



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

**GOTESCO PROPERTIES,
 INCORPORATED,**

G.R. No. 228513

Petitioner,

- versus -

VICTOR C. CUA,

Respondent.

X-----X

VICTOR C. CUA,

G.R. No. 228552

Petitioner,

Present:

- versus -

CAGUIOA, *J.*, *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO, *and*
 SINGH, *JJ.*

**GOTESCO PROPERTIES,
 INCORPORATED,**

Promulgated:
February 15, 2023

Respondent.

Mis-PDCB-H

X-----X

DECISION

GAERLAN, J.:

This resolves the consolidated Petitions for Review on *Certiorari*¹ assailing the March 29, 2016 Decision² and November 29, 2016 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 100311, which affirmed with modification the August 3, 2012 Decision⁴ of the Regional Trial Court

¹ *Rollo* (G.R. No. 228513), pp. 10-27; *rollo* (G.R. No. 228552), pp. 20-34.

² *Rollo* (G.R. No. 228552), pp. 6-15; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam and Francisco P. Acosta, concurring.

³ *Id.* at 16-17.

⁴ *Id.* at 36-61; penned by Presiding Judge Rosalyn D. Mislos-Loja.

(RTC) of Manila, Branch 41 (RTC Branch 41) ordering Gotesco Properties, Inc. (Gotesco) to cease and desist from collecting from Victor Cua (Cua) the common area and aircon dues (CAAD) and to return to Cua the CAAD previously imposed.

Antecedents

Sometime in 1994, Cua entered into four contracts of lease with Gotesco for the use of the latter's commercial units in Ever-Gotesco Commonwealth Center. The units were used for the operation of Cua's two jewelry stores Carmille Jewelry Emporium and Beverly Hills Emporium, and two amusement centers Val and Vhon Amusement and Carl Amusement Center.⁵

The lease was prepaid for a period of 20 years. In addition to the rent, Gotesco charged Cua CAAD and other charges for the use of the common areas, entrance, hallways, comfort rooms, stairs, escalators, elevators, centralized aircon, janitorial and security services.⁶

The contracts of lease contain a stipulation regarding the payment of CAAD:

17. Common Area Dues and Other Charges – Unless otherwise arranged with the LESSOR, the LESSEE shall pay monthly common area dues equivalent to Two Pesos (P2.00) per square meter per day and aircon dues of Two and 25/100 Pesos (P2.25) per square meter per day or the gross amount of Four and 25/100 [Pesos] (P4.25) per square meter [per day] on or before the 5th day of each month, without the necessity of demand from the LESSO[R]. Any interruption or disturbance of the possession of the LESSE[E] due to fortuitous events shall not be a cause for non-payment of the common area dues.

The aforementioned common area and aircon dues shall bear an annual escalation, compounded, at eighteen [percent] (18%) effective calendar year 1995 or at a rate to be determined by [the] LESSOR if said dues shall not be sufficient to meet inflation, Peso[]devaluation, and other escalation in utility and maintenance costs at any point in time.⁷

From January 1997 to 2003, Gotesco imposed escalation costs on the CAAD, thereby charging Cua an aggregate amount of ₱2,269,735.64.⁸

⁵ *Rollo* (G.R. No. 228513), pp. 13 and 34-35.

⁶ *Rollo* (G.R. No. 228552), p. 47.

⁷ *Rollo* (G.R. No. 228513), p. 49.

⁸ *Id.*

Finding the imposition unfair, Cua protested the escalation costs through Letters dated February 23, 2001 and March 26, 2001. However, Gotesco, through its General Manager Ellen Miranda, insisted on the validity of the escalation charges, as stipulated in the contracts of lease.⁹

On March 3, 2003, Cua filed a Complaint for Injunctive Relief, Restitution, and Damages with Emergency Application for an *Ex Parte* Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction.¹⁰

On even date, Executive Judge Enrico Lanzas issued a TRO effective for 72 hours from service to Gotesco. Meanwhile, the case was raffled to RTC Manila, Branch 14 (RTC Branch 14).¹¹

Then, on March 6, 2003, RTC Branch 14 extended the TRO for a period not exceeding 20 days from the date of its issuance on March 3, 2003.¹²

Subsequently, on March 27, 2003, RTC Branch 14 granted Cua's application for a writ of preliminary injunction and thus, ordered Gotesco to cease and desist from charging Cua the CAAD, pending the resolution of the case.¹³

Aggrieved, Gotesco filed a motion for reconsideration.

