332 Phil. 525

EN BANC

[G.R. No. 106063, November 21, 1996]

EQUATORIAL REALTY DEVELOPMENT, INC. & CARMELO & BAUERMANN, INC., PETITIONERS, VS. MAYFAIR THEATER, INC., RESPONDENT.

D E C I S I O N

HERMOSISIMA, JR., J.:

Before us is a petition for review of the decision[1] of the Court of Appeals[2] involving questions in the resolution of which the respondent appellate court analyzed and interpreted particular provisions of our laws on contracts and sales. In its assailed decision, the respondent court reversed the trial court[3] which, in dismissing the complaint for specific performance with damages and annulment of contract,[4] found the option clause in the lease contracts entered into by private respondent Mayfair Theater, Inc. (hereafter, Mayfair) and petitioner Carmelo & Bauermann, Inc. (hereafter, Carmelo) to be impossible of performance and unsupported by a consideration and the subsequent sale of the subject property to petitioner Equatorial Realty Development, Inc. (hereafter, Equatorial) to have been made without any breach of or prejudice to, the said lease contracts.[5]

We reproduce below the facts as narrated by the respondent court, which narration, we note, is almost verbatim the basis of the statement of facts as rendered by the petitioners in their pleadings:

> *"Carmelo owned a parcel of land, together with two 2-storey buildings constructed thereon located at Claro M. Recto Avenue, Manila, and covered by TCT No. 18529 issued in its name by the Register of Deeds of Manila.*
>
> *On June 1, 1967 Carmelo entered into a contract of lease with Mayfair for the latter's lease of a portion of Carmelo's property particularly described, to wit:*
>
> *'A PORTION OF THE SECOND FLOOR of the two-storey building, situated at C.M. Recto Avenue, Manila, with a floor area of 1,610 square meters.*
>
> *THE SECOND FLOOR AND MEZZANINE of the two-storey building, situated at C.M. Recto Avenue, Manila, with a floor area of 150 square meters,'*
>
> *for use by Mayfair as a motion picture theater and for a term of twenty (20) years. Mayfair thereafter constructed on the leased property a movie house known as 'Maxim Theatre.'*

Two years later, on March 31, 1969, Mayfair entered into a second contract of lease with Carmelo for the lease of another portion of Carmelo's property, to wit:

'A PORTION OF THE SECOND FLOOR of the two-storey building, situated at C.M. Recto Avenue, Manila, with a floor area of 1,064 square meters.

THE TWO (2) STORE SPACES AT THE GROUND FLOOR and MEZZANINE of the two-storey building situated at C.M. Recto Avenue, Manila, with a floor area of 300 square meters and bearing street numbers 1871 and 1875,'

for similar use as a movie theater and for a similar term of twenty (20) years. Mayfair put up another movie house known as 'Miramar Theatre' on this leased property.

Both contracts of lease provides (sic) identically worded paragraph 8, which reads:

'That if the LESSOR should desire to sell the leased premises, the LESSEE shall be given 30-days exclusive option to purchase the same.

In the event, however, that the leased premises is sold to someone other than the LESSEE, the LESSOR is bound and obligated, as it hereby binds and obligates itself, to stipulate in the Deed of Sale thereof that the purchaser shall recognize this lease and be bound by all the terms and conditions thereof.'

Sometime in August 1974, Mr. Henry Pascal of Carmelo informed Mr. Henry Yang, President of Mayfair, through a telephone conversation that Carmelo was desirous of selling the entire Claro M. Recto property. Mr. Pascal told Mr. Yang that a certain Jose Araneta was offering to buy the whole property for US Dollars 1,200,000, and Mr. Pascal asked Mr. Yang if the latter was willing to buy the property for Six to Seven Million Pesos.

Mr. Yang replied that he would let Mr. Pascal know of his decision. On August 23, 1974, Mayfair replied through a letter stating as follows:

'It appears that on August 19, 1974 your Mr. Henry Pascal informed our client's Mr. Henry Yang through the telephone that your company desires to sell your above-mentioned C.M. Recto Avenue property.

Under your company's two lease contracts with our client, it is uniformly provided:

'8. That if the LESSOR should desire to sell the leased premises the LESSEE shall be given 30-days exclusive option to purchase the same. In the event, however, that the leased premises is sold to someone other than the LESSEE, the LESSOR is bound and obligated, as it is (sic) herebinds (sic) and obligates itself, to stipulate in the Deed of Sale thereof that the purchaser shall recognize this lease and be bound by all the terms and conditions hereof (sic).'

Carmelo did not reply to this letter.

On September 18, 1974, Mayfair sent another letter to Carmelo purporting to express interest in acquiring not only the leased premises but 'the entire building and other improvements if the price is reasonable. However, both Carmelo and Equatorial questioned the authenticity of the second letter.

Four years later, on July 30, 1978, Carmelo sold its entire C.M. Recto Avenue land and building, which included the leased premises housing the 'Maxim' and 'Miramar' theatres, to Equatorial by virtue of a Deed of Absolute Sale, for the total sum of P11,300,000.00.

