

**ASSOCIATED REALTY DEVELOPMENT COMPANY, INC., PETITIONER,  
VS. THE COURT OF APPEALS, KEATER HUANG AND TAN GIOK TIN,  
RESPONDENTS.***G.R. No. L-18056. January 30, 1965*

Ponente: PAREDES, J.

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On May 7, 1946, the petitioner corporation bought from the China Banking Corporation a parcel of land containing an area of 4,562.79 square meters, located at the corner of Soler and Alvarado Streets, Manila. It was the desire of the petitioner to subdivide the property for purposes of resale, which was frustrated due to the difficulty of ejecting the tenants, all Chinese, and who had organized themselves into the Soler Tenant Association. Respondents spouses Keater Huang and Tan Kiok Tin, were also tenants of the property, and were at the time occupying a portion of the same. The projected ejectment of the tenants was brought to the attention of the Chinese Consul General in Manila. The intervention of the Consul General, brought about the creation of a mediation committee, through whose efforts the matter was amicably settled, resulting into the tenants having been given the first option to acquire the lots occupied by them within a certain period of time and upon payment of the prices fixed in the agreement that will be made. The mediation committee was composed of respondent herein Keater Huang, tenant and member of the tenants organization; Y. C. Shueh, Vice-Consul of the Chinese Consulate; and Lim Sae Gim, another tenant. The property was subsequently subdivided into 43 lots of various areas and shapes which became later known as the Soler-Alvarado Subdivision. The subdivision and survey of the property as per plan (Exh. K) prepared by surveyor Sixto Tenmatay, was undertaken from August 21, to 23, 1946. A second survey was made on December 10, 1946; a verification survey on June 23, 1947, by surveyor Jose N. Quedding; and third survey by another surveyor on July 31, 1947.

After the first and second surveys, the Associated Realty, on April 22, 1947, wrote Tan Giok Tin (Mrs. Keater Huang), the following:

This is to confirm in writing the subject of our conversation in connection with your desire to purchase a parcel of land situated at .271 Soler from the Associated Realty Development Co., Inc. Tho Company is willing to grant to you an. additional parcel of land along the river bank which is adjacent to Lot No. 24 of Plan Soler-Alvarado Subdivision, District of Binondo, Manila. This award is in consideration of the valuable swvices of your husband, Mr. Keater Huang, during the mediation between the Soler Tenant Association and this Company with the Chinese Consulate General. This grant is also given to you on these conditions:

1. That this parcel of land bordering or adjacent to the said

Lot No. 24 (271 Soler) to the river bank—total area of which shall be surveyed and determined later—shall entirely form part and parcel of the said Lot No. 24 of the Soler-Alvarado Subdivision;

2. That this lot will also be included in the registration of the Torrens Title at the conclusion of contract of sales;

3. That there is no financial obligation on your part for its acquisition from the Company;

On the same date also, the Associated Realty executed a document of sale captioned "receipt of full payment and agreement to convey," whereby it transferred to Tan Giok Tin a parcel of land known as Lot No. 24 of plan Soler-Alvarado Subdivision with an area of Fifty-two (52) sq. meters, more or less, situated at 271 Soler St., Binondo, Manila, and where it further agreed to have title thereto issued in the name of said Tan Giok Tin at the earliest Practicable time, but not later than one year from the execution of the said document. The amount paid for the lot of 52 square meters was P6,760, at P130.00 per square. Upon the execution of the above document, Associated Realty delivered to the appellees herein possession of Lot No. 24, together with a copy of the survey plan, which indicated the exact shape, measurement and location thereof. Simultaneous to the delivery of Lot No. 24, Associated Realty, also delivered possession to appellees herein the parcel of land situated alongside the Estero de Mag-dalena, subject matter of a letter earlier reproduced which, according to survey made, had an area of 79 square meters, after the plan indicating said parcel was approved by the Director of Lands. Upon the delivery of possession of the parcel along the estero, appellees herein constructed a cement fence along the estero, which cost them P3,400.00. The value of the property, at the time of the award was P130.00 per square meter or a total of P10,270.00.

On March 31, 1948, Keater Huang presented with the Office of the Engineer, City of Manila, an application for the construction of a three (3) story Residential House of strong materials, which covered the whole area of Lot 24. The building plan was so prepared that it fitted the size and shape of the lot, as appearing in the subdivision plan, supplied by Associated Realty when it delivered possession thereof to appellees. The above application bore the consent of Associated Realty, same having been given by Ko Seng Liat, Vice-President of the Associated Realty.

