

THIRD DIVISION

[G.R. No. 192885, July 04, 2012]

**SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS.
HONORABLE COURT OF APPEALS AND SUBIC INTERNATIONAL
HOTEL CORPORATION, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is to resolve the petition for *certiorari* under Rule 65 of the Rules of Court, dated August 2, 2010, of petitioner Subic Bay Metropolitan Authority (SBMA), seeking to reverse and set aside the Decision^[1] dated January 21, 2010 of the Court of Appeals (CA), which affirmed the Decision^[2] dated March 22, 2006 of the Regional Trial Court (RTC), Branch 74, Olongapo City.

The antecedent facts, as found by the RTC and the CA follow.

Petitioner SBMA is a government agency organized and established under Republic Act (R.A.) No. 7227 to develop the Subic Special Economic and Freeport Zone into a self-sustaining industrial, commercial and investment center. On the other hand, private respondent Subic International Hotel, Corporation (private respondent) is one of the locators of the Freeport Zone.^[3]

On December 1, 1992 and June 8, 1993, petitioner and private respondent entered into two separate lease agreements whereby the private respondent undertook to help petitioner in the development and rehabilitation of the Subic Naval Base by taking over abandoned barracks and constructing hotel and restaurant facilities that will accommodate the needs of the growing number of businessmen and tourists in the Freeport Zone. The two agreements were later consolidated into a Lease and Development Agreement.^[4] Section 6.1 of the said Agreement stipulated for the payment of service fees, which pertain to the proportionate share of the private respondent in the costs that the petitioner may incur in the provision of services, maintenance and operation of common facilities computed at \$0.10 per square meter of the gross land area of the leased property.

Subsequently, upon a conduct of lease compliance audit, the SBMA Internal Audit Department found out that private respondent and other Freeport locators have not been charged for service fees. Thus, on August 25, 2005, petitioner issued private respondent a billing statement for accrued service fees in the amount of Two Hundred Sixty-Five Thousand Fifty-Three Dollars and Fifty Cents (\$265,053.50). This led to a series of conciliation and clarificatory meetings between the parties. Consequently, the SBMA Board decided to waive the payment of future service fees and advised private respondent to lodge its protest for the payment of accumulated service fees to the accounting department.

Private respondent then formally requested for the reconsideration of the billing for accumulated service fees alleging that the services for which the billing was supposed to be based were not actually provided by petitioner but by independent contractors.

On the other hand, petitioner clarified that service fees also include other services which indirectly redound to the benefit of the tenants. Petitioner reasoned that it has a clear legal right to impose service fees under Section 13 (a) (3) of R.A. No. 7227, which does not specifically pertain to garbage collection, electricity, telephone, and water service alone but to other services such as fire protection, maintenance of common areas, police protection, and other services of similar nature.

Thus, private respondent filed a Petition for Declaratory Relief with the RTC, Branch 74, Olongapo City, praying for the determination by the Court whether petitioner has the right to collect for the accumulated service fees from the private respondent. The parties submitted a Joint Stipulation of Facts and filed a Motion for Summary Judgment.^[5]

The RTC rendered its Decision dated March 22, 2006 in favor of the private respondent and declared that petitioner has no legal right under Section 6.3 of the Lease and Development Agreement to enforce the collection of previous billings for fixed service fees. The dispositive portion of the decision is as follows:

WHEREFORE, in view of the foregoing considerations, the instant Motion for Summary Judgment is granted and this Decision is hereby rendered on the basis of the Joint Stipulation of Facts and applicable laws and jurisprudence declaring that respondent Subic Bay Metropolitan Authority has no legal right under Section 6.3 of the Lease and Development Agreement dated 24 November 1996, to enforce the collection of previous billings for Fixed Service Fees at the rate of US\$0.10 per square meter per month of the leased property covering the period from 01 December 1996 up to 08 February 2001 in the total amount of US\$307,874.04.

SO DECIDED.^[6]

The motion for reconsideration was denied in an Order^[7] dated May 31, 2006. Aggrieved, petitioner appealed to the CA, however, the latter, in its Decision dated January 21, 2010, affirmed the March 22, 2006 decision of the RTC, thus:

WHEREFORE, the appeal is DISMISSED. The Decision dated March 22, 2006 of the RTC, Branch 74, Olongapo City, in Civil Case No. 137-0-04, is AFFIRMED.

SO ORDERED.^[8]

According to the CA, the records show that petitioner did not actually provide most

of the services enumerated in the Lease and Development Agreement and that the obligation involved in the agreement was reciprocal in nature; therefore, private respondent's obligation to pay was dependent upon petitioner's performance of its reciprocal duty to provide the agreed service, and since petitioner failed to perform its part of the deal, it cannot exact compliance from private respondent of its duty to pay.

A motion for reconsideration was filed, but it was denied. Hence, the present petition.

This Court finds this petition unmeritorious.

The core of the issue is the entitlement of SBMA to Service Fees as contained in the Lease and Development Agreement. Sections 6.1, 6.2 and 6.3 of the said Agreement provide that:

SECTION 6. SERVICE FEES

6.1 Definition. Tenant, its Subsidiaries, assignees, transferees or operators shall, for the entire Term of this Lease, and without any set-off, counterclaim or deduction therefrom, pay or cause to be paid, to Landlord as "Additional Rent," its proportional share (based on the Gross Land Area of the Property) of (i) all costs which Landlord may incur in providing services or in maintaining and operating facilities which directly or indirectly benefit or serve the Property or Tenant or any of its Subsidiaries, assignees, transferees or operators, and (ii) any other similar fees or charges assessed on a non-discriminatory basis. Said costs shall be referred herein as "Service Fees" and are hereby defined to include but not be limited to a proportional share of the following costs incurred by Landlord: water, electricity, gas and telephone service; garbage removal; security; police protection; fire protection; insurance; landscaping; cost of maintaining common areas; public services befitting SBF investors generally; janitorial, sanitation and cleaning services; fees for professional services; charges under maintenance and service contracts; all maintenance and repair costs; any equipment rental; depreciation of the cost of capital improvements made to reduce Service Fees or limit increases therein; and any and all other costs of operation, whether ordinary or extraordinary. An invoice or certificate for service fees or other charges delivered by Landlord to Tenant shall be conclusive as to the amount of any such fees or charges payable by Tenant if no protest challenging the basis or amount thereof is filed with Landlord within five (5) days from receipt of such invoice or certificate. Notwithstanding any such protest, Tenant shall pay the amount reflected on such invoice or certificate pending resolution of such protest.

6.2 Estimated Service Fees. As frequently as Landlord shall deem appropriate, Landlord may give Tenant notice of Landlord's estimate of Service Fees for the then – current fiscal year ("Estimated Service Fees). Tenant shall pay throughout the Term, as Additional Rent hereunder, together with any Base Rent payment due, such instalments of Estimated Service Fees as and when Landlord may reasonably require. The amount