

SECOND DIVISION

[G.R. No. 175687, November 28, 2007]

**MATERRCO, INC., PETITIONER, VS. FIRST LANDLINK ASIA
DEVELOPMENT CORPORATION, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

On appeal by certiorari is the September 15, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 94751 dismissing the appeal filed by petitioner Materrco, Inc. (MATERRCO) from the judgment of the Regional Trial Court (RTC) of Pasay City, which affirmed *in toto* the Decision of the Metropolitan Trial Court (MeTC) in the ejectment case filed against it by respondent First Landlink Asia Development Corporation (FLADC).

Respondent FLADC is the owner and operator of "Masagana Citimall" located at Taft Avenue, Pasay City. Petitioner MATERRCO was the owner and operator of "Masagana Department Store and Supermarket" which occupied around half of the Masagana Citimall's floor space that was available for lease.

FLADC and MATERRCO used to be wholly owned and controlled by David S. Tiu and Cely Y. Tiu (Tius). When **FLADC**, however, ran into financial difficulties, the Tius invited the group of Ong Yong, Juanita Tan Ong, Wilson T. Ong, Anna L. Ong, William T. Ong and Julia Ong Alonzo (the Ongs) to invest therein in exchange for one-half (½) of the outstanding capital stock of FLADC and 6 of the 11 seats in its Board of Directors.

The details of the Pre-Subscription Agreement entered into by the Ongs and Tius on August 15, 1994, and the break down of their erstwhile harmonious business relations not long after its execution, became the subject of another case earlier decided by this Court - *Ong Yong v. Tiu*^[1] - the factual antecedents of which are partly reproduced hereunder as a necessary backdrop to the present case, *viz*:

x x x Under the Pre-Subscription Agreement they entered into, the Ongs and the Tius agreed to maintain equal shareholdings in FLADC: the Ongs were to subscribe to 1,000,000 shares at a par value of P100.00 each while the Tius were to subscribe to an additional 549,800 shares at P100.00 each in addition to their already existing subscription of 450,200 shares. Furthermore, they agreed that the Tius were entitled to nominate the Vice-President and the Treasurer plus five directors while the Ongs were entitled to nominate the President, the Secretary and six directors (including the chairman) to the board of directors of FLADC. Moreover, the Ongs were given the right to manage and operate the mall.

Accordingly, the Ongs paid P100 million in cash for their subscription to 1,000,000 shares of stock while the Tius committed to contribute to

FLADC a four-storey building and two parcels of land respectively valued at P20 million (for 200,000 shares), P30 million (for 300,000 shares) and P49.8 million (for 49,800 shares) to cover their additional 549,800 stock subscription therein. The Ongs paid in another P70 million to FLADC and P20 million to the Tius over and above their P100 million investment, the total sum of which (P190 million) was used to settle the P190 million mortgage indebtedness of FLADC to PNB.

The business harmony between the Ongs and the Tius in FLADC, however, was shortlived because the Tius, on February 23, 1996, rescinded the Pre-Subscription Agreement. The Tius accused the Ongs of (1) refusing to credit to them the FLADC shares covering their real property contributions; (2) preventing David S. Tiu and Cely Y. Tiu from assuming the positions of and performing their duties as Vice-President and Treasurer, respectively, and (3) refusing to give them the office spaces agreed upon.

x x x x

The controversy finally came to a head when [SEC Case No. 02-96-5269] was commenced by the Tius on February 27, 1996 at the Securities and Exchange Commission (SEC), seeking confirmation of their rescission of the Pre-Subscription Agreement. x x x^[2]

It was in light of the foregoing that FLADC, now under the control of the Ongs, filed with the MeTC of Pasay City a complaint for ejectment against MATERRCO on November 29, 1996, docketed as Civil Case No. 987-96, from which the present petition originated. The complaint sought to eject MATERRCO's "Masagana Department Store and Supermarket" from the premises of Masagana Citimall and also from the 150 square meter (sq. m.) lot covered by TCT No. 135325 in the name of FLADC which was leased to MATERRCO.

