

## THIRD DIVISION

[ G.R. NO. 169656, October 11, 2007 ]

**FELSAN REALTY & DEVELOPMENT CORPORATION, PETITIONER,  
VS. COMMONWEALTH OF AUSTRALIA, RESPONDENT.**

### DECISION

**NACHURA, J.:**

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 69475, dated December 2, 2004, and Resolution dated September 13, 2005 denying the motion for reconsideration of the said decision.

Petitioner Felsan Realty & Development Corporation is the owner of a three-storey duplex residential house located at San Lorenzo Village, Makati

City. On February 25, 1997, respondent Commonwealth of Australia entered into a contract of lease over the said property with the petitioner. The lease was for two years from February 22, 1997 until February 21, 1999, and the agreed monthly rental was P100,000.00. The respondent paid P200,000.00 as two months security deposit, and P2,400,000.00 as advance rentals for the entire duration of the lease.

On November 4, 1997, at around 2:30 a.m., fire broke out at the ground floor of the leased premises which destroyed a major portion of the house. According to the Fire Investigation Report of the Bureau of Fire Protection, the cause of the fire was "[a]ccidental due to overheated electric fan that produce[d] intense heat/sparks and subsequently ignited the combustible materials thereat and burst into flame."<sup>[2]</sup>

On November 21, 1997, the respondent informed the petitioner that, as a result of the fire, the property has become uninhabitable and unsuitable for living. It averred that the appraisal made by its Facilities Manager indicated that it would take three months to complete the restoration of the premises and that the alternate property offered was not suitable. The respondent then demanded the pre-termination of the lease contract effective November 4, 1997, and reimbursement of the advance rentals and security deposit.<sup>[3]</sup>

The petitioner rejected the respondent's demand to terminate the contract on the ground that the fire was caused by the gross negligence of the occupants of the leased property based on the investigation report of the Bureau of Fire Protection of Makati City which showed that the fire was caused by an "overheated fan." Instead, the petitioner offered to refund the balance, if any, of the advance rentals and security deposit from the time it is able to find a new lessee until February 22, 1999.

<sup>[4]</sup>

On May 29, 1998, the petitioner informed the respondent of the completion of the repairs of the premises and asked whether the latter will reoccupy the same.<sup>[5]</sup> The

respondent, however, replied that it was no longer interested in reoccupying the subject property and reiterated its request for the refund of the advance rentals paid. Consequently, the petitioner informed the respondent that it has advertised the property as available for lease and that it was willing to refund the balance, if any, of the advance rentals and security deposit from the time of the new lease up to and including February 22, 1999, less the amount spent for the repairs of the damage caused to the property.<sup>[6]</sup>

The respondent did not agree. Thus, on November 13, 1998, the respondent filed a complaint against the petitioner claiming that under Section 13 of the Contract of Lease, it is entitled to the reimbursement of P1,556,666.67 as balance of the prepaid rental. It also prayed for exemplary damages, attorney's fees and the costs of suit.

In its Answer with Counterclaim, the petitioner averred that the respondent did not comply with the mandatory requirement under Article 1358 of the Civil Code of the Philippines that a pre-termination or rescission of a contract of lease over real property shall appear in a public document. It claimed that the respondent is not entitled to reimbursement because the subject property was damaged by fire due to its negligence.

During trial, Edgardo A. Nogales, who was the Chief of the Investigation and Intelligence Unit of Fire Station 2, Fire District III, Makati City, at the time of the fire, testified that they determined the cause of the fire as accidental in nature because it was not intentionally motivated. According to him, the fire was caused by the overheating of an electric fan which was plugged in but actually turned off. He said that there was no shred of evidence tending to show that the fire was anything but accidental.<sup>[7]</sup>

On the other hand, Reynaldo D. Gonzales, the Fire and Arson Investigator assigned to the case, testified that, based on the path of the fire, the probable area where the fire started was the maids' quarters on the ground floor of the building. He narrated that, according to the account of the firemen who arrived first at the scene, there was no one inside the maids' quarter when the fire broke out because they had to use force to open it. They reported to Gonzales that the electric fan was plugged into a wall socket and in the "on" position when they entered the room. Gonzales stated that although he was not personally present when the firemen entered the maids' quarters after forcibly opening it, he conducted an ocular inspection thereon. He noted that the source of ignition could only be the burnt electric fan which was still plugged in.<sup>[8]</sup>

On October 23, 2000, the Regional Trial Court (RTC) rendered a Decision upholding the right of the respondent to pre-terminate the contract of lease. According to the trial court, the respondent successfully overturned the presumption of negligence against it through the testimonies of the fire officers that the cause of the fire was accidental. It opined that the overheating of the electric fan which, although plugged in, was not switched on, could not have been reasonably expected or foreseen by occupants of the leased premises. The trial court further declared that the pre-termination of the Contract of Lease need not appear in a public instrument because the requirement under Article 1358<sup>[9]</sup> of the Civil Code is not mandatory but a mere formality for the convenience of the parties. Moreover, it awarded attorney's fees to

the respondent since the latter was constrained to go to court to protect its interests. The dispositive portion of the Decision reads:

PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff declaring the pre-termination of the Contract of Lease effective 4 November 1997 and ordering defendant to pay the following:

1. PhP1,556,666.67 representing the balance of the advance rentals;
- [2.] PhP200,000.00 representing the two (2) months security deposit;
- [3.] PhP100,000.00 as and for attorney's fees; and
- [4.] The costs.