In an Order dated April 22, 2003, RTC Branch 14 overturned its March 24, 2003 Order and dissolved the writ of preliminary injunction previously issued.¹⁴

On June 25, 2003, Cua filed a Motion for Disqualification of Presiding Judge, which was granted in the Order dated August 4, 2003. Accordingly, the case was re-raffled to RTC Branch 39.¹⁵

After a series of proceedings and exchange of pleadings, eventually, the case was re-raffled to RTC Branch 41, and the case was tried on the merits.¹⁶

⁹ *Rollo* (G.R. No. 228552), pp. 48-49.

¹⁰ *Id.* at 36.

¹¹ *Id.*

¹² *Id.* at 37.

¹³ *Id.*

¹⁴ *Id.* at 38.

¹⁵ *Id.*

¹⁶ *Id.* at 38-40.

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Ruling of RTC Branch 41

On August 3, 2012, RTC Branch 41 rendered a Decision¹⁷ in favor of Cua. It invalidated the escalation clause in the second paragraph of clause 17 in the lease contracts for being violative of the principle of mutuality of contracts.¹⁸ It explained that Gotesco's unrestrained right to unilaterally adjust the CAAD escalation costs deprived Cua of the right to assent to an important modification in their contract.¹⁹ It likewise noted that Gotesco failed to establish how it determined, computed, and arrived at its assessment justifying the need to increase the CAAD escalation costs.²⁰ Moreover, it expressed dismay that the increased CAAD rates even exceeded the amount of monthly rentals, when the former was only meant to be an additional imposition in response to any contingencies.²¹ Consequently, it ordered Gotesco to stop charging CAAD escalation costs and to return the ₱2,269,735.64 it collected from Cua, with legal interest of six percent (6%) *per annum*.²² Additionally, it awarded Cua attorney's fees considering the length of time that lapsed from the filing of the complaint to the rendition of the judgment, the procedures sought, and the complexities of the case.²³

The dispositive portion of the RTC ruling reads:

WHEREFORE, in view of the foregoing, this Court finds in favor of [Cua] and against [Gotesco]:

- (1) Directing [Gotesco] or any of its agents, including any and all persons acting for and in its behalf, to permanently cease and desist from imposing and collecting from [Cua] escalated common area and aircon dues (CAAD) until and unless they shall have mutually agreed on the amount thereof;
- (2) Ordering [Gotesco] to return the CAAD collected pursuant to paragraph 2 of paragraph (17) of the Contracts of Lease, all in the amount of P2,269,735.64 plus interest thereon at the rate of 6% per annum reckoned from January of 1997 until full restitution thereof;
- (3) Ordering [Gotesco] to pay [Cua] the sum of P500,000.00 as and for attorney's fees and litigation expenses; and
- (4) The costs of suit.

¹⁷ Id. at 36-61.

¹⁸ Id. at 57-58.

¹⁹ Id. at 58.

²⁰ Id. at 59.

²¹ Id.

²² Id. at 60.

²³ Id.

