

## THIRTEENTH DIVISION

[ CA-G.R. CV NO. 66929, August 31, 2006 ]

**THE NET, INC., PLAINTIFF-APPELLEE, VS. EQUATORIAL REALTY DEVELOPMENT, INC. AND MAYFAIR THEATER, INC., DEFENDANTS. EQUATORIAL REALTY DEVELOPMENT, INC., DEFENDANT-APPELLANT.**

### D E C I S I O N

**CRUZ, J.:**

Before the Regional Trial Court (or "RTC") of Manila (Branch 5) was an action for interpleader involving the rentals on a 138 square-meter portion (or "contested premises") of the ground floor of CARBA Building (or "building") situated at 1883 C. M. Recto Avenue, Manila. The building stands on four lots formerly covered by Transfer Certificates of Title (or "TCT") Nos. 130407 to 130410 in the name of Equatorial Realty Development, Inc. (or "appellant").

The contested premises was leased by The Net, Inc. (or "appellee") from appellant for a period of three years starting July 1, 1996 at a monthly rental of P63,000.00.

Filed by appellee on November 6, 1997 against Mayfair Theater, Inc. (or "Mayfair") and appellant, the action was predicated on the averments that Mayfair and appellant were demanding payment of the rentals for the contested premises (or "rentals in question"), each claiming ownership of the building and lots whereon it stands (or "subject property").

On December 24, 1997, January 5, 1998 and February 5, 1998, appellee deposited with the Office of the Clerk of Court, RTC of Manila, various amounts totaling P436,590.00 representing the rentals in question from September 1997 to February 1998 (or "rental deposit").

In answer, appellant laid claim to the rentals in question on the grounds that it is the owner of the subject property per TCT Nos. 130407 to 130410; that said TCTs still subsist and cannot be collaterally attacked; that the Supreme Court's decision in *Equatorial Realty Development, Inc. and Carmelo & Bauermann, Inc. vs. Mayfair Theater, Inc.* (G.R. No. 106063, November 21, 1996) did not vest title over the subject property in Carmelo & Bauermann, Inc. (or "Carmelo") nor annul the sale thereof by the latter in its favor since the decision deemed the sale rescinded only upon Carmelo's restitution of the purchase price; and that pending execution of a deed of sale in favor of Carmelo, appellant continues to be the owner of the subject property.

Appellant set up a compulsory counterclaim for unpaid and accruing rentals and interests thereon and a cross-claim against Mayfair for damages and attorney's fees. It sought a temporary restraining order (or "TRO") and preliminary injunction to

enjoin Mayfair from collecting rentals from appellee and from taking possession of the contested premises.

For its part, Mayfair filed a motion to dismiss the complaint on the grounds (i) that it "plainly states no cause of action" since TCT Nos. 130407 to 130410 were already canceled and, in lieu thereof, TCT Nos. 235120 to 235123 were issued to it; (ii) that there is another action pending between the same parties for the same cause; and (iii) that the action is improper because appellee had knowledge of the transfer of ownership of the subject property to Mayfair.

On March 6, 1998, appellee and Mayfair executed a compromise agreement whereby the former recognized Mayfair as the true owner of the subject property and undertook to pay to the latter the rentals in question.

On March 27, 1998, appellee and Mayfair filed a joint omnibus motion praying (i) that their compromise agreement dated March 6, 1998 be approved; (ii) that the complaint be dismissed for having been mooted by said compromise agreement; and (iii) that appellee's rental deposit be released and paid directly to Mayfair.

On April 2, 1998, Mayfair filed a motion to dismiss the cross-claim predicated on (i) non-compliance with the rule on certificate of non-forum shopping; (ii) non-payment of docket fees; (iii) bar by prior judgment (in G.R. No. 106063); and (iv) the abovementioned compromise agreement.

