject of this lease agreement; x x x.

Code.[42] The CA, thus, did not err when it affirmed the order of the RTC ordering the petitioner to pay rentals from October 1999 until the time it actually vacates the premises.

WHEREFORE, the instant petition is hereby **DENIED**. Accordingly, the Decision dated 27 November 2015 and Resolution dated 25 August 2016 of the Court of Appeals in CA-G.R. CV No. 97981 are hereby **AFFIRMED**.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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OLIVA FIRME & ASSOCIATES
LAW FIRM
Counsel for Petitioner
Units 28 & 30, 2nd Floor
The Facilities Centre Building, No. 548 Shaw Boulevard, 1550 Mandaluyong City

Court of Appeals (x)
Manila
(CA-G.R. CV No. 97981)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 42
1000 Manila
(Civil Case No. 04-111094)

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42 *Chua Tee Dee v. Court of Appeals*, G.R. No. 135721, 27 May 2004; 473 Phil. 446-472 (2004).