

SUPREME COURT
CASE BRIEF
FATHIMATH THASLEEMA v HDC
[2018/SC-A/11]

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DATE OF DECISION: 18 November 2020

BENCH:

- Justice Honourable Dr. Azmiralda (Presiding Justice)
- Justice Honourable Uz. Husnu Al Suood
- Justice Honourable Uza. Aisha Shujune Muhammad

FACTS:

- On 29 November 2005, Housing Development Corporation Limited (“**HDC**”) and Fathimath Thasleema entered into an agreement (“**Agreement**”) for the lease of a plot of land in Hulhumalé for industrial use for a period of 25 years.
- As no work have been started on the land till date, HDC had decided not to grant her an extension of time and sent her a notice to terminate the Agreement on 17 September 2015.
- When the decision of HDC was challenged by Fathimath Thasleema, at the Hulhumalé Magistrate Court, it was ruled that the notice issued by HDC was in breach of the Agreement between HDC and Fathimath Thasleema.
- HDC sought to appeal the decision of the Magistrate Court at the High Court where this decision was overturned on the grounds that, the land was leased for a specific purpose and if a party to the Agreement does not perform what was obliged on that party under the Agreement, the other party maybe permitted to terminate the Agreement.
- The decision of the High Court was appealed by Fathimath Thasleema at the Supreme Court.

ISSUE:

- Whether the High Court had correctly interpreted the terms of the Agreement between HDC and Fathimath Thasleema, s. 20 of Law No. 4/91 (Contract Act) and s. 2.1 of Regulation for Development of Industrial Zones leased in Hulhumalé.

DECISION AND RATIONALE:

- The Supreme Court overruled the decision of High Court and decided that:
 - the notice of termination issued by HDC was in breach of the Agreement between Fathimath Thasleema and HDC; and

- HDC shall act in accordance with the Agreement.
- The Supreme Court highlighted that clause 10 of the Agreement was wrongly interpreted by the High Court, when it ruled that the clause obliges Fathimath Thasleema to develop the land for industrial use, whilst the clause only lays down the conditions of utilizing the land and prohibits the lessee from using the land for any purpose other than a way permitted by the Agreement and by the relevant law. So, unless Fathimath Thasleema uses the land for an unauthorized purpose, she will not be in breach of that condition of the Agreement and the fact that she did not utilize the land at all, is a whole different circumstance.
- It was further noted that, for argument sake, even if clause 10 (b) of the Agreement obliges Fathimath Thasleema to develop the land for industrial use under the Agreement, there are no clauses in the Agreement which specifies the time when Fathimath Thasleema can be regarded to have defaulted clause 10 or when does HDC reserve the right to terminate the Agreement regarding the same. Hence, Fathimath Thasleema cannot be held liable for the default of the Agreement even under s. 20 (a) of the Contract Act which states that unless otherwise agreed between the parties, obligations under the contract must be complied as provided therein.
- It was also noted that, in the s. 2.1 of the Regulation for Development of Industrial Zones Leased in Hulhumalé, which was referred to by HDC in their arguments claiming that Fathimath Thasleema was in breach of that section, it does not stipulate any consequences of not starting any work on the leased land under the Agreement.
- The rule of '*contra proferentem*' which states that any clause in a contract that is considered as ambiguous shall be interpreted to the detriment of the party who drafted the contract, was ruled to be not applicable in this case as clause 10 of the Agreement which was subject to dispute in this case was clear and did not need any interpretation.
- The Justices agreed that a contract can only be terminated as per what is expressly stipulated in the contract itself. While the Agreement lays down all the obligations and covenants of the parties as well as the procedures for termination and to rectify disputes arising in relation to the Agreement, none of those clauses provided the consequences of not doing any work on the land. Hence, HDC's decision to terminate the Agreement based on the fact that no work has been carried out on the land leased under the Agreement was in contrary to the Agreement.

PRECEDENT SET:

- This case sets a precedent as to the fact that, the obligations of the parties under an Agreement will only be deemed as what is expressly provided therein, and an agreement can be only terminated as expressly provided therein. The case further explains the circumstance where the rule of '*contra proferentem*' can be applied.

ANALYSIS:

- No party to the agreement shall be allowed to terminate the agreement in contravention to the expressly specified circumstances and procedures laid down in the agreement. Regardless of the purpose of the agreement, the obligations of the parties under an agreement will only be deemed as what is expressly provided therein.

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