

THIRD DIVISION

[G.R. No. 151168, August 25, 2010]

**CEBU AUTOMETIC MOTORS, INC. AND TIRSO UYTENGUSU III,
PETITIONERS, VS. GENERAL MILLING CORPORATION,
RESPONDENT.**

D E C I S I O N

BRION, J.:

We resolve the petition filed by Cebu Autometric Motors, Inc. (*CAMI*) to assail the decision^[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 64363. The *CA* decision:

- a) reversed and set aside the decision of the Regional Trial Court of Cebu, Branch 16 (*RTC*) in Civil Case No. CEB-25804 dismissing respondent General Milling Corporation's (*GMC*) unlawful detainer complaint against *CAMI*;^[2] and
- b) reinstated the decision of the Municipal Trial Court in Cities (*MTCC*) in Civil Case no. R-41923^[3] ordering: *CAMI* to vacate the subject property; and *CAMI* and Tirso Uytengsu III (*Uytengsu*) to pay *GMC* actual damages in the amount of P20,000.00 a month from the date of demand until property has been vacated, as well as P50,000.00 for attorney's fees.

FACTUAL ANTECEDENTS

GMC, a domestic corporation, is the registered owner of the *GMC Plaza Complex*, a commercial building on Legaspi Extension corner McArthur Boulevard, Cebu City. On February 2, 1998, *GMC*, represented by its General Manager, Luis Calalang Jr. (*Calalang*), entered into a contract with *CAMI*, a domestic corporation, for the lease of a 2,906 square meter commercial space within *GMC*'s building (*leased premises*).

The lease contract was for a period of twenty (20) years, with the monthly rental fixed at P10,000.00. The contract further stipulated that the property shall be used exclusively by *CAMI* as a garage and repair shop for vehicles,^[4] and imposed upon *CAMI* the following terms and conditions:

C. The LESSEE shall upon the signing of this contract immediately deposit with the LESSOR the following amounts:

- a. The sum of PESOS: - TEN THOUSAND & 00/100 (P10,000.00) inclusive of VAT Philippine currency, to be applied as rental for the last month;
- b. The sum PESOS - TEN THOUSAND & 00/100 - (P10,000.00) as guarantee deposit to defray the cost of

the repairs necessary to keep the leased premises in a good state of repair and to pay the LESSEE'S unpaid bills from the various utility services in the leased premises; that this amount shall be refundable, if upon the termination of this contract, the leased premises are in good state of repair and the various utility bills have been paid.

x x x x

H. The LESSEE shall not place or install any signboard, billboard, neon lights, or other form of advertising signs on the leased premises or on any part thereof, except upon the prior written consent of the LESSOR.

x x x x

M. Finally, the failure on the part of the LESSOR to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that said LESSOR may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants herein contained, unless expressed in writing and signed by the LESSOR or its duly authorized representative.^[5]

According to GMC, CAMI violated the provisions of the lease contract when: a) CAMI subleased a portion of the leased premises without securing GMC's prior written consent; b) CAMI introduced improvements to the leased premises without securing GMC's consent; and c) CAMI did not deliver the required advance rental and deposit to GMC upon the execution of the lease contract.

On June 11, 1999, GMC sent CAMI a letter informing the latter that it was terminating the lease contract and demanding that CAMI vacate the premises and settle all its unpaid accounts before the end of that month.

On July 7, 1999, GMC filed a complaint for unlawful detainer with the MTCC against CAMI, asserting that it terminated the lease contract on June 11, 1999 because CAMI violated the terms of the contract and continued to do so despite GMC's repeated demands and reminders for compliance; and that CAMI refused to vacate the leased premises. GMC also impleaded Uytengsu, the General Manager of CAMI, in his official and personal capacities.

In response, CAMI denied that it had subleased any portion of the leased premises. On the improvements allegedly introduced without GMC's consent, CAMI explained that these were introduced prior to the execution of the present lease contract; in fact, these improvements were made with GMC's knowledge and were the reason why GMC decided to enter into the present lease contract with CAMI for 20 years at the low rental of only P10,000.00 a month. On its alleged failure to deliver the advance rental and deposit, CAMI pointed out that Calalang, GMC's representative, had verbally waived this requirement. Moreover, CAMI contended that a party is considered in default only if it fails to comply with the demand to observe the terms and conditions of the contract. Since CAMI immediately deposited the amount of

P20,000.00 with the court as advance rental and deposit after it learned of the unlawful detainer complaint, it could not be considered in default. Consequently, CAMI posits that it did not violate any of the provisions of the lease contract, and GMC had no right to terminate the lease contract and to demand CAMI's ejectment from the leased premises.

On July 5, 2000, the MTCC rendered its decision in favor of GMC. The dispositive portion of its ruling reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [GMC] and against the defendant [CAMI], to wit:

1. Ordering the defendants and all other person (sic) staying in the premises of the plaintiff to vacate the property and remove all their temporary structure therein;
2. Ordering the defendants to pay plaintiff compensatory damages in the amount of P20,000.00 a month from date (sic) demand until defendants vacate plaintiff property;
3. Ordering the defendants to pay plaintiff Attorney's Fees in the amount of P50,000.00;
4. Ordering the defendants to pay the costs.

SO ORDERED.

The RTC reversed the MTCC decision and dismissed GMC's complaint after finding that CAMI had not violated the terms and conditions of the lease contract. The RTC learned that Calalang had waived payment of the advance rental and deposit, and had given his consent to the introduction of improvements, signboards and alterations on the leased premises. The RTC also held that CAMI did not sublease the premises.