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SO ORDERED.²⁴

Aggrieved, Gotesco sought reconsideration, which the RTC denied in its January 9, 2013 Order.²⁵

Dissatisfied with the ruling, Gotesco filed a notice of appeal, which the RTC gave due course in its Order dated February 6, 2013.²⁶

Ruling of the CA

On March 29, 2016, the CA rendered the assailed Decision,²⁷ partly granting the appeal. The CA interpreted the escalation clause as pertaining to two situations – in the absence of inflation, Gotesco shall impose an 18% interest, but in case of inflation, Gotesco shall determine the rate of interest it wishes to impose.²⁸ The CA explained that the first scenario, which allows Gotesco to impose an 18% interest rate is valid, while the second scenario, which grants Gotesco the power to impose a new interest rate sans written notice to Cua is invalid, and violates the principle of mutuality of contracts. Accordingly, the CA affirmed the RTC's Order directing Gotesco to return the ₱2,269,735.64, subject however to a re-computation based on the 18% interest rate stated in the lease contract. Furthermore, the CA deleted the award of attorney's fees and litigation expenses, finding no equitable justification for their award.²⁹

The decretal portion of the CA ruling states:

WHEREFORE, in light of the foregoing premises, the instant **APPEAL** is hereby **PARTLY GRANTED** and the Decision dated August 3, 2012 and Order dated January 9, 2013 are hereby **MODIFIED** insofar as the restitution of the amount of ₱2,269,735.64 representing the CAAD escalation cost which should be re-computed inclusive of the 18% charged per the contracts of lease.

Necessarily, the case is ordered **REMANDED** to the RTC of Manila City, Branch 41, for the proper computation of the invalid interest imposed upon the CAAD dues, except the agreed rate of 18%. Further, the award of attorney's fees and litigation expenses in the amount of ₱500,000.00 are hereby **DELETED**.

SO ORDERED.³⁰ (Emphases in the original)

²⁴ Id. at 61.
²⁵ *Rollo* (G.R. No. 228513), pp. 256-257.
²⁶ Id. at 302.
²⁷ *Rollo* (G.R. No. 228552), pp. 6-15.
²⁸ Id. at 11-12.
²⁹ Id. at 11-14.
³⁰ Id. at 14.

Both Cua and Gotesco sought reconsideration, however, their motions were denied in the CA's November 29, 2016 Resolution.³¹

Undeterred, Gotesco³² and Cua³³ filed their respective petitions for review on *certiorari*, which were docketed as G.R. No. 228513 and G.R. No. 228552, respectively.

On June 7, 2017, the Court ordered the consolidation of the petitions for review.³⁴

Issues

The pivotal issues revolve around the validity of the CAAD escalation clause and Cua's entitlement to attorney's fees.

On the one hand, Cua avers that the principle of mutuality of contracts prohibits Gotesco from having the sole power to determine the escalation rate.³⁵ He proffers that escalation clauses cannot be potestative and should be based on reasonable and valid grounds.³⁶ He challenges Gotesco's right to impose the 18% interest or other interest rate on the CAAD, sans proof of inflation, peso devaluation, and escalation in the utility and maintenance costs.³⁷

Alternatively, he alleges that the lease contract allowed Gotesco to collect the escalation cost subject to the suspensive condition that the CAAD is not "sufficient to meet inflation, peso devaluation, and other escalation in utility and maintenance costs at any point in time."³⁸ He advances that since the imposition of the escalation rate was subject to a condition, Gotesco should first comply with the condition or prove its happening.³⁹ He bewails that the imposition of the CAAD escalation cost had no factual basis and was done in bad faith.⁴⁰ He further laments that Gotesco imposed higher CAAD dues against him as a leasehold tenant, as opposed to the regular tenants, when in fact, they all equally use and enjoy the same common areas and air-conditioning.⁴¹ He exhorts that by doing so, Gotesco indirectly increased his

³¹ Id. at 16-17.

³² *Rollo* (G.R. No. 228513), pp. 10-27.

³³ *Rollo* (G.R. No. 228552), pp. 20-34.

³⁴ *Rollo* (G.R. No. 228513), p. 339.

³⁵ *Rollo* (G.R. No. 228552), p 191.

³⁶ Id.

³⁷ Id. at 26.

³⁸ Id. at 27.

³⁹ Id. at 28.

⁴⁰ Id. at 27, 29, and 30.