With the approval of the application for the construction of the building, the proposed residential house was built by appellees. After the completion of the construction, it turned out that Lot 24 contained only an area of 45 square meters or 7 square meters short of the area stated in the Receipt of Full Payment and Agreement to Convey; that the house constructed, which had a floor area of 52 square meters, occupied a portion of the estero lot, which the Associated Realty had given to plaintiffs and which turned out to be owned by the government of which the Associated Realty had no authority to dispose, one way or the other.

Demands for the release of the titles and conveyance in the names of the plaintiffs of the two parcels were made, but appellants failed and/or refused, due to the utter impossibility of doing so. A complaint for damages, containing four (4) causes of action, was filed on September 20, 1954, by appellees, with the CFI of Manila, praying:

1. Under the First Cause of Action:

(a) Condemning the defendant to pay to the plaintiffs the sum of P23,700.00, which represents the present market value to the award containing seventy-nine (79) square meters at P300.00 per square meter, and with interest thereon at the legal rate from the filing of this complaint; and

(b) Ordering the defendant to pay to the plaintiffs the sum of P3,400.00, which represents the cost and repairs to the cement fence constructed by the plaintiffs along the Estero de Magdalena, with legal interest thereon from the filing of this complaint.

2. Under the Second Cause of Action:

(a) Ordering the defendant to pay the plaintiffs the sum of P26,000.00, which represents the value of the latter's residential building with legal interest thereon from the filing of this complaint;

(b) Ordering the defendant to pay to the plaintiffs the sum of P15,600.00, which represents the actual market value of Lot No. 24, containing fifty-two (52) square meters at P300.00 per square meter with legal interest thereon from the filing of this complaint;

(c) Ordering the defendant to pay the plaintiffs the sum of P1,400.00, which represents the cost of the demolition, and removal of the old building on Lot No. 24, with legal interest thereon from the filing of this complaint.

3. Under the Third Cause of Action:

(a) Condemning the defendant to pay to the plaintiffs a sum equivalent to ten (10%) per centum of the total amount that maybe awarded by the Court in their favor to cover attorney's fees;

(b) Condemning the defendant to pay to the plaintiffs the amount of not less than P50,000.00 as moral damages;

(c) Condemning the defendant to pay to the plaintiffs the amount of not less than P10,000.00 as exemplary damages.

4. Under the Fourth Cause of Action:

(a) Condemning the defendant to pay to the plaintiffs the sum of FIVE HUNDRED (P500.00) PESOS as additional attorney's fees;

(b) Condemning the defendant to pay to the plaintiffs the sum not less than P10,000.00 as additional moral damages;

(c) Condemning the defendant to pay to the plaintiffs the sum of net less than P10,000.00 as additional exemplary damages; and

(d) Ordering the defendant to pay the costs of this suit.

The Associated Realty, answering the complaint, averred that it believed in good faith, but did not represent to plaintiffs, that it was the owner of the estero lot; that, if at all, the lot was being given as donation, which could not be va'id as such because it was not executed in a public document and there wns no valid acceptance thereof by the plaintiffs; that Keater Huang acted in bad faith in repairing and constructing the new fence along the estero lot, as he knew from the start that the same did not belong to the Associated Realty, but to the government; that if plaintiff Keater Huang is entitled to any compensation as mediator between the Associated Realty and and the Soler-Alvarado Tenants Association, of which he is a member, same would amount only to P2,000.00, which the corporation credited Lim Sae Gim, ,also a tenant and member of the committee. The corporation also claimed that plaintiffs had condoned the failure on its part to give the estero lot, when the parties (defendant and plaintiffs) exerted efforts to acquire the property from the government; that the deed of sale (Exh. G), merely stated that Lot No. 24 has an area of 52 square meters, more or less, without giving to the plaintiffs the survey plan indicating the shape, measurement and area of the said lot, because at the time the final survey was not yet completed; that plaintiffs knew on or before March 31, 1948, that the estero lot did not belong to defendant corporation and that Lot 24, had an area of only 45.30 square meters; that after the above matters were brought out, the corporation, by way of compromise, offered to purchase the estero lot for P3,000.00, so that plaintiffs could make use thereof, but which was refused; that because of such refusal, and due to the impending winding up of the affairs of the corporation, regarding the Soler-Alvarado Subdivision, it transferred its rights over the estero lot, in favor of its Manager, Guillermo V. Madridejos. As a counter-claim, defendant corporation urged that plaintiffs be made liable to pay it P25,000.00 for maliciously prosecuting the case, in spite of lack of probable cause; P50,000.00 for the wrongful attachment of its properties, and P476.00 representing rentals it had paid the government for the use and occupation of the estero ,lot by plaintiffs. Plaintiffs generally and specifically denied the allegations in the

counterclaim and prayed for additional damages of P25,000.00, for mental anguish, etc.

