

## THIRD DIVISION

[ G.R. NO. 153201, January 26, 2005 ]

**JOSE MENCHAVEZ, JUAN MENCHAVEZ JR., SIMEON MENCHAVEZ, RODOLFO MENCHAVEZ, CESAR MENCHAVEZ, REYNALDO, MENCHAVEZ, ALMA MENCHAVEZ, ELMA MENCHAVEZ, CHARITO M. MAGA, FE M. POTOT, THELMA M. REROMA, MYRNA M. YBAÑEZ, AND SARAH M. VILLABER, PETITIONERS, VS. FLORENTINO TEVES JR., RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Avoid contract is deemed legally nonexistent. It produces no legal effect. As a general rule, courts leave parties to such a contract as they are, because they are *in pari delicto* or equally at fault. Neither party is entitled to legal protection.

### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the February 28, 2001 Decision<sup>[2]</sup> and the April 16, 2002 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR CV No. 51144. The challenged Decision disposed as follows:

**"WHEREFORE**, the assailed decision is hereby **MODIFIED**, as follows:

"1. Ordering [petitioners] to jointly and severally pay the [respondent] the amount of P128,074.40 as actual damages, and P50,000.00 as liquidated damages;

"2. Dismissing the third party complaint against the third party defendants;

"3. Upholding the counterclaims of the third party defendants against the [petitioners. Petitioners] are hereby required to pay [the] third party defendants the sum of P30,000.00 as moral damages for the clearly unfounded suit;

"4. Requiring the [petitioners] to reimburse the third party defendants the sum of P10,000.00 in the concept of attorney's fees and appearance fees of P300.00 per appearance;

"5. Requiring the [petitioners] to reimburse the third party defendants the sum of P10,000.00 as exemplary damages pro bono publico and litigation expenses including costs, in the sum of P5,000.00."<sup>[4]</sup>

The assailed Resolution denied petitioners' Motion for Reconsideration.

### **The Facts**

On February 28, 1986, a "Contract of Lease" was executed by Jose S. Menchavez, Juan S. Menchavez Sr., Juan S. Menchavez Jr., Rodolfo Menchavez, Simeon Menchavez, Reynaldo Menchavez, Cesar Menchavez, Charito M. Maga, Fe M. Potot, Thelma R. Reroma, Myrna Ybañez, Sonia S. Menchavez, Sarah Villaver, Alma S. Menchavez, and Elma S. Menchavez, as lessors; and Florentino Teves Jr. as lessee. The pertinent portions of the Contract are herein reproduced as follows:

"WHEREAS, the LESSORS are the absolute and lawful co-owners of that area covered by FISHPOND APPLICATION No. VI-1076 of Juan Menchavez, Sr., filed on September 20, 1972, at Fisheries Regional Office No. VII, Cebu City covering an area of 10.0 hectares more or less located at Tabuelan, Cebu;

x x x            x x x            x x x

"NOW, THEREFORE, for and in consideration of the mutual covenant and stipulations hereinafter set forth, the LESSORS and the LESSEE have agreed and hereby agree as follows:

"1. The TERM of this LEASE is FIVE (5) YEARS, from and after the execution of this Contract of Lease, renewable at the OPTION of the LESSORS;

"2. The LESSEE agrees to pay the LESSORS at the residence of JUAN MENCHAVEZ SR., one of the LESSORS herein, the sum of FORTY THOUSAND PESOS (P40,000.00) Philippine Currency, annually x x x;

"3. The LESSORS hereby warrant that the above-described parcel of land is fit and good for the intended use as FISHPOND;

"4. The LESSORS hereby warrant and assure to maintain the LESSEE in the peaceful and adequate enjoyment of the lease for the entire duration of the contract;

"5. The LESSORS hereby further warrant that the LESSEE can and shall enjoy the intended use of the leased premises as FISHPOND FOR THE ENTIRE DURATION OF THE CONTRACT;

"6. The LESSORS hereby warrant that the above-premises is free from all liens and encumbrances, and shall protect the LESSEE of his right of lease over the said premises from any and all claims whatsoever;

"7. Any violation of the terms and conditions herein provided, more particularly the warranties above-mentioned, the parties of this Contract responsible thereof shall pay liquidated damages in the amount of not less than P50,000.00 to the offended party of this Contract; in case the LESSORS violated therefor, they bound themselves jointly and severally

liable to the LESSEE;”

x x x      x x x      x x x.<sup>[5]</sup>

On June 2, 1988, Cebu RTC Sheriffs Gumersindo Gimenez and Arturo Cabigon demolished the fishpond dikes constructed by respondent and delivered possession of the subject property to other parties.<sup>[6]</sup> As a result, he filed a Complaint for damages with application for preliminary attachment against petitioners. In his Complaint, he alleged that the lessors had violated their Contract of Lease, specifically the peaceful and adequate enjoyment of the property for the entire duration of the Contract. He claimed P157,184.40 as consequential damages for the demolition of the fishpond dikes, P395,390.00 as unearned income, and an amount not less than P100,000.00 for rentals paid.<sup>[7]</sup>

Respondent further asserted that the lessors had withheld from him the findings of the trial court in Civil Case No. 510-T, entitled “Eufracia Colongan and Paulino Pamplona v. Juan Menchavez Sr. and Sevillana S. Menchavez.” In that case involving the same property, subject of the lease, the Menchavez spouses were ordered to remove the dikes illegally constructed and to pay damages and attorney’s fees.<sup>[8]</sup>