⁴¹ Id. at 29.

rental fee to compensate for the difference between the rentals of leasehold and regular tenants.⁴² Thus, Cua demands the return of the escalation cost he paid in the total amount of ₱2,269,735.64.⁴³

Furthermore, he maintains that he is entitled to attorney's fees since he was compelled to file a complaint against Gotesco. He also avers that the case is complex, involved numerous hearings, consisted of voluminous evidence, and took a while to be resolved, which led him to hire two counsels.⁴⁴

On the other hand, Gotesco counters that the escalation clause was consensually agreed upon pursuant to the principle of mutuality of contracts. It likewise maintains that the terms of the lease contract are clear and leave no room for doubt.⁴⁵ It justifies its imposition of the escalation cost due to the Asian currency crisis, increase in the rates of the utility and service providers, escalation costs on the upkeep of the mall, employment of staff to keep the mall fully operational, and maintenance of its equipment.⁴⁶ It stresses that Cua, as a businessman, cannot feign ignorance to the reality that since 1997, the inflation rate had been continuously rising due to the Asian currency crisis. It further contends that the Court may take judicial notice of such awful economic conditions.⁴⁷

Moreover, Gotesco assails the CA's disposition ordering it to return the amount of ₱2,269,735.64 and subjecting said sum to a re-computation based on the 18% percent interest rate.⁴⁸ It contends that the provision allowing it to determine the interest rate in case of inflation is valid and clear, and hence, its literal meaning must prevail.⁴⁹ It also insists that the lease contracts do not violate public policy, public order, and good customs.⁵⁰

Lastly, it retorts that Cua is not entitled to attorney's fees sans proof that his case falls under the exceptions in Article 2208 of the Civil Code.⁵¹

Ruling of the Court

Cua's petition which seeks the nullification of the CAAD escalation costs and prays for an award of attorney's fees, is granted.

⁴² Id. at 30.

⁴³ Id.

⁴⁴ Id. at 32.

⁴⁵ Id. at 178-179.

⁴⁶ Id. at 179-181.

⁴⁷ Id.

⁴⁸ Id. at 183-184.

⁴⁹ Id. at 184.

⁵⁰ Id. at 185.

⁵¹ Id. at 181-183.

The principle of mutuality of contracts

Essentially, a contract is a meeting of minds between two persons whereby one binds himself/herself, with respect to the other, to give something or to render some service.⁵² Parties enjoy the freedom to contract, and may establish such terms and conditions as they deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.⁵³ Likewise, parties are bound by the terms of the contract, and compliance to its provisions cannot be left to one side's will.⁵⁴ Hence, absent the parties' mutual assent, there can be no contract in its true sense.⁵⁵

Notably, the binding effect of a contract stems from two settled principles: (i) "that any obligation arising from contract has the force of law between the parties; and [ii] **that there must be mutuality between the parties based on their essential equality.**"⁵⁶

Resultantly, a contract which appears heavily skewed in favor of a party, thereby leading to an unconscionable result, must be struck down as void. In the same vein, if compliance to a stipulation depends solely on the will of one of the parties, then said stipulation must be declared invalid.⁵⁷ Concomitantly, any modification in the contract should be made with the consent of the contracting parties and mutually agreed upon. The minds of the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement.⁵⁸ Otherwise, it will have no binding effect.⁵⁹

In relation, stipulations regarding the payment of interest are covered by the principle of mutuality of contracts.⁶⁰ The law ordains that "[n]o interest shall be due unless it has been expressly stipulated in writing."⁶¹ Consequently, interest rates may only be imposed when reduced in writing and agreed upon by the express stipulation of the parties. Any change to the terms of interest must be mutually agreed upon, or else, it will have no binding effect.⁶²

⁵² CIVIL CODE, Article 1305.

⁵³ Id., Article 1306.

⁵⁴ Id., Article 1308.