On November 27, 1998, the RTC issued an order approving the compromise agreement, denying appellant's application for TRO and preliminary injunction and dismissing appellant's counterclaim and cross-claim. Pertinent portions of said order read:

"x x x. In the case at bar, the rights of the defendant Equatorial over the rentals sought to be paid by the plaintiff is not only undetermined and free of doubts but was already resolved as belonging to the other claimant, the Mayfair Theater, Inc. And, further considering that defendant Mayfair and plaintiff, The Net has also executed a Compromise Agreement, which they have submitted to this Court for approval and to dismiss this case, and the same not appearing to be contrary to law, morals, public order and public policy, is ordered Approved.

Likewise, the counter claim and cross claim also contained in the answer filed by Equatorial, this Court honestly believed cannot remain pending for an independent adjudication. Apparently, these claims all hinges from the continuing claim for ownership by Equatorial over the leased property notwithstanding the implementation of the Supreme Court's decision of November 21, 1996. That the execution of the pertinent deeds and documents of transfer of the subject property by the Manila RTC Clerk of Court pursuant to Sec. 10, Rule 39 of the Revised Rules of Court and the eventual cancellation and issuance of new transfer certificates of title in the name of Mayfair was further affirmed by the Court of Appeals when it denied the petition for certiorari and prohibition filed by Equatorial to set aside the orders of May 20, 1997, August 25, 1997 and November 6, 1997, by the Presiding Judge of RTC, Branch 7, Manila. That since the questions by Equatorial on the alleged irregularity on the procedure by

which Supreme Court's decision was executed has already been resolved by the Court of Appeals, apparently, no material facts are further left to support the counter-claim and cross-claims posed by Equatorial as against the plaintiff, The Net and co-defendant Mayfair. And, furthermore, the cross-claim of Equatorial against Mayfair is so inextricably linked and dependent upon Mayfair's claim also for the rentals over the leased property. However, with the Supreme Court's decision vesting ownership already upon Mayfair over the properties subject of the lease, the counter-claim and cross claim has no more leg to stand on and could not remain for an independent adjudication by this court. (*Belleza vs. HuntingFon*, L-3319; *Froilan vs. Pan Oriental Shipping*, L-6060, Sept. 30, 1954). Hence, to dismiss the counter claim and cross claim pleaded by Equatorial is believed proper and in order.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the claimant, Mayfair Theater, Inc. Accordingly, the plaintiff, The Net, Inc., is ordered to pay their rentals over the property subject of the lease with Mayfair Theater, Inc. from September, 1998 to its termination as may be provided for in their subsequent contract of lease.

The counter-claim filed by the defendant Equatorial against the plaintiff, The Net and cross-claim against Mayfair Theater, Inc. are ordered Dismissed for lack of basis in fact and in law."

Appellant filed a motion for reconsideration of the order dated November 27, 1998 but it was denied per order dated April 12, 1999. Within the reglementary period, appellant filed a notice of appeal in respect to the order dated November 27, 1998.

On April 15, 1999, Mayfair filed an omnibus motion praying, among others, for the release of the rental deposit "pending resolution of (appellant's) Motion for Reconsideration."

On May 3, 1999, Mayfair filed a motion for execution pending appeal. Appellant opposed the motion.

On December 15, 1999, the RTC issued an omnibus order, the dispositive portion of which reads:

"WHEREFORE, premises all considered, this Court orders as follows:

1. The Joint Omnibus Motion filed by the plaintiff, The Net, and Mayfair Theatre, Inc. for the release of the amount deposited or consigned with the RTC, Clerk of Court of Manila, is hereby Granted.

Accordingly, the Clerk of Court of the Regional Trial Court of Manila is ordered to release The Net, Inc.'s deposit in the amount of P436,590.00 to Mayfair Theater, Inc. upon presentation of the official receipts, and upon posting by Mayfair of a bond for the same amount to answer for damages in case of a reversal of the judgment in this case;

2. The Motion for Execution Pending Appeal filed by Mayfair Theatre, Inc. is ordered Denied for lack of basis in fact and in law; And,