The complaint for ejectment filed by FLADC alleged that in September 1994, FLADC as lessor and MATERRCO as lessee entered into a **verbal** contract of lease over several commercial spaces in Masagana Citimall; that a written contract of lease was forwarded by FLADC to MATERRCO but the same was never returned; that the parties agreed, *inter*

alia, on rental rates,^[3] leased areas, "aircon" and Common Usage Area (CUSA) charges; that MATERRCO also leased the 150-sq. m. parcel of land owned by FLADC beginning March 1995, at the rate of P10,000.00 a month; that FLADC had made several demands for MATERRCO to pay its back rentals, electricity, water and "aircon" bills and CUSA charges but the same were repeatedly ignored; and that FLADC through counsel, by letter dated September 9, 1996, demanded that MATERRCO vacate the leased premises and pay its back rentals and bills.

The complaint prayed that judgment be rendered as follows:

1. Ordering the defendant, or any person claiming right under it, to immediately vacate the leased premises;
2. Ordering the defendant to pay the plaintiff the following amounts:

- a. P18,591,330.42 representing back rentals, electricity, water and aircon bills and CUSA charges as of November 1996.
- b. starting December 1996 until the leased premises is fully vacated, the following amounts:
 - i) P200.00 per sq.m. of the 8,617.40 sq.m. space leased by defendant, or a total of P1,895,828.00 as monthly rental or reasonable compensation for the use of the leased premises, plus ten percent (10%) value-added tax;
 - ii) P10,000.00 a month for the 150 sq. m. land leased by defendant as monthly rental or reasonable compensation for the use of the leased premises, plus ten percent (10%) value-added tax;
 - iii) P60.00 per sq.m. of the 8,617.40 sq. m. space leased by defendant, or a total of P517,044.00 as CUSA charges;
 - iv) P60.00 per sq.m. of the 8,617.40 sq. m. space leased by defendant, or a total of P517,044.00 as aircon charges;
 - v) An amount depending on the proportionate share in the consumption of electricity and water by defendant starting November 1996 until the leased premises is fully vacated.
- c. P800,000.00 as and for attorney's fees.
- d. Costs of the suit.^[4]

Other reliefs just and equitable under the premises were also prayed for.

In its Answer, MATERRCO alleged that the verbal lease agreement between it and FLADC was reduced to writing through the Contract of Lease dated December 16, 1993; that the rentals and additional charges alleged by FLADC did not correspond to those agreed upon in the written contract;^[5] that MATERRCO had no unpaid accounts since all of its payments were in accord with the **written** contract; that the 150 sq. m. lot still belonged to the Tius, for it was supposed to be a property contribution of the Tius to FLADC in return for shares of stock, which FLADC had yet to issue; and that FLADC had no right to eject MATERRCO from either the mall or the lot.

In the meantime, SEC Case No. 02-96-5269, mentioned in the above-quoted factual backdrop to the present case wherein the validity of the Tius' rescission of the Pre-Subscription Agreement was at issue, had been elevated to this Court by way of petition for review in the priorly mentioned case of *Ong Yong v. Tiu*.^[6] Pending the resolution of the said petition by this Court, the MeTC suspended the ejectment proceedings.

By Resolution of April 20, 2003 in the *Ong Yong* case, this Court ruled against the Tius, finding their rescission of the Pre-Subscription Agreement invalid. The MeTC thereafter proceeded with the ejectment case.

Finding that there were "serious doubts on the authenticity of the contract of lease" presented by MATERRCO, the MeTC, by Decision dated October 19, 2005, held that there was no written contract of lease between the parties and that the subject lease was on a verbal month-to-month basis pursuant to Article 1687 of the Civil Code.^[7] The MeTC, moreover, took note of the September 9, 1996 letter of FLADC terminating the lease and demanding payment of MATERRCO's unpaid account. And it held that it may intervene in fixing the rent "as a matter of fairness and equity."^[8]

The MeTC thus ruled against MATERRCO, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff [FLADC] and against the defendant [MATERRCO] as follows:

1. Ordering the defendant and all persons claiming authority under it to peaceably vacate the leased premises subject of this action;
2. Ordering the defendant to pay plaintiff the amount of Php778,036.98 representing the rental arrearages for the period starting from the filing of the complaint on November 1996 to December 1996 plus legal interest;
3. Ordering the defendant to pay plaintiff the amount of Php13,005,665.88 representing the rental arrearages for the period January 1997 to December 1997 plus legal interest;
4. Ordering the defendant to pay plaintiff the amount of Php15,789,905.64 representing the rental arrearages for the period January 1998 to December 1998 plus legal interest;
5. Ordering the defendant to pay plaintiff the amount of Php17,274,109.16 representing the rental arrearages for the period January 1999 to December 1999 plus legal interest;
6. Ordering the defendant to pay plaintiff the amount of Php20,307,293.16 representing the rental arrearages for the period January 2000 to December 2000 plus legal interest;
7. Ordering the defendant to pay plaintiff the amount of Php22,582,181.16 representing the rental arrearages for the period January 2001 to December 2001 plus legal interest;
8. Ordering the defendant to pay plaintiff the amount of Php20,025,739.80 representing the rental arrearages for the period January 2002 to December 2002 plus legal interest;
9. Ordering the defendant to pay plaintiff the amount of Php19,442,076.08 representing the rental arrearages for the period January 2003 to December 2003 plus legal interest;
10. Ordering the defendant to pay plaintiff the amount of Php18,274,748.64 representing the rental arrearages for the period

January 2004 to December 2004 plus legal interest;

11. Ordering the defendant to pay plaintiff the amount of Php23,254,33.60 representing the rental arrearages for the period January 2005 to December 2005 plus legal interest;
12. Ordering the defendant to pay plaintiff the amount of Php2,843,610.00 plus 10% VAT and legal interest from November 2005 and until the defendant shall have vacated the leased premises;
13. Ordering the defendant to pay plaintiff the amount of Php10,000.00 plus 10% VAT and legal interest to be reckoned from March 1995 until the defendant shall have vacated the 150 sq. m. lot likewise subject of the instant case.
14. Ordering defendant to pay plaintiff the amount of Php20,000.00 as and by way of attorney's fees; and
15. Ordering him to pay the cost of suit.

Defendant's counterclaim is dismissed for lack of merit.^[9]

MATERRCO appealed the MeTC Decision to the RTC, which appeal was docketed as Civil Case No. 05-1421.

In the interim, the MeTC issued a Writ of Execution in favor of FLADC. To enjoin the execution proceedings, MATERRCO filed a Petition for Certiorari, Prohibition, Injunction with Preliminary Injunction and Temporary Restraining Order with the RTC of Pasay City. The petition was denied by the RTC, prompting MATERRCO to elevate the case to the Court of Appeals via petition for certiorari.^[10] The Court of Appeals dismissed the petition by Decision dated April 20, 2006. MATERRCO filed a motion for reconsideration during the pendency of which it alleged that its fixtures were dismantled and its properties taken out of the subject premises by FLADC.

On March 6, 2006, the RTC promulgated its decision in Civil Case No. 05-1421 dismissing MATERRCO's appeal from the trial court's decision in the ejectment case. MATERRCO assailed the RTC decision via petition for review with the Court of Appeals, docketed as C.A. - G.R. SP No. 94751. The appellate court dismissed the petition, however, for lack of merit by Decision dated September 15, 2006, now the subject of the present petition. MATERRCO's Motion for Reconsideration was denied by the Court of Appeals by the also challenged Resolution dated December 2, 2006.

Hence, the present petition for review, faulting the Court of Appeals^[11] to have

I. . . . ERRED IN DISMISSING THE PETITION AND IN MISAPPLYING PRINCIPLES OF LAW NOT APPLICABLE TO IT; AND

II. . . . ERRED IN FINDING THAT PETITIONER HAS UNPAID RENTS AND CONSEQUENTLY ORDERING THE LATTER'S EJECTMENT.

MATTERCO adds that