⁵⁵ *Security Bank Corp. v. Spouses Mercado*, 834 Phil. 286, 306 (2018), citing *Philippine Savings Bank v. Castillo*, G.R. No. 193178, May 30, 2011, 649 SCRA 527, 537.

⁵⁶ *Security Bank Corp. v. Spouses Mercado*, supra at 305, citing *Almeda v. Court of Appeals*, G.R. No. 113412, April 17, 1996, 256 SCRA 292, 299-300.

⁵⁷ See Id.

⁵⁸ *Security Bank Corp. v. Spouses Mercado*, supra note 55.

⁵⁹ Id., citing *Silos v. Philippine National Bank*, G.R. No. 181045, July 2, 2014, 728 SCRA 617, 646.

⁶⁰ Id. at 305.

⁶¹ CIVIL CODE, Article 1956.

⁶² Supra note 59.

The CAAD escalation clause is void for transgressing the principle of mutuality of contracts

At the core of the instant controversy is the validity of the second paragraph of clause 17 of the lease contracts, which states:

17. x x x x

The aforementioned common area and aircon dues shall bear an annual escalation, compounded, at eighteen [percent] (18%) effective calendar year 1995 or at a rate to be determined by [the] LESSOR if said dues shall not be sufficient to meet inflation, Peso[]devaluation, and other escalation in utility and maintenance costs at any point in time.⁶³

Ostensibly, the entire second paragraph partakes of an escalation clause. An escalation clause is a stipulation that allows an increase in the interest rate agreed upon by the contracting parties. It is a *proviso* found in commercial contracts imposed to maintain fiscal stability, and to retain the value of money in long term contracts.⁶⁴

Jurisprudence holds that an escalation clause is not inherently wrong or void *per se*. Nonetheless, “an escalation clause ‘which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement’ is void.”⁶⁵ Such stipulation violates the principle of mutuality of contracts.⁶⁶

Mutuality is absent when the interest rate in a loan agreement is set at the sole discretion of one party, or when there is no reasonable means by which the other party can determine the applicable interest rate. In such situation, the parties are not on equal footing when they negotiated and concluded the terms of the contract.⁶⁷ Imperatively, there must be a meeting of the minds between the parties on any modification, especially when it relates to an important or material aspect of the agreement.⁶⁸

⁶³ *Rollo* (G.R. No. 228513), p. 49.

⁶⁴ *Spouses Juico v. China Banking Corp.*, 708 Phil. 495, 507 (2013), citing *Spouses Florendo v. Court of Appeals*, 333 Phil. 535, 543 (1996), citing *Banco Filipino Savings & Mortgage Bank v. Navarro*, No. L-46591, July 28, 1987, 152 SCRA 346, 353 and *Insular Bank of Asia and America v. Spouses Salazar*, No. L-82082, March 25, 1988, 159 SCRA 133, 137; and *Equitable PCI Bank v. Ng Sheung Ngor*, G.R. No. 171545, December 19, 2007, 541 SCRA 223, 240.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See *Philippine National Bank v. Spouses Manalo*, 728 Phil. 20, 29 (2014).

⁶⁸ *Spouses Limso v. Philippine National Bank*, 779 Phil. 287 (2016).

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A scrutiny of the second paragraph shows that it allows Gotesco to impose an interest rate of 18% or any rate it determines if the CAAD “shall not be sufficient to meet inflation, peso devaluation, and other escalation in utility and maintenance costs at any point in time.” Clearly, Gotesco reserved the right to unilaterally decide on the interest rate to be imposed.

It is well to note at this point that the CA erred in interpreting the clause to mean that the 18% interest rate applies in case there is no inflation, while the rate subject to Gotesco’s sole determination applies in case of inflation. To stress, the phrase “*at [the rate of] x x x (18%) x x x or at a rate to be determined by the [lessor] if [the CAAD is not] sufficient to meet inflation x x x*”⁶⁹ is not separated by a comma. Hence, this implies that if the CAAD is not sufficient to meet inflation, peso devaluation and other escalation in utility and maintenance costs at any point in time, then Gotesco may impose the interest rate it so desires, which may range from 18% or such other rate.

