

## SEVENTH DIVISION

**[ CA-G.R. CV NO. 83800, August 08, 2006 ]**

**VIRGINIA R. MENDOZA, PLAINTIFF-APPELLANT, VS. GROLIER INTERNATIONAL, INC. DEFENDANT-APPELLEE.**

### DECISION

**COSICO, J.:**

This is an appeal from the decision dated December 12, 2003 of the Regional Trial Court, Branch 101 of Quezon City in Civil Case No. Q-01-44086 dismissing the complaint for damages for breach of contract filed by the lessor against her lessee. The dispositive portion of the aforesaid decision reads<sup>[1]</sup>:

"WHEREFORE, in view of the foregoing, this Court RULES in favor of the Defendant Grolier International Inc. The instant complaint as well as the counterclaim are ORDERED DISMISSED for lack of merit. Defendant is ABSOLVED from liabilities for damages.

SO ORDERED." [Decision, p. 8]

A motion for reconsideration was filed by the plaintiff which was denied in the Order dated April 29, 2004 of the trial court where it ruled<sup>[2]</sup>:

"In the end, we are sorry to say that this case should boil down to questions of credibility; or whose version is more credible and trustworthy.

WHEREFORE, there being no new matters raised in the instant motion which would warrant the reversal of the Decision of this Court dated December 12, 2003, this Court hereby resolves to DENY Plaintiff's Motion for Reconsideration.

SO ORDERED." [Order, p. 2]

Undaunted by the adverse rulings, plaintiff-appellant is now before us assailing the said decision arguing that the trial court erred in finding that she had failed to prove defendant-appellee's breach of contract by a preponderance of evidence as to entitle her to recover damages by reason of such breach.

### **The Facts**

The facts of the case are undisputed.

On May 10, 2001 a complaint for damages was filed by plaintiff-appellant Virginia R. Mendoza against defendant-appellee Grolier International, Inc. ("GROLIER") for the latter's alleged violation of the terms and conditions of the Contract of Lease<sup>[3]</sup>

executed over the first floor of the commercial building known as Virginia Bldg. owned by plaintiff-appellant and located at San Fernando City, La Union. In her complaint, plaintiff-appellant made the following allegations<sup>[4]</sup>:

"3. On May 9, 1991, plaintiff and defendant entered into a Contract of Lease for the lease of the Ground Floor of said Virginia Bldg. to be utilized as business office of the Defendant. x x x

4. Said Contract of Lease was renewed yearly until May 12, 1997 when the said Ground Floor subject of the lease was gutted by fire, as evidence by a Spot Report issued by the Municipal Fire Marshall of then Municipality of San Fernando, La Union x x x

5. Immediately after the occurrence of the fire as above-mentioned, Plaintiff and her staff inspected the gutted place and found out that the fire originated from the inside of the leased premises and was due to the negligence and lack of care of the Defendant and its personnel in violation of the terms and conditions of the Contract of Lease;"

Among other matters, plaintiff-appellant prayed that defendant-appellee be ordered to pay damages in the amounts of: P360,000.00 as actual damages, P100,000.00 as exemplary damages, P100,000.00 as and by way of attorney's fees, and costs of suit.

In Answer<sup>[5]</sup> thereto, GROLIER denied its liability and alleged that the fire department failed to determine the cause of the fire or its origin. Moreover, it averred that it had used the leased premises purely for a commercial purpose and exercised the diligence of a good father of the family in devoting the same according to the use stipulated in the contract.

During the pre-trial<sup>[6]</sup>, the issues submitted for resolution were: For the plaintiff -- (1) Whether or not the defendant breached the Contract of Lease and should be answerable for the damages sustained by the plaintiff as a result of the fire that razed the latter's premises and (2) Whether or not the plaintiff should be entitled to exemplary damages and attorney's fees and costs of suit. For the defendant -- whether or not defendant should be made liable for the fire that gutted the first floor of the building owned by plaintiff. Issues having been joined, trial on the merits thereafter ensued.

