

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**LEONOR J. VDA. DE JAVELLANA,  
*Petitioner,***

***-versus-***

**G.R. No. L-60129  
July 29, 1983**

**COURT OF APPEALS and MOBIL OIL  
PHILIPPINES, INC.,  
*Respondents.***

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**DECISION**

**CONCEPCION, JR., J.:**

APPEAL by certiorari from the judgment of the Court of Appeals (now known as the Intermediate Appellate Court) in CA-G.R. No. 50108-R, entitled: "Mobil Oil Philippines, Inc., plaintiff-appellee, versus Leonor J. Vda. de Javellana and Shell Refining Company (Phil.), Inc., defendants-appellants," insofar as it denied herein petitioner's claim for damages.

The facts of the case are not disputed. Briefly stated, they are as follows:

The petitioner Leonor J. Vda. de Javellana is the registered owner of three (3) contiguous parcels of land, with an aggregate

area of 1,549 square meters, situated along Buendia Avenue, Makati, Metro Manila. The place was found suitable for a gasoline station so that on December 20, 1969, she executed an option to lease the said property in favor of the herein private respondent, Mobil Oil Philippines, Inc. (Mobil, for short). Said option read, in part as follows:

“This option may be exercised by the optionee within a period of 60 days from the date hereof, and if not so exercised or executed within the stated period, this option shall cease and come to an end, and the consideration paid herein shall automatically be forfeited to the optionor, otherwise, said amount shall form part of the first payment of the lease.”<sup>[1]</sup>

As agreed upon and understood by the parties, Mobil had up to February 18, 1970 within which to exercise its option.

On July 31, 1970, however, Javellana leased the same property to the Shell Refining Company (Phil.), Inc. (Shell, for short) and received the amounts of P120,000.00, as advance rental on the property, and P20,000.00, for demolition expenses.<sup>[2]</sup>

As a result, Mobil, claiming that it had exercised its option to lease the property, filed an action before the Court of First Instance of Rizal against Javellana and Shell to declare the lease agreement between Javellana and Shell null and void and of no legal effect, and to compel Javellana to execute and sign a lease agreement in its favor. Mobil also prayed that both defendants be ordered to pay damages and attorney's fees; and that a writ of preliminary injunction be issued to restrain the defendants from implementing the lease agreement in question and from constructing and/or installing a gasoline station or structure of whatever nature on the property during the pendency of the case.<sup>[3]</sup>

Javellana denied all the material averments of the complaint and claimed, by way of affirmative defense, that the complaint stated no cause of action, and that Mobil failed to exercise its option to lease her property within the stipulated period. As counterclaim, she asked that Mobil be adjudged to pay her the amounts of P100,000.00, for

moral damages; P30,000.00, for exemplary damages; and P20,000.00, for attorney's fees and expenses of litigation.<sup>[4]</sup>

Shell also denied the material averments of the complaint and alleged, as affirmative defenses, that the option to lease was not valid or binding on third parties the same not being in a public instrument duly registered in the office of the Register of Deeds; that there was no valid exercise of the option to lease because plaintiff availed of it only after the 60-day period had elapsed; that the lease agreement entered into by and between Javellana and Shell was valid, legal and binding not only on the parties to the said agreement but also on plaintiff Mobil because it was executed in compliance with all the requirements of the law and registered with the office of the Register of Deeds; that the alleged exercise of the option by plaintiff Mobil is not provable under the provisions of the Statutes of Fraud; and that Mobil not having any right over the properties in question cannot restrain Shell from making use of said properties having leased the same from its owner.

By way of counterclaim, Shell alleged that Mobil was liable to it for unjustifiably compelling Javellana to violate her obligations under their lease agreement; that by reason of the unjustified filing of the case said defendant could not proceed with the construction and operation of gasoline station in the properties in question resulting in loss of expected profits; that the non-construction of the said gasoline station would cause losses to the corporation because it will be paying rentals to Javellana at the rate provided for in the Lease Agreement although in the meantime it cannot make use of the property for the purpose for which they were leased and that by reason of the filing of the case it incurred litigation expenses, including attorney's fees in the amount of P10,000.00.