Indeed, this escalation clause is wholly potestative and solely dependent on Gotesco’s will. Gotesco enjoyed an unbridled right to impose any interest rate it so desired. In fact, the interest rate varied widely and was not subject to any ceiling or discernible standard. Strangely, with the unrestrained imposition of varying interest rates, the CAAD even exceeded the amount of monthly rent.⁷⁰ Undeniably, Gotesco’s imposition of shifting interest rates resulted to a modification of the contract that in turn, necessitated Cua’s consent. The parties were not on equal footing as Cua was left with no choice but to accept whatever rate Gotesco wished to impose.

Verily, the haphazard imposition of indiscriminate interest rates, sans sufficient basis and without clear notice and proof of the supposed conditions warranting their imposition unveils the unfairness and one-sidedness of the escalation clause. As Cua testified, from May 1994 to December 1996, Gotesco charged him a fixed CAAD of ₱4.25 per square meter per day or ₱131.75 for a period of 30 days. However, beginning 1997, Gotesco started to unilaterally impose CAAD escalation costs at varying interest rates.⁷¹

In justifying its acts, Gotesco vaguely and conveniently harped on the Asian currency crisis, purported increase in rates by service and utility providers, and the alleged downward spiral of the economy. However, it failed to present an iota of evidence proving the occurrence of these events, how they led to inflation, peso devaluation and escalation in the maintenance and utility costs, and most importantly, how they necessitated an increase in

⁶⁹ *Rollo* (G.R. No. 228513), p. 49; *rollo* (G.R. No. 228552), p.44.

⁷⁰ *Rollo* (G.R. No. 228552), p. 59.

⁷¹ *Id.* at 47-48.

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the CAAD. Worse, instead of proving the aforementioned occurrences, Gotesco simply asked the Court to take judicial notice of them.

In *Citibank, v. Sabeniano*,⁷² the Court stressed that it cannot simply take judicial notice of the Asian currency crisis in 1997, and automatically declare that there had been extraordinary inflation.⁷³ Rather, the burden of proving extraordinary inflation or deflation of the currency rests on the party alleging it. Said fact must be proven by competent evidence and cannot be merely assumed.⁷⁴

On this score, Gotesco miserably failed to justify its right to impose CAAD escalation costs. Montano S. Tejam (Tejam), Gotesco's Mall Operations Head, related during the trial that from 1997, there was a continuous increase in CAAD because of the peso devaluation and continuing price increases in fuel and oil, increase of power purchase agreement or electrical consumption, and the present economic situation in general.⁷⁵ However, he admitted that he has no knowledge on the value of the increases, and that he simply computed the 18% escalation cost based on the present economic situation and other factors.⁷⁶ This reveals Gotesco's unbridled determination and imposition of interest rates.

Also, Tejam admitted that clause 17 does not include the expenses of security, salaries of administrative staff, fuel and oil provisions, [Common Use of Services Area and Aircon]⁷⁷ and [Power Purchase Agreement],⁷⁸ maintenance of sewerage treatment plant and pump as well as aircon chiller.⁷⁹ Ironically however, said expenses were used as grounds for the imposition of the CAAD escalation clause.

Furthermore, Tejam explained that in addition to the billing statement, the tenant is informed in writing of the increased CAAD escalation as well as the basis thereof, through a circular. In this case, Cua, being a leasehold tenant, was allegedly informed through a Circular dated December 1, 2002.⁸⁰ Oddly however, Gotesco had been imposing CAAD escalation costs five years prior to the circulation of said circular.

⁷² 543 Phil. 406 (2007).

⁷³ Id. at 432-433.

⁷⁴ Id. at 432.

⁷⁵ *Rollo* (G.R. No. 228552), p. 53.

⁷⁶ Id. at 54.

⁷⁷ Id. at 46.

⁷⁸ Id. at 53.

⁷⁹ Id. at 54.