The CFI of Manila, on December 29, 1956, rendered the following judgment:

"Upon the facts above stated, bearing in mind that the defendant has generously offered to the plaintiffs, in lieu of the estero land, the sum of ₱3,000.00, and in fairness and justice to all, the court believes that the plaintiffs are entitled to an indemnity in the sum of three thousand pesos (₱3,000.00), plus ₱1,200.00 for the repairs of the stone fence in 1947, plus the sum of ₱871.00 representing the difference in the price of lot No. 24 on the basis of the reduced area of 45.30 square meters. Accordingly, judgment is hereby rendered ordering the defendant to pay to the plaintiffs the sum of five thousand seventy-one pesos (₱5,071.00). The fee for the revocable permit for the use of the estero land shall hereafter be paid by the plaintiffs. The defendant's counterclaim is dismissed. No pronouncement is made as to costs."

Both parties appealed to this Court. In view, however, of the amendment of the Judiciary Act of 1948, by Rep. Act No. 2613, the case was referred to the Court of Appeals, it appearing that the amount in controversy is only ₱70,000.00, more or less.

On November 9, 1960, the Court of Appeals rendered judgment, the pertinent portions of which are hereunder reproduced:

"\* \* \*. It has noticed that the document of sale (Exhibit G) merely stated that lot 24 has an area of 52 square meters, more or less, and is situated at 271 Soler St., Bttondo, Manila, without specifying the boundaries. It is also noted that the award of the estero lot does not state the area and boundaries. But it appears that the subdivision was surveyed immediately after its acquisition. The plan of the subdivision (Exhibit K), prepared by Sixto Ten-matay, as the surveyor hired by the defendant corporation, indicates that the first survey of the subdivision was undertaken from August 21 to 23, 1946, the second on December 10, 1946, and the third on July 31, 1917. Another verification survey was made by another surveyor, Jose N. Quedding, on June 23, 1947. According to Tito Dans, Manager of the defendant, the said subdivision plan (Exhibit K) was submitted to the corporation in December, 1946, and that he knew from said plan that Lot 24 was triangular in form. The plan (Exhibit K) shows two vital facts: (1) there is no strip of estero lot between Lot 24 and the river bank; and (2) Lot 24 has an area of 45.30 square meters and is triangular in shape.

"The plaintiffs applied for the construction of their house on March 31, 1948. The application, building plan and location plan of the house (Exhibits H, E, and K-1) show that the proposed building was in the shape of a capital letter "L" and spread over an area of 52 square meters, more or less. These papers were presented to Co Seng Liat and Tito Dans. At the time of the presentation of these papers to Co Seng Liat and Tito Dans, the subdivision was completely surveyed. Yet, Co Seng Liat and Tito Dans gave their conformity to the application and plan.

"It is true that on April 8, 1948 Co Seng Liat informed Keater Huang that the estero lot was government property, and the construction of the house of the plaintiffs started a week thereafter. But Co Seng Liat intimated to Keater Huang that part of the proposed building covered government property or that said estero lot has an area of 79 square meters. Co Seng Liat's approval of the application and plan for the proposed building indicated at least that Lot 24 was in the shape of a capital letter "L" and has an area of 5.2 square meters. It is also true that Keater Huang knew of and consented to the application filed by Co Seng Liat for a lease over the estero lot from the government for the use and occupation of the plaintiffs, but, as aforesaid, Keater Huang was then still unaware of the fact that the estero lot claimed by the government has an area of 79 square meters or that a portion thereof is occupied by his house. Sometime in 1949, Keater Huang rejected the offer of defendant to buy the government lot for the use of plaintiffs for a sum of not less than ₱3,000.00. After Keater Huang had refused the offer, it appears that defendant never tried to return to the plaintiffs the corresponding purchase price of the difference in the area of Lot 24, taking into account that the total purchase price of ₱6,760.00 was based on the area of 52 square meters-mentioned in the deed of sale. These circumstances belie

defendant's pretense that plaintiffs have, either expressly or impliedly, excused said defendant from its failure to make good the award of the estero lot to the plaintiffs. Lastly, the corporation's assignment of its rights over the estero lot in favor of one of its employees, Guillermo Madridejos, without first notifying plaintiffs of such action, is highly questionable.

"Upon the foregoing, we are persuaded to believe and so hold that the defendant is guilty of fraud and bad faith in its dealings with plaintiffs. Accordingly, we can, not sustain defendant's appeal.