Plaintiff-appellant presented five (5) witnesses including herself and documentary evidence<sup>[7]</sup> which included the spot report prepared by the fire department involving the fire incident, while defendant-appellee presented two (2) witnesses and also submitted documentary evidence<sup>[8]</sup>. As synthesized by the trial court, the testimonies of the witnesses are as follows:<sup>[9]</sup>

"Plaintiff presented the following witnesses:

RICARTE DULAY RUIZ testified as follows:

He is a security guard presently employed at Dominion Bus Lines since 1998. Prior to his employment at Dominion Bus Lines he was employed

at Times Transport Inc. from 1989 to 1997 using Virginia Bldg. and surrounding premises as terminal located at Quezon Avenue and Flores St., San Fernando, La Union City. On May 12, 1997 while he was at the office of Times Transit assigned at the Information, recording the arrival of buses at about 5:00 to 5:30 a.m. a driver of a passenger jeepney which passed by gave him a warning sign that there was a fire going on in the office of Grolier. He immediately pulled down the switch of the electricity and called up the Fire Department. The fire lasted for about an hour. Thereafter, the Police Investigator of San Fernando, La Union arrived and checked the place. He was with the Police Investigator when the burned premises was checked and they recovered flat iron, one (1) electric fan, pliers, screw driver and steel saw (lagare). He was also investigated at the San Fernando Police Station where the investigator made a police report.

FO3 OSCAR NATHANIEL DUQUE testified that:

He is a Fire Investigator assigned at the Bureau of Fire Protection in San Fernando City, La Union He prepared the Spot Report dated February 12, 2002 marked Exh. B. On May 12, 1997, at about 5:00 a.m. while he was in their office, a former Security Guard of Times Transit informed their office that Virginia Building is being razed by fire. Together with [the] driver of their truck, SFO2 Reynaldo Cruz and the nose nasal man FO1 Amante Castillo, they immediately responded to the place of the incident and sprayed water at the Virginia Building particularly the Grolier International office and put out the fire. Peeping through the window because the office was closed, they saw the three blades of jalousie window were detached. He also saw that an electric iron was still plugged, he also saw a steel saw, and a tire range at the top of the table. The incident is still under investigation because they are still looking for a lead since Grolier Office transferred to another place. They were after Grolier because it was where the fire started. They took pictures of the plugged electric iron but the pictures kept in their bodega were damaged by a heavy rain. His original spot report kept in their bodega was also damaged.

ORLANDO UNTALASCO testified as follows:

He is a fireman connected with the Bureau of Fire Protection, San Fernando Fire Station, assigned at the Investigation Division. In May 1997, he was assigned as Chief Investigator. He learned of the fire accident at the Virginia Building while he was in his house through a co-worker and he immediately proceeded to the fire scene and arrived twenty (20) minutes after the fire fighting operation. As part of his investigation he gathered physical evidence like the flat iron plugged placed on top of the table with combustible materials like papers, a lagare (pang metal), a hammer, and chisel, screw driver. He observed the jalousies of the window at the southern part of the building were removed and the window grills were jacked. He saw a vault inside the Grolier Offices still closed but there was showing that there was an attempt to open it. He took the statement of the janitor and manager of Grolier. The manager whom he investigated told him that the janitor

stayed for 24 hours in the office. Per his investigation and statement he took from the janitor, the latter admitted that he stayed in the office for 24 hours but when the fire incident happened he was at the Hill One Hotel located at Rizal Avenue, San Fernando City. After he took the statement of employees of Grolier he made a Progress Report with attachments like the physical evidence gathered at the fire scene and the sworn statement of the manager and the janitor of Grolier. His findings stated in his report that there was a crime committed before the fire incident wherein the suspect was the janitor because the latter stays in the office for 24 hours. That he was not able to file [an] arson case because he has no more jurisdiction over the case because he was transferred to another branch of their office. The reason for his findings and conclusion was that there was an attempt to forcibly open the vault (3 feet height and four (4) feet width). The southern part of Grolier's Office was forcibly opened, the jalousies were removed and the grills hacked. The plugged flat iron was placed on top of the table with papers around. Three (3) hours after the fire incident he was able to talk to the janitor in the morning at about 10:00 to 11:00. He could not produce now his Report because the same which was placed in their bodega was damaged by flood. He is aware of the spot report prepared in connection with the fire incident because he also signed the same.