⁸⁰ Id. at 55.

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All the aforementioned acts prove Gotesco's baseless and unbridled manner of determining and imposing CAAD escalation costs. Considering that the CAAD escalation clause is invalid, Gotesco is ordered to return to Cua the amount of ₱2,269,735.64, with interest of six percent (6%) *per annum* from the finality of this Court's ruling until full satisfaction. The CAAD dues beginning year 1997, shall be re-computed pursuant to the first paragraph of clause 17, or at the rate of ₱4.25 per square meter per day, to wit:

17. Common Area Dues and Other Charges – Unless otherwise arranged with the LESSOR, the LESSEE shall pay monthly common area dues equivalent to Two Pesos (P2.00) per square meter per day and aircon dues of Two and 25/100 Pesos (P2.25) per square meter per day or the gross amount of Four and 25/100 Pesos (P4.25) per square meter [per day] on or before the 5th day of each month, without the necessity of demand from the LESSO[R]. Any interruption or disturbance of the possession of the LESSE[E] due to fortuitous events shall not be a cause for non-payment of the common area dues.⁸¹

Cua is entitled to attorney's fees

Article 2208 of the Civil Code lays the basis for the award of attorney's fees, as follows:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;**
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;

⁸¹ *Rollo* (G.R. No. 228513), p. 49.

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.⁸² (Emphases supplied)

The award of attorney's fees in favor of the winning party lies within the court's discretion, taking into account the circumstances of each case. Attorney's fees may be awarded if a party was forced to litigate, and incur expenses to protect its right and interest due to another party's unjustified act or omission.⁸³ In all cases, the award should have factual, legal, and equitable basis, and must not be founded on pure speculation and conjecture. In addition, the reason for the award of attorney's fees must be stated in the body of the decision.⁸⁴

In this case, the RTC awarded attorney's fees on the following ground:

Considering the length of time that elapsed from the time of the filing of this Complaint to the rendition of this judgment, the provisional remedies sought, the modes of discovery availed of, among others, this Court finds and so holds that the sum of five hundred thousand (P500,000.00) pesos is sufficient.⁸⁵

Indeed, the records show that the case dragged on for a period of more than nine years at the trial stage; involved numerous proceedings ranging from the issuance of a TRO and an extension thereof, a writ of preliminary injunction, its subsequent dissolution, two motions for disqualification that resulted to two judges inhibiting from the case, motion for partial summary of judgment, motion for specification, interrogatories to defendant, motion to render meaningful discovery, motion for production, inspection, and copying of documents. Further, in the course of the protracted trial, Cua hired two counsels.⁸⁶

Additionally, as found by this Court, Gotesco staunchly insisted on the imposition of the escalation clause, which was clearly void for being violative

⁸² CIVIL CODE, Article 2208.

⁸³ *Camp John Development Corp. v. Charter Chemical and Coating Corp.*, G.R. No. 198849, August 7, 2019, citing *Sime Darby Pilipinas, Inc. v. Goodyear Phils., Inc.*, 666 Phil. 546, 564 (2011).

⁸⁴ *Spouses Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 460 (2016), citing *Alcatel Philippines, Inc. v. I.M. Bongar & Co., Inc.*, G.R. No. 182946, October 5, 2011, 658 SCRA 741, 744.

⁸⁵ *Rollo* (G.R. No. 228552), p. 60.

⁸⁶ *Rollo* (G.R. No. 228552), p. 32.

of the principle of mutuality of contracts, and even assuming to have been valid, was bereft of any basis in fact.

Remarkably, in *Lim v. Tan*,⁸⁷ the Court awarded attorney's fees after considering the legal extent of the work undertaken as well as the length of time that elapsed to prosecute the case.⁸⁸ Likewise, in *Camp John Development Corp. v. Charter Chemical and Coating Corp.*,⁸⁹ the Court considered the years that passed from the time the prevailing party justifiably and incessantly demanded payment from the other party who unjustifiably refused to pay.⁹⁰

Accordingly, this Court finds the award of attorney's fees proper in the reduced amount of ₱100,000.00, which is more just and reasonable under the circumstances.

