

EIGHTH DIVISION

[CA-G.R. SP NO. 128775, February 27, 2014]

**SELEGNA HOLDINGS CORPORATION AND EDGARDO H. ANGELES,
PETITIONERS, VS. HON. JUDGE VIRGILIO MACARAIG,
PRESIDING JUDGE, REGIONAL TRIAL COURT OF MANILA,
BRANCH 37, AND UNIVERSITY OF SANTO TOMAS,
RESPONDENTS.**

D E C I S I O N

REYES, JR., J.C., J.:

In this Petition for Certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure, petitioners seek to annul and set aside the Omnibus Order dated August 17, 2012 and Order dated January 3, 2013, both issued by the Regional Trial Court (RTC) of Manila, Branch 37 in Civil Case No. 12-127110.

The antecedents:

On February 10, 2004, private respondent University of Santo Tomas (UST for brevity) entered into a Build, Operate and Transfer Contract (BOT contract) with petitioner Selegna Holdings Corporation (hereinafter Selegna). In the said BOT contract, Selegna undertook to design, construct, operate and maintain a 2-level Multi-deck Parking (MDP for brevity) inside the UST Campus. Prior to the completion of the 1st and 2nd levels of the MDP, UST decided to pursue the construction of the 3rd and 4th levels thereof. Selegna exercised its option to undertake the construction, operation and maintenance of the additional two (2) levels. Subsequently, on December 21, 2004, UST and Selegna entered into another BOT contract. The new BOT contract provided that Selegna would operate and maintain Levels 1 to 3 of the MDP for a period of fifteen (15) years from the date of completion.

The construction of the 1st and 2nd levels was completed on January 12, 2005. On the other hand, the construction of the 3rd and 4th levels was completed on November 15, 2005.

On the strength of Article 4.3.2 of the BOT contract dated December 21, 2004 which provides that Selegna shall allocate 2,000 square meters within the MDP for commercial operations such as fastfood restaurants/mini gift shops, bookstore/supplies and related business activities, Selegna as lessor, entered into several lease contracts from the years 2005 up to 2008. Some lessees, in turn, entered into sublease agreements with other entities.

UST, however, allegedly discovered some anomalies in Selegna's operation of the MDP. Hence, in a letter dated November 6, 2008, UST pointed out to Selegna that the latter violated the BOT contract for the utter failure to obtain its approval when

the latter entered into several lease agreements. In fact, according to UST, such failure is also a violation of the lease contracts which commonly provided that the acceptance of lessee as lessor's tenant and nature of lessee's operation in the MDP shall be subject to UST's approval.

In a letter dated November 25, 2008, UST reiterated its position that Selegna violated the December 21, 2004 BOT contract. It also brought to Selegna's attention that it learned that the amount of rentals which the lessees of MDP were paying to Selegna were much lower than those collected from the sub-lessees. According to UST, the grave disparity between the two (2) amounts adversely affected MDP's revenue which could have been the reason why Selegna had already been in default in the payment of its obligation with Metrobank and Trust Company (Metrobank for brevity), which funded the MDP project.

On March 10, 2009, UST wrote to petitioner Edgardo H. Angeles (hereinafter Angeles), president and chief executive officer of Selegna. In his reply dated April 1, 2009, Angeles admitted that some of MDP's lessees are owned in full or in partnership with some of his children. He also conceded that Selegna indeed failed to obtain UST's approval when it entered into lease contracts and apologized for such failure.

Almost a month thereafter, Selegna filed a *Petition for Declaratory Relief with Prayer for TRO/Preliminary Injunction* before the RTC of Manila. Said petition was docketed as SCA No. 09-121343 and was raffled to Branch 45 of RTC-Manila.

On December 3, 2009, Branch 45 of the RTC-Manila issued an Order (Rollo, pp. 54-57) granting Selegna's prayer for injunctive relief. The dispositive part of the Order reads:

"WHEREFORE, premises considered, this Court resolves as follows:

the petitioners' prayer for the issuance of a preliminary injunction is hereby GRANTED, and upon the petitioners' filing of a bond in the amount of Ten Million Pesos (P10,000,000.00), to be approved by this Court, to answer for all damages and costs which the respondent University of Santo Tomas (UST) may suffer by reason of the preliminary injunction if the Court will finally decide that the petitioners were not entitled thereto, let a preliminary injunction be issued against the respondent, ordering said respondent to refrain from terminating the Contract dated February 10, 2004 and Contract dated December 21, 2004 wherein the petitioners and the respondent are the contracting parties; and

the MOTION TO DISMISS dated May 5, 2009 filed by the respondent University of Santo Tomas (UST) is hereby DENIED for lack of merit.

SO ORDERED." (Rollo, p. 57)

On motion of Selegna, the petition for declaratory relief was later converted into an ordinary civil action of Specific Performance and Damages with Prayer for TRO/Preliminary Injunction, as per Order (Rollo, pp. 58-60) dated June 7, 2010 of Branch 45 of RTC-Manila.

Later on, creditor Metrobank initiated a discussion for an amicable settlement between Selegna and UST. On June 29, 2010, a Compromise Agreement between Selegna and UST was finalized and a Motion to Approve the Compromise Agreement was signed by Selegna and its counsel.

UST signified its willingness to sign the Compromise Agreement, for as long as the sublease agreements are not contrary to the BOT contract and the lease contracts. Finding that the leased premises were subleased without its approval, UST did not sign the Compromise Agreement.