In September 1978, Mayfair instituted the action a quo for specific performance and annulment of the sale of the leased premises to Equatorial. In its Answer, Carmelo alleged as special and affirmative defense (a) that it had informed Mayfair of its desire to sell the entire C.M. Recto Avenue property and offered the same to Mayfair, but the latter answered that it was interested only in buying the areas under lease, which was impossible since the property was not a condominium; and (b) that the option to purchase invoked by Mayfair is null and void for lack of consideration. Equatorial, in its Answer, pleaded as special and affirmative defense that the option is void for lack of considertion (sic) and is unenforceable by reason of its impossibility of performance because the leased premises could not be sold separately from the other portions of the land and building. It counterclaimed for cancellation of the contracts of lease, and for increase of rentals in view of alleged supervening extraordinary devaluation of the currency. Equatorial likewise cross-claimed against co-defendant Carmelo for indemnification in respect of Mayfair's claims.

During the pre-trial conference held on January 23, 1979, the parties stipulated on the following:

'1. That there was a deed of sale of the contested premises by the defendant Carmelo x x x in favor of defendant Equatorial x x x;

2. That in both contracts of lease there appear (sic) the stipulation granting the plaintiff exclusive option to purchase the leased premises should the lessor desire to sell the same (admitted subject to the contention that the stipulation is null and void);

3. That the two buildings erected on this land are not of the condominium plan;

4. That the amounts stipulated and mentioned in paragraphs 3 (a) and (b) of the contracts of lease constitute the consideration for the plaintiff's occupancy of the leased premises, subject of the same contracts of lease, Exhibits A and B;

xxx xxx xxx

6. That there was no consideration specified in the option to buy embodied in the contract;

7. That Carmelo & Bauermann owned the land and the two buildings erected thereon;

8. That the leased premises constitute only the portions actually occupied by the theaters; and

9. That what was sold by Carmelo & Bauermann to defendant Equatorial Realty is the land and the two buildings erected thereon.'

xxx xxx xxx

After assessing the evidence, the court a quo rendered the appealed decision, the decretal portion of which reads as follows:

'WHEREFORE, judgment is hereby rendered:

(1) Dismissing the complaint with costs against the plaintiff;

(2) Ordering plaintiff to pay defendant Carmelo & Bauermann P40,000.00 by way of attorney's fees on its counterclaim;

(3) Ordering plaintiff to pay defendant Equatorial Realty P35,000.00 per month as reasonable compensation for the use of areas not covered by the contract (sic) of lease from July 31, 1979 until plaintiff vacates said area (sic) plus legal interest from July 31, 1978; P70,000.00 per month as reasonable compensation for the use of the premises covered by the contracts (sic) of lease dated (June 1, 1967 from June 1, 1987 until plaintiff vacates the premises plus legal interest from June 1, 1987; P55,000.00 per month as reasonable compensation for the use of the premises covered by the contract of lease dated March 31, 1969 from March 30, 1989 until plaintiff vacates the premises plus legal interest from March 30, 1989; and P40,000.00 as attorney's fees;

(4) Dismissing defendant Equatorial's crossclaim against defendant Carmelo & Bauermann.

The contracts of lease dated June 1, 1967 and March 31, 1969 are declared expired and all persons claiming rights under these contracts are directed to vacate the premises'."[6]

The trial court adjudged the identically worded paragraph 8 found in both aforecited lease contracts to be an option clause which however cannot be deemed to be binding on Carmelo because of lack of distinct consideration therefor.

The court a quo ratiocinated:

"Significantly, during the pre-trial, it was admitted by the parties that the option in the contract of lease is not supported by a separate

consideration. Without a consideration, the option is therefore not binding on defendant Carmelo & Bauermann to sell the C.M. Recto property to the former. The option invoked by the plaintiff appears in the contracts of lease x x x in effect there is no option, on the ground that there is no consideration. Article 1352 of the Civil Code, provides:

'Contracts without cause or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good custom, public order or public policy.'

Contracts therefore without consideration produce no effect whatsoever. Article 1324 provides:

'When the offeror has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon consideration, as something paid or promised.'

in relation with Article 1479 of the same Code:

'A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.'

The plaintiff cannot compel defendant Carmelo to comply with the promise unless the former establishes the existence of a distinct consideration. In other words, the promisee has the burden of proving the consideration. The consideration cannot be presumed as in Article 1354:

'Although the cause is not stated in the contract, it is presumed that it exists and is lawful unless the debtor proves the contrary.'

where consideration is legally presumed to exists. Article 1354 applies to contracts in general, whereas when it comes to an option it is governed particularly and more specifically by Article 1479 whereby the promisee has the burden of proving the existence of consideration distinct from the price. Thus, in the case of Sanchez vs. Rigor, 45 SCRA 368, 372-373, the Court said:

'(1) Article 1354 applies to contracts in general, whereas the second paragraph of Article 1479 refers to sales in particular, and, more specifically, to an accepted unilateral promise to buy or to sell. In other words, Article 1479 is controlling in the case at bar.

(2) In order that said unilateral promise may be binding upon the promissor, Article 1479 requires the concurrence of a condition, namely, that the promise be supported by a consideration distinct from the price.