ANGELES ATENDIDO testified as follows:

She is employed with Mencorp Transport System and private secretary to the General Manager. The Grolier Office was a former lessee of Virginia Building but the said office was gutted by fire sometime in 1997 per lease contract between Plaintiff and Defendant, the first contract was in 1991 to May 31, 1997 where Grolier hold office at the ground floor, the said contract was terminated because of the fire incident. The second contract was executed in (sic) June 1, 1997 when the Defendant transferred office at the second floor of the Virginia Building. The incident was given attention only last year because the owner, Virginia Mendoza, was so busy with the labor problems of Times Transportation Company wherein she is a co-owner. Per instruction of Ms. Virginia Mendoza, he contacted the contractor, Mr. Joseph Panson, who made an estimate of the damaged premises captioned Summary of Quotations, Labor and Materials. She also consulted their lawyer, who sent a demand letter dated March 15, 2001 demanding Grolier International to pay for the damages during the fire that gutted the space occupied by it. Grolier, in answer demanded Virginia Mendoza to pay for the damages they suffered. Their lawyer also wrote the Fire Marshall of San Fernando City requesting for the official result of the investigation of the fire which was personally delivered by their Building Administrator Leonila Devijo. A reply from the City Fire Marshal dated March 26, 2001 addressed to Atty. Cesar Brillantes (Exh. H) was received with the Certification by the Fire Marshal of San Fernando City (Exh. I). She is aware of the lease contract between Defendant and Plaintiff. The lease contract, first contract was in 1991 until May 31, 1997. After the fire, the first contract was terminated and Grolier and Mrs. Mendoza executed another lease contract on June 1, 1997, when Defendant transferred office to the second floor of the same Virginia Building. Despite the fire incident that occurred on the first floor,

Plaintiff allowed the Defendant to lease the second floor of the same building.

VIRGINIA MENDOZA testified that:

She is the Plaintiff in the instant case. She entered into a Contract of Lease with Defendant Grolier which occupied its office on the ground floor annex to the main building (almost 110 square meters) which expired on May 16, 1992 renewable yearly. She was informed of the fire that razed her building on May 12, 1997 which housed the terminal buses of Times Transit and Dominion while she was in her house in Quezon City. She proceeded to La Union and arrived there at 5:00 o'clock in the afternoon and inspected the office gutted by fire. The office was very much damaged by fire and saw the electric iron still plugged. She instructed her staff to have a thorough investigation to determine the cause of the fire and to look for the janitor who stays and sleeps in the premises of the burnt office. There is no conclusion as to the investigation made because the staff of Grolier did not go to the Police for investigation. After the fire, Defendant requested another space in the main building with the assurance that they will not allow anybody to sleep in the office. The second lease dated June 1, 1997 x x x lasted for two (2) years after the fire because Defendants transferred to Baguio. During the duration of the two (2) years lease, she discussed with the Defendant about the damages and their liabilities wherein Defendant mentioned that they also incurred damages but their discussion was not settled. Prior to the filing of the instant case, she asked her secretary, Angeles Atendido, to make an estimate of the damages. With respect to the filing of the instant case she agreed to pay her lawyer P100,000.00 attorney's fee and appearance fee of P1,500.00.

Plaintiff rested her case and formally offered her Exhibits A to J.

Defendant presented two (2) witnesses namely: Luzviminda A. Marquez, Area Cashier and Federico Daleon, Comptroller.

LUZVIMINDA MARQUEZ, testified that she is the Area Cashier of Defendant assigned at San Fernando, La Union with office located at the first floor of Virginia Building, San Fernando City, La Union. She is in charge of everyday collections and deposits to the bank and if the bank is already closed, she kept the collections in their vault inside the office. The building where they were holding office is more or less 20 years old, its floorings has cracks and chipping off, and the water was dripping the ceiling during rainy days and they use pails to drip the water that enter the office, the flush of the toilet are no longer functioning. The door is made of glass and the jalousies are clear. On May 12, 1991 at about 6:30 to 7:00 a. m., she was informed by their messenger by the name of Porfirio Campos that their office was gutted by fire. She went to the office and saw the burned office. She saw her drawer as that of her secretary were opened and everything were raged by fire like calculators, fax machines, tables and typewriters. She noticed that the vault and the grills were sawn (nilagare). Her belongings and her money inside her drawer were lost. She proceeded to the Office of the Fire Department