Shell also filed a cross-claim against Javellana claiming that it had been assured by Javellana at the time of the execution of their lease agreement that the option to lease in favor of Mobil had expired without the latter having taken advantage thereof; that Javellana should indemnify Shell for whatever amount it should be ordered to pay Mobil, as well as damages and expenses of litigation.<sup>[5]</sup>

Meanwhile, on August 17, 1970, or two days after the filing of the original complaint, the trial court issued a temporary restraining order, restraining Javellana from leasing and/or encumbering the property in question to third parties and from constructing thereon any building or structure of whatever nature, until further orders from the court. Said restraining order was reiterated on September 9, 1970, upon the filing of the second amended complaint impleading Shell, and Shell was likewise restrained from implementing the lease agreement and constructing or installing on the property a gasoline station or any other kind of structure.<sup>[6]</sup>

After trial, the lower court found that Mobil had duly exercised its option to lease the property of Javellana and rendered judgment, as follows:

“In view of all the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants:

- “1. Making permanent the writ of preliminary prohibitory injunction heretofore issued by this court;
- “2. Ordering the issuance, upon the filing by the plaintiff of a bond in the amount of P50,000.00 of a writ of preliminary mandatory injunctions ordering the defendant and/or persons acting under them to turn over to the plaintiff the physical possession of the lots covered by Transfer Certificate of Title Nos. 25426 and 15427 in the name of Leonor Vda. de Javellana, of the Registry of Deeds of Rizal, and authorizing the plaintiff and/or persons acting under it to construct a gasoline station and to operate the same;
- “3. Declaring the Lease Agreement, Exhibit 1-Shell, null and void and of no force and effect;
- “4. Ordering the defendant Javellana to execute the Lease Agreement, Exhibit B-1, provided that all the terms and conditions agreed upon by the plaintiff and the defendant Javellana appearing in the option, Exhibit B, are incorporated therein;

- “5. Condemning the defendants, jointly and severally to pay to the plaintiff the amount of P51,750.00 as and by way of compensatory and exemplary damages, plus attorney’s fees of P10,000.00;
- “6. Condemning the defendant Javellana to return to the defendant Shell the amount of P140,000.00 paid by it to said defendant Javellana;
- “7. Dismissing the counterclaim of defendants, and the cross-claim of Shell against Javellana except the aforesaid amount of P140,000.00; and
- “8. Ordering the defendants to pay the costs of suit.”<sup>[7]</sup>

On appeal, however, the respondent Court of Appeals found that Mobil failed to exercise its option within the stipulated period; hence, the lease contract between Javellana and Shell is valid and should be given legal effect. The appellate court further found that the institution of the suit by Mobil and the issuance of the writ of preliminary injunction at its instance had decidedly damaged and prejudiced Javellana and Shell — “On the part of Javellana, she was deprived of the rentals due her by reason of her contract with Shell, all of which she ought to recover in her counter-claim.” But, the appellate court, although it reversed the judgment, did not grant damages to Javellana because her counterclaim had been dismissed by the trial court and said dismissal was never raised nor questioned by her on appeal, much less assigned as an error and discussed in her brief.<sup>[8]</sup>

Unable to obtain a reconsideration of the judgment,<sup>[9]</sup> the petitioner filed the present recourse.

The issue is whether or not the petitioner is entitled to an award of damages for the wrongful filing of a case against her and the improvident issuance of a writ of preliminary mandatory injunction, notwithstanding the fact that her counter-claim for such damages had been dismissed by the trial court and she had not assigned such

dismissal, as an error in her brief filed with the respondent appellate court.