SO ORDERED.<sup>[10]</sup>

On December 2, 2004, the CA rendered a Decision affirming the RTC decision.<sup>[11]</sup> At the outset, the appellate court agreed with the petitioner that the terms "accident" and "accidental" do not exclude, without qualification, events resulting in damage or loss due to the fault, recklessness or negligence of third parties. However, in view of the conflicting testimonies of the fire investigators, it held that it cannot reasonably conclude that the accident was attended by negligence or fault. It, therefore, sustained the trial court's findings that the respondent cannot be held liable since the petitioner failed to establish by preponderance of evidence the respondent's negligence. It agreed with the trial court that non-compliance with the requirement under Article 1358 of the Civil Code does not affect the validity or enforceability of the rescission of the contract as between the parties.

On September 13, 2005, the CA likewise denied the petitioner's motion for reconsideration.

In this petition for review, the petitioner ascribes the following errors to the CA:

A.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN PLACING ON PETITIONER FELSAN THE BURDEN OF PROVING NEGLIGENCE AS CAUSE OF THE FIRE, IN CONTRAVENTION OF ARTICLES 1667 AND 1668 OF THE NEW CIVIL CODE WHICH PLACES THE BURDEN OF PROVING NON-NEGLIGENCE ON THE LESSEE, RESPONDENT COA [COMMONWEALTH OF AUSTRALIA] IN THE INSTANT CASE.

B.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN EQUATING "ACCIDENTAL" WITH LACK OF NEGLIGENCE ON THE PART OF COA.

C.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN HOLDING THAT THERE WAS A CONFLICT OF TESTIMONIES OF SFO4 NOGALES, ON THE ONE HAND, AND OF FO3 GONZALES, ON THE OTHER HAND, AS TO THE "ON" OR "OFF" POSITION OF THE

OVERHEATED ELECTRIC FAN, CONSIDERING THAT THE FORMER IS HEARSAY AND WORTHLESS WHILE THE LATTER IS COMPETENT AND POSITIVE.

D.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN UPHOLDING THE SPECULATION OF THE TRIAL COURT THAT THE CAUSE OF THE FIRE COULD HAVE BEEN FAULTY WIRING EITHER OF THE FAN ITSELF OR THE ELECTRICAL SOCKET, CONSIDERING THAT CONJECTURE IS NOT FACT.

E.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN UPHOLDING THAT IN THE FACE OF SUPPOSED EQUIPOISE OF EVIDENCE AND/OR CONJECTURE, JUDGMENT SHOULD NEVERTHELESS BE IN FAVOR OF PETITIONER FELSAN.

F.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN ILLOGICALLY TAKING AGAINST PETITIONER FELSAN ITS RELIANCE ON THE CERTIFICATION OF SFO4 NOGALES THAT THE FIRE WAS ACCIDENTAL, FOR THE PURPOSE OF RECOVERING INDEMNITY FROM THE INSURER, AND THUS ERRONEOUSLY APPLYING THE LAW AND PRINCIPLE OF ESTOPPEL AGAINST FELSAN.

G.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN HOLDING THAT RESPONDENT COA HAS THE RIGHT TO AUTOMATIC RESCISSION OF THE LEASE CONTRACT AND TO PAYMENT OF THE BALANCE OF UNPAID RENTALS (P1,556,666.67) AND TWO MONTHS SECURITY DEPOSIT (P200,000.00), AS WELL AS ATTORNEY'S FEES (P100,000.00).

H.

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN AFFIRMING THE DECISION OF THE TRIAL COURT.<sup>[12]</sup>

The petitioner maintains that the respondent does not have the right to pre-terminate the contract and to be reimbursed for the advance rentals since the leased property was damaged due to the latter's fault or negligence. The petitioner contends that the CA erred in placing on it, the lessor, the burden of proof to establish that the respondent-lessee was negligent, considering that under Article 1667 of the Civil Code, the lessee is presumed to be negligent; hence, the latter bears the burden to prove that it was not negligent. It argues that the evidence proffered by the respondent was not sufficient to overturn the presumption of negligence.