Eventually, UST filed on December 28, 2010 a complaint for "*Specific Performance, Accounting and Damages, with prayer for an Ex-Parte Seventy Two (72) Hour Temporary Restraining Order, Temporary Restraining Order Preliminary Prohibitory and Mandatory Injunctions*" (Rollo, pp.129-160) against petitioners and the lessees of the MDP. Said complaint was filed before the RTC of Manila and was docketed as Civil Case No. 10-124899.

In an Order dated December 29, 2010, the Executive Judge of the RTC of Manila granted UST's prayer for the issuance of a TRO and issued a 72-hour TRO against the defendants in Civil Case No. 10-124899. Thereafter, Civil Case No. 10-124899 was raffled to Branch 10 of RTC-Manila which heard UST's application for injunctive reliefs and required both parties to submit their respective memoranda. However, after the said hearing, the presiding judge of Branch 10 voluntarily inhibited from the case on the ground that Selegna's counsel was his classmate in college and in law school.

Civil Case No. 10-124899 was then raffled to Branch 32 of RTC-Manila which proceeded to hear UST's application for injunctive reliefs. During the hearing on January 11, 2011, UST received an urgent motion for suspension of proceedings on the ground that a motion for reconsideration of the inhibition order was filed. On the same day, Branch 32 of RTC-Manila suspended the proceedings pending resolution of the motion for reconsideration.

On January 24, 2011, Branch 10 of RTC-Manila issued an Order denying the motion for reconsideration. Hence, the case was referred back to Branch 32 for continuation of the proceedings. The inhibition of the presiding judge of Branch 32 was later sought, on the ground that she is an alumna of UST. Said motion was granted by the presiding judge of Branch 32 and the case was re-raffled to Branch 173 of the RTC-Manila.

On March 17, 2011, Branch 173 of RTC-Manila issued a Resolution (Rollo, pp. 161-176) granting UST's application for writ of preliminary injunction. It also denied the motion to dismiss filed by Selegna and its co-defendants. The motion for reconsideration of the said Resolution was subsequently denied by the same court in its Omnibus Resolution dated June 29, 2011 for lack of merit. The aforementioned Resolutions was later questioned before this appellate court and the petition was docketed as CA-G.R. SP No. 120524.

Meanwhile, in September 2011, Selegna filed before Branch 173 of the RTC-Manila a Motion to Implead Metrobank as Additional Party Litigant on the ground that Metrobank had a legal interest over the MDP. Said motion was denied in an Order

(Rollo, pp. 181-182) dated October 27, 2011.

Selegna sought reconsideration of the Order dated October 27, 2011 which also sought the dismissal of UST's complaint for specific performance. Meantime, in an Order dated November 8, 2011, Branch 173 of the RTC-Manila ordered the re-raffle of Civil Case No. 10-124899 for the conduct of Judicial Dispute Resolution (JDR) pursuant to OCA Circular No. 57-2011 in relation to A. M. No. 11-1-6-SC-PHILJA. Said case was re-raffled to Branch 26 of RTC-Manila.

Meanwhile, on January 11, 2012, UST instituted a Petition for Indirect Contempt of Court against petitioners and the lessees of the MDP for their contumacious refusal to comply with the Writ of Preliminary Injunction issued on March 17, 2011 by Branch 173 of RTC-Manila in Civil Case No. 10-124899. Said petition was docketed as Civil Case No. 12-127110 and was raffled to Branch 37 of RTC-Manila.

On January 16, 2012, Branch 26 of RTC-Manila issued an Order (Rollo, pp. 216-218) dismissing Civil Case No. 10-124899, UST's complaint of specific performance, on the ground of forum shopping. UST subsequently sought reconsideration of the January 16, 2012 Order and also moved for the inhibition of the presiding judge of Branch 26 of RTC-Manila. Said motions were denied in an Order (Rollo, pp. 219-222) dated February 20, 2012. UST later assailed before this appellate court the aforementioned Orders via a petition for certiorari and the petition was docketed as CA-G.R. SP No. 123620.

On March 5, 2012, petitioners filed in Civil Case No. 12-127110 a Motion to Consolidate (Rollo, pp. 243-248) said case either with Civil Case No. 09-121343 (petitioners' complaint for specific performance against UST) of Branch 45 of RTC-Manila or with Civil Case No. 10-124899 (UST's complaint for specific performance against petitioners and lessees of the MDP). UST filed its Comment with Omnibus Motion (Rollo, pp. 249-265) dated March 23, 2012, to which petitioners filed their Opposition (Rollo, pp. 266-270) on May 24, 2012.

On August 17, 2012, the RTC issued the assailed Omnibus Order (Rollo, pp. 38-42), the dispositive part of which reads:

"WHEREFORE, premises considered, the respondents' Motion to Consolidate is DENIED for lack of merit. The motion for inhibition is likewise DENIED for lack of factual and legal bases.

Moreover, respondent's Counter Petition for Contempt [of] Court is expunged from the records for failure to comply with Section 4, Rule 71 of the Rules of Court.

SO ORDERED." (Rollo, p. 42)

Petitioners' motion for reconsideration was subsequently denied by the RTC in the assailed Order (Rollo, p. 43) dated January 3, 2013.

Hence, the instant petition, raising following issues-

"I. WHETHER OR NOT THE ANCILLARY ORDER OF PRELIMINARY INJUNCTION ISSUED BY JUDGE ARMANDO YANGA DATED MARCH 17, 2011 IN CONNECTION WITH THE SEPARATE COMPLAINT FOR SPECIFIC