WHEREFORE, premises considered, the petition in G.R. No. 228552 entitled *Victor C. Cua v. Gotesco Properties, Inc.* is **GRANTED**, while the petition in G.R. No. 228513 entitled *Gotesco Properties, Inc. v. Victor C. Cua* is **DENIED for lack of merit**. Accordingly, the March 29, 2016 Decision and the November 29, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 100311 are **AFFIRMED with the following MODIFICATIONS**:

- (i) The Common Area and Aircon Dues (CAAD) Escalation Clause is hereby invalidated. Gotesco Properties, Inc. is ORDERED to return to Victor C. Cua the amount of ₱2,269,735.64;
- (ii) The case is REMANDED to the Regional Trial Court Branch 41 for the proper computation of the CAAD pursuant to the first paragraph of Clause 17 of the Contracts of Lease; and
- (iii) Victor C. Cua is awarded attorney's fees equivalent to ₱100,000.00.

The amount returned by Gotesco Properties, Inc. and the attorney's fees shall be subject to an interest rate of six percent (6%) *per annum* reckoned from the finality of this Court's Decision until full satisfaction.

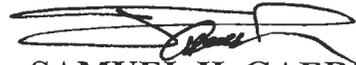
⁸⁷ 801 Phil. 13 (2016).

⁸⁸ Id. at 25-26.

⁸⁹ G.R. No. 198849, August 7, 2019.

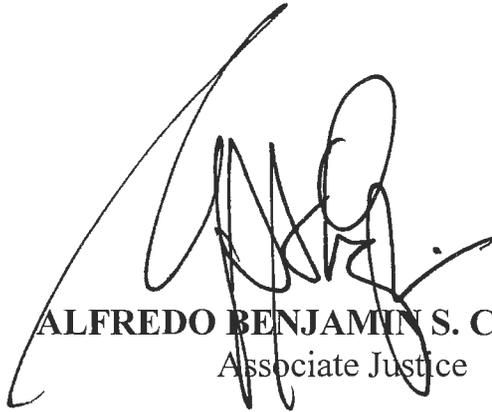
⁹⁰ *Camp John Development Corp. v. Charter Chemical and Coating Corp.*, supra.

SO ORDERED.

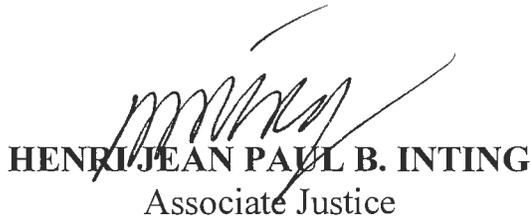


SAMUEL H. GAERLAN
Associate Justice

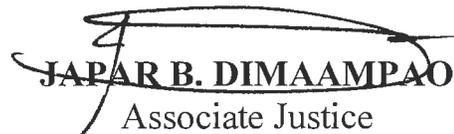
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



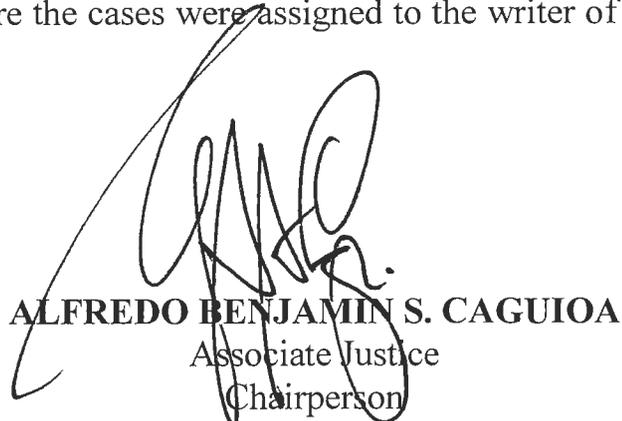
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

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