

SECOND DIVISION

[G.R. NO. 164728, November 23, 2007]

**MERCURY DRUG CORPORATION, PETITIONER, VS. REPUBLIC
SURETY AND INSURANCE COMPANY, INC., RESPONDENT.**

DECISION

QUISUMBING, J.:

This petition for review assails the Decision^[1] dated April 21, 2004 of the Court of Appeals in CA-G.R. CV No. 70727, which had affirmed the Decisions dated August 11, 2000^[2] and February 27, 2001^[3] of the Regional Trial Court (RTC), Branch 23, Manila. Also assailed is the Resolution^[4] of the Court of Appeals dated July 14, 2004, which had denied petitioner's motion for reconsideration.

The pertinent facts of the case are as follows:

On January 27, 1995, respondent Republic Surety and Insurance Company, Inc. (hereafter, Surety) leased to petitioner Mercury Drug Corporation (Mercury), for a period of 10 years, the ground floor of Franlour Koh Building located at Padre Faura St., Manila. Mercury acknowledged in the lease contract that the leased premises were in good and tenantable condition on presentation by the Surety of a certification^[5] dated September 27, 1994 from Civil and Structural Engineer Serafin S. Policarpio that the building was structurally sound. Several months later, the architectural department of Mercury reported that the building was structurally unsound and posed great risk to the occupants. On May 10, 1996, Mercury informed Surety of these findings. Surety immediately replied that said findings were erroneous. Mercury consulted Civil and Structural Engineer Fernando N. Enriquez, who reported the following:

x x x x

III. INSPECTION FINDINGS AT GROUND FLOOR AREAS

- a. Hairline cracks on perimeter chb walls[.]
- b. Two wooden post[s] were damaged and cannot be subjected to axial load.
- c. From ground to second floor level the three wooden posts are infested by termites.
- d. Existing steel beam and wooden posts connection was found to be defective and structurally unsafe.

IV. REMEDIAL MEASURES

- a. All damaged wooden post and floor beams affected by termites shall be replace[d] with good lumber (yakal).
- b. The entire structure shall be reinforced by installing structural steel columns and beams.
- c. Additional columns shall rest on new foundations.
- d. All existing perimeter walls shall be demolished and replaced with new chb walls.
- e. Estimated cost to reinforced the existing building shall be as follows: (Excluding cost of Renovation)

x x x x

TOTAL COST P7,167,000.00^[6]

Mercury referred the matter to Engr. Policarpio, who made the following report to the City Engineer's Office:

x x x x

III. INSPECTION FINDINGS AT GROUND FLOOR AREAS

- a. Hairline cracks on perimeter CHB walls.
- b. Wooden girts were not properly anchored to wooden columns and rested only on the concrete hollow blocks wall.
- c. Some wooden posts were hollow caused by termites infection (sic) which will eventually fail due to inadequacy of the column to hold the bending and axial loads.
- d. Existing steel beams and wooden posts connection were found to be defective and structurally unsafe, caused by the said termite infection (sic).
- e. Wooden floor joist at second floor were not properly spaced, causing the floor to vibrate and sag.

Though the three storey building is newly renovated, the structural condition at the ground floor is posing a great risk on the occupants, neighboring building and to the passers by and not only to human but it is also a fire hazard since the building is made of wood.

In view of the above, I am superseding my first certification dated September 24, 1994 and I am recommending the immediate demolition of the building to avoid the possible collapse of the building and the fire hazard.^[7]

On February 21, 1997, Mercury informed Surety of the findings of Engr. Policarpio and that it was suspending payment of the rentals until Surety undertook the

necessary structural repairs on the building. In September 1997, Surety repaired and remodeled the ground floor. Thereafter, Mercury asked Surety to secure a certification on the structural integrity of the building from the City Engineer's Office as it could not determine by mere visual inspection whether the repair done was adequate. However, Surety failed to secure the certification so Mercury continued to suspend its rental payments. This prompted Surety to file against Mercury, a Complaint^[8] dated September 3, 1998 for a sum of money before the RTC, Branch 23, Manila.

In its answer, Mercury admitted not paying the rentals but justified it on the ground of the alleged failure of Surety to undertake the necessary repairs and to present a certification from the City Engineer attesting to the structural integrity of the building.

During the pre-trial conference, the parties entered into an express stipulation that the only issue to be resolved was whether Mercury was justified in suspending its rental payments. Trial on the merits ensued.

On August 11, 2000, the trial court found that Surety made the necessary repairs which generally strengthened the building as testified to by Engineer Joseph Reyes, the District Building Inspector in the Office of the Building Official of Manila City. The trial court held that Mercury was obligated to pay the rentals in accordance with the lease contract. The decretal portion of the decision reads:

WHEREFORE, premises considered judgment is hereby rendered ordering defendant Mercury to pay plaintiff:

- a) The sum of [P]720,000.00 plus interest thereon at the rate of 1% per month from February 1, 1997 until full payment representing rental due for the period covering February 1, 1997 to January 31, 1998;
- b) The sum of [P]900,000.00 plus interest thereon at the rate of 1% per month from February 1, 1998 until full payment representing rental due for the period covering February 1, 1998 to January 31, 1999;
- c) The sum of [P]162,000.00, the amount equivalent to 10% of the rentals to be paid by defendant Mercury which is due the government by way of Expanded Value Added Tax; and
- d) The sum of [P]100,000.00 as attorney's fees.

With cost against defendant Mercury.

SO ORDERED.^[9]

Mercury moved for reconsideration but it was denied. Subsequently, Surety filed a Supplemental Complaint^[10] dated September 15, 2000 alleging that after the filing