GMC sought relief from the RTC decision through a petition for review with the CA. GMC claimed that Calalang's waiver of the advance rental and deposit was void since it was not in writing. In response, CAMI questioned whether GMC had complied with the requisites of Section 2, Rule 70 of the Rules of Court prior to the filing of the unlawful detainer complaint - *an issue that, according to GMC, was raised for the first time before the CA.*

In the assailed September 28, 2001 decision, the CA reversed the RTC decision and held that even though the advance rental and deposit payments could be waived under the contract, the waiver had to be in writing and signed by a duly authorized representative of GMC in order to be effective. Since Calalang's waiver was not contained in a written document, it could not bind GMC.

As to the contention that GMC failed to comply with the jurisdictional requirement found in Section 2, Rule 70 of the Rules of Court, the CA held that such a belated claim could no longer be entertained at that late stage of the proceedings. Since

CAMI freely litigated on the issues presented by GMC before the lower courts without raising this issue, it cannot now raise the issue on the basis of estoppel.

THE PETITION

CAMI now comes to this Court *via* a petition for review on *certiorari*,^[6] claiming that the CA committed reversible error in its September 28, 2001 decision and November 22, 2001 resolution.

First, CAMI contends that the demand letter sent by GMC merely stated that it expected CAMI to vacate the premises and pay all its unsettled accounts by the end of June 1999; the letter did not demand compliance with the terms of the contract. Thus, CAMI could not be considered in default and GMC had no cause to terminate the lease contract. The defective demand letter also failed to comply with the demand required by Section 2, Rule 70 of the Rules of Court; pursuant to *Arquelada v. Philippine Veterans Bank*^[7] - which held that the demand from the lessor to pay or to comply with the conditions of the lease and to vacate the premises must be alleged in the complaint for unlawful detainer for the MTCC to acquire jurisdiction over the case - the MTCC thus failed to acquire jurisdiction over GMC's complaint against it.

Next, CAMI assails the CA interpretation of paragraph M of the lease contract.^[8] According to CAMI, paragraph M only applies when the waiver refers to the right of GMC to take action for any violation of the terms and conditions of the contract. Where the waiver relates to the performance of the term or condition, such as waiver of the payment of advance rental and deposit, the waiver does not need to be in writing.

Last, CAMI questions the reinstatement of the MTCC decision, which ordered CAMI and Uytengsu to pay for actual damages to GMC in the amount of P20,000.00 per month from the time of demand until CAMI actually vacated the property, and attorney's fees in the amount of P50,000. CAMI assails the award of damages for having no legal or factual basis.

GMC, on the other hand, contends that CAMI never raised the issue of GMC's lack of demand before either the MTCC or the RTC as one of its defenses; instead, this issue, as well as the corresponding issue of the MTCC's lack of jurisdiction, was raised for the first time on appeal before the CA. GMC also reiterates the CA's ruling that any waiver of the lease contract's terms and conditions must be in writing in order to be effective. Finally, GMC dismisses CAMI's questions on the inclusion of Uytengsu, as well as the award of actual damages and attorney's fees, for not having been raised before the lower courts.

THE COURT'S RULING

We resolve to grant the petition.

Petition raises factual questions

In petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised and passed upon by this Court. As in any

general rule, however, certain exceptions may exist.^[9] In the present case, we are asked to either uphold GMC's unlawful detainer complaint or dismiss it outright under a situation where the findings of facts of the trial court and the appellate court conflict with each other, which is one of the recognized exceptions to the requirement that Rule 45 petitions deal only with questions of law. If necessary, therefore, we can examine the evidence on record in this case and determine the truth or falsity of the parties' submissions and allegations.

On the issue of demand

GMC claims that CAMI belatedly raised the issue of lack of demand. On the other hand, CAMI contends in its *Motion to Admit Reply*^[10] that it raised this defense as early as its *Answer* before the MTCC.

We agree with CAMI. The MTCC decision, which quoted CAMI's *Answer* extensively, clearly shows that *CAMI stated that it will be in default with respect to the advance rental and deposit only after GMC has made a demand for the payment*. CAMI also stated that it had already deposited the advance rental and deposit with the Clerk of Court of the MTCC. Lastly, *CAMI denied GMC's claim in its complaint that a demand had been made*.^[11] These statements, taken together, clearly belie GMC's claim that CAMI never raised the lack of demand as an issue before the lower court.

Another issue raised, relating to demand, is whether GMC sent CAMI the required demand letter. Invoking Article 1169 of the Civil Code,^[12] CAMI principally contends that it could not be considered in default because GMC never sent a proper demand letter.

CAMI, in invoking Article 1169, apparently overlooked that what is involved is not a mere *mora* or delay in the performance of a generic obligation to give or to do that would eventually lead to the remedy of rescission or specific performance. What is involved in the case is a contract of lease and the twin remedies of rescission and judicial ejectment after either the failure to pay rent or to comply with the conditions of the lease. This situation calls for the application, not of Article 1169 of the Civil Code but, of Article 1673 in relation to Section 2, Rule 70 of the Rules of Court. Article 1673 states:

Article 1673. The lessor may **judicially eject** the lessee for any of the following causes:

x x x x

(3) Violation of any of the conditions agreed upon in the contract; xxx

Based on this provision, a lessor may judicially eject (and thereby likewise rescind the contract of lease) the lessee if the latter violates any of the conditions agreed upon in the lease contract. Implemented in accordance with Section 2, Rule 70, *the lessor is not required to first bring an action for rescission, but may ask the court to do so and simultaneously seek the ejectment of the lessee in a single action for*