Petitioners filed a Third Party Complaint against Benny and Elizabeth Allego, Albino Laput, Adrinico Che and Charlemagne Arendain Jr., as agents of Eufracia Colongan and Paulino Pamplona. The third-party defendants maintained that the Complaint filed against them was unfounded. As agents of their elderly parents, they could not be sued in their personal capacity. Thus, they asserted their own counterclaims.<sup>[9]</sup>

After trial on the merits, the RTC ruled thus:

“[The court must resolve the issues one by one.] As to the question of whether the contract of lease between Teves and the [petitioners] is valid, we must look into the present law on the matter of fishponds. And this is Pres. Decree No. 704 which provides in Sec. 24:

‘Lease of fishponds-Public lands available for fishpond development including those earmarked for family-size fishponds and not yet leased prior to November 9, 1972 shall be leased only to qualified persons, associations, cooperatives or corporations, subject to the following conditions.

‘1. The lease shall be for a period of twenty five years (25), renewable for another twenty five years;

‘2. Fifty percent of the area leased shall be developed and be producing in commercial scale within three years and the remaining portion shall be developed and be producing in commercial scale within five years; both periods begin from the execution of the lease contract;

‘3. All areas not fully developed within five years from the date of the execution of the lease contract shall automatically revert to the public domain for disposition of the bureau;

provided that a lessee who failed to develop the area or any portion thereof shall not be permitted to reapply for said area or any portion thereof or any public land under this decree; and/or any portion thereof or any public land under this decree;

'4. No portion of the leased area shall be subleased.'

The Constitution, (Sec. 2 & 3, Art. XII of the 1987 Constitution) states:

'Sec. 2 - All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests, or timber, wild life, flora and fauna and other natural resources are owned by the state.

'Sec. 3 - Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands x x x.'

"As a consequence of these provisions, and the declared public policy of the State under the Regalian Doctrine, the lease contract between Florentino Teves, Jr. and Juan Menchavez Sr. and his family is a patent nullity. Being a patent nullity, [petitioners] could not give any rights to Florentino Teves, Jr. under the principle: 'NEMO DAT QUOD NON HABET' - meaning ONE CANNOT GIVE WHAT HE DOES NOT HAVE, considering that this property in litigation belongs to the State and not to [petitioners]. Therefore, the first issue is resolved in the negative, as the court declares the contract of lease as invalid and void ab-initio.

"On the issue of whether [respondent] and [petitioners] are guilty of mutual fraud, the court rules that the [respondent] and [petitioners] are *in pari-delicto*. As a consequence of this, the court must leave them where they are found. x x x.

x x x      x x x      x x x

"x x x. Why? Because the defendants ought to have known that they cannot lease what does not belong to them for as a matter of fact, they themselves are still applying for a lease of the same property under litigation from the government.

"On the other hand, Florentino Teves, being fully aware that [petitioners were] not yet the owner[s], had assumed the risks and under the principle of 'VOLENTI NON FIT INJURIA NEQUES DOLUS' - He who voluntarily assumes a risk, does not suffer damage[s] thereby. As a consequence, when Teves leased the fishpond area from [petitioners]-who were mere holders or possessors thereof, he took the risk that it may turn out later that his application for lease may not be approved.

"Unfortunately however, even granting that the lease of [petitioners] and

[their] application in 1972 were to be approved, still [they] could not sublease the same. In view therefore of these, the parties must be left in the same situation in which the court finds them, under the principle IN PARI DELICTO NON ORITOR ACTIO, meaning[:] Where both are at fault, no one can found a claim.

"On the third issue of whether the third party defendants are liable for demolishing the dikes pursuant to a writ of execution issued by the lower court[, t]his must be resolved in the negative, that the third party defendants are not liable. First, because the third party defendants are mere agents of Eufracia Colongan and Eufenio Pamplona, who are the ones who should be made liable if at all, and considering that the demolition was pursuant to an order of the court to restore the prevailing party in that Civil Case 510-T, entitled: Eufracia Colongan v. Menchavez.

"After the court has ruled that the contract of lease is null and void ab-initio, there is no right of the [respondent] to protect and therefore[,] there is no basis for questioning the Sheriff's authority to demolish the dikes in order to restore the prevailing party, under the principle VIDETUR NEMO QUISQUAM ID CAPERE QUOD EI NECESSE EST ALII RESTITUERE - He will not be considered as using force who exercise his rights and proceeds by the force of law.

"WHEREFORE, in view of all foregoing [evidence] and considerations, this court hereby renders judgment as follows:

"1. Dismissing the x x x complaint by the [respondent] against the [petitioners];

"2. Dismissing the third party complaint against the third party defendants;

"3. Upholding the counterclaims of the third party defendants against the [petitioners. The petitioners] are hereby required to pay third party defendants the sum of P30,000.00 as moral damages for this clearly unfounded suit;

"4. Requiring the [petitioners] to reimburse the third party defendants the sum of P10,000.00 in the concept of attorney's fees and appearance fees of P300.00 per appearance;

"5. Requiring the [petitioners] to pay to the third party defendants the sum of P10,000.00 as exemplary damages probono publico and litigation expenses including costs, in the sum of P5,000.00."<sup>[10]</sup> (Underscoring in the original)

Respondent elevated the case to the Court of Appeals, where it was docketed as CA-GR CV No. 51144.

### **Ruling of the Court of Appeals**

The CA disagreed with the RTC's finding that petitioners and respondent were *in pari*