The petitioner claims that the refusal of the respondent appellate court to award damages to her despite its findings that she had incurred damages by reason of the acts of Mobil, runs counter to the doctrine that errors may be considered if plain or otherwise necessary to arrive at a just decision, and would sacrifice the ends of justice to empty technicality. She further claims that the prayer in her brief that the decision appealed from should be reversed in toto, coupled with the findings of the respondent appellate court that she had actually suffered damages as a consequence of the acts of Mobil, constitute ample justification for awarding her damages.

Traversing the argument, Mobil contends that the respondent appellate court correctly ruled that the petitioner is not entitled to damages since she failed to appeal from the dismissal of her counter-claim for damages, nor did she assign such dismissal as error and argued the same in her brief.

After a careful review and perusal of the entire records of the case, the Court finds the stand of the petitioner meritorious.

The general rule is that only errors which have been stated in the assignment of errors and properly argued in the brief will be considered, except errors affecting jurisdiction over the subject-matter and plain, as well as clerical, errors.

But while the petitioner Javellana did not assign as error the failure of the trial court to adjudge recovery and to award damages, We feel that there is sufficient justification to set aside the judgment in this respect. For, the error is patent. Under Section 7, Rule 51 of the Revised Rules of Court, the Court of Appeals is given an option to consider and pass upon a proven error notwithstanding the fact that it was not specifically assigned and argued in the brief.

Besides, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.<sup>[10]</sup>

At any rate, the Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case,<sup>[11]</sup> and, We find it unfair and unjust to deprive the petitioner of the rentals on her property due to a mere technicality.

The contract of lease executed by and between the petitioner Javellana and Shell stipulated that the lease shall be for a period of twenty (20) years, subject to cancellation at the exclusive option of shell at the end of the 10<sup>th</sup> and/or 15<sup>th</sup> year, by notifying Javellana in writing at least 30 days prior to the end of the said 10<sup>th</sup> or 15<sup>th</sup> year; and that Shell shall pay Javellana, as rentals on the property, the following amounts:

1. P5,000.00, per month, during the 1<sup>st</sup> up to the 5<sup>th</sup> year of the lease;
2. P6,000.00, per month, during the 6<sup>th</sup> up to the 10<sup>th</sup> year of the lease;
3. P7,000.00, per month, during the 11<sup>th</sup> up to the 15<sup>th</sup> year of the lease; and
4. P8,000.00, per month, during the 16<sup>th</sup> up to the 20<sup>th</sup> year of the lease.

The contract of lease was executed on July 31, 1970, so that the rentals which Javellana would have received were it not for the filing of the case by Mobil and the improvident issuance of a writ of preliminary injunction at the instance of Mobil, was P912,000.00, up to the end of the 13<sup>th</sup> year on July 30, 1983. But, since she had been given an advance rental of P120,000.00 by Shell, the accrued rental due her is P792,000.00. Consequently, Mobil is hereby ordered to pay Javellana the amount of P792,000.00, with interest thereon at the legal rate from finality of judgment until the same is fully paid, plus the amount of P7,000.00, per month, from July 31, 1983, until the possession of the property in question is returned to Javellana. Mobil is further ordered to pay Javellana the amount of P20,000.00, for attorney's fees and expenses of litigation.

**WHEREFORE**, with the modification above-indicated, the judgment appealed from should be, as it is hereby, **AFFIRMED** in all other respects. With costs against the respondent Mobil Oil Philippines, Inc.

**SO ORDERED.**

**Makasiar, J., (Chairman), Guerrero, Abad Santos and Escolin, JJ., concur.**

**Aquino, J., took no part.**

**De Castro, J., on sick leave.**

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[1] Record on Appeal, p. 20.

[2] Id., p. 67.

[3] Id., p. 10.

[4] Id., p. 53.

[5] Id., p. 116.

[6] Id., pp. 41, 114.

[7] Id., p. 232.

[8] Rollo, p. 26.

[9] Id., pp. 41, 52.

[10] Hernandez vs. Andal, 78 Phil. 196.

[11] Ortigas vs. Lufthansa German Airlines, G.R. No. L-28773, June 20, 1975; 64 SCRA 610.