"\* \* \* Keater Huang must be reasonably compensated for his services as mediator in connection with the controversy between the corporation and the Soler Tenant Association. Defendant conceded that it was morally indebted to Keater Huang for his services in this regard, but asserts that at most Keater Huang was reasonably entitled to P2,000.00, the same amount which it had paid the other mediator Lim Sae Gim. In 1949, however, the corporation offered to buy the estero property for not more than P3,000.00 on behalf of the plaintiffs. These circumstances are indicative of the truth of the testimony of Keater Huang that he had accepted the role of mediator upon the inducement of Go Puan Seng and Co Seng Liat who promised to pay him a reasonable amount for his services. We are, therefore, constrained to order defendant to pay Keater Huang the sum of P5,000.00 as full and fair compensation for his services as mediator, in lieu of a return of the fair value of the estero lot which they have in the meantime used or occupied. With respect to Lot 24 and the residence of plaintiff's constructed thereon, plaintiffs choose to be paid for their actual values. The construction of the house was started in April, 1948 and completed in July, 1948. There is not an iota of positive evidence to show that, in the course of the construction, defendant or its officers and agents tried to advise plaintiffs to temporarily stop construction on the ground that the building occupied more than the actual area of Lot 24, despite the fact that the final subdivision survey was finished as early as July, 1947. It is not far-fetched to surmise, in this connection, that defendant might have deliberately concealed from plaintiffs the true area of Lot 24 in the hope that its application for a permit to occupy the estero lot would eventually ripen into a sales patent. For Lot 24 alone, its price per square meter in 1947 was 130.00 (Exhibit G). In 1954, when the complaint in this case was filed, the price certainly must have soared by reason of the development of the subdivision and the surrounding areas. We may, therefore, set the price at P300.00 per square meter, as prayed for by plaintiffs, and, therefore, plaintiffs are entitled to the price of P15,600.00 for the investment of P6,760.00. \* \* \*. For the house, a three-story house worth P26,000.00 we must give allowances for depreciation and the beneficial use availed of it by plaintiffs since July, 1948. We may, therefore, fix its price at P18,000.00, and grant to defendant the right to occupy, sell or demolish the building. For counsel fees, defendant is hereby condemned to pay 10% of the total amount due from it in favor of plaintiffs. No award of moral and exemplary damages.

"Wherefore, we hereby set aside the judgment of the lower court and render another condemning the defendant corporation to pay the plaintiff spouses in the total sum of P41,200.00, with legal interest thereon from September 20, 1954, until full payment, plus a sum equivalent to 10% of the above amount by way of counsel fees, without pronouncement as to cost."

Plaintiffs (now respondents) moved for a reconsideration of the above decision, asking that instead of the amount of P5,000.00 awarded as compensation, the value of the estero lot, computed at P300.00 per square meter, for the 79 square meters, be adjudged. They anchored their claim on the fact that said estero lot was awarded to them in consideration of the valuable services of Keater Huang and which defendant corporation made a part and parcel of Lot 24. Upon the other hand, defendant (now petitioner) moved for the reconsideration and re-hearing, pointing out that the findings and conclusions in the decision have no basis, both in law and in fact. The Court of Appeals, promulgated, on February 1, 1961, an "Amended Decision," which, in part reads:

"We re-examined the voluminous record of this case, with the point discussed in the motions of the parties always in our mind. We reset the case for oral argumentation, and we listened intently to the able lawyers representing the parties.

"Anent the motion of the defendant corporation, we find no ground, factual or legal, to justify a reversal of our

judgment. All the arguments presented in the motion for reconsideration were thoroughly evaluated in our decision. The defendant's motion for reconsideration is hereby denied.

"With respect to the plaintiffs' motion for reconsideration, we are asked to eliminate the award of P5,000.00 representing Keater Huang's full and fair compensation for his services as mediator and, in lieu thereof, to order the defendant corporation to compensate the plaintiffs in the amount of P21,690.00. representing the fair value of the estero lot at the rate of P300.00 per square meter based on its actual area of 72.30 square meters, because of the failure of the corporation to finalize the award of said estero lot to Keater Huang. We set aside the decision of the court a quo and rendered judgment in favor of the plaintiffs essentially upon our finding that the defendant is guilty of fraud or bad faith in its dealings with plaintiffs. We hesitated to grant compensation to the plaintiffs for the value of the estero lot because, among others, the area of said lot was not specified in the deed of award (Exhibit C). However, a review of the record would show that the Bureau of Lands approved the plan of land, as surveyed for the defendant corporation, on April 26, 1948, showing that the estero lot has an area of 72 square meters (Exhibit D or 42). Quite significantly, it was the same month of April, 1948 that the plaintiff spouses started the construction of their new residence and the improvement of the estero lot.

"Upon the foregoing, we hereby grant the plaintiffs' motion for reconsideration, and hereby amend our decision of November 9, 1960 to conform to our views and conclusions above set forth and its dispositive portion shall therefore read as follows:

" 'Wherefore, we hereby set aside the judgment of the lower court and render another condemning the defendant corporation to pay the plaintiff spouses in the total sum of P57,890.00, with legal interest thereon from September 20, 1954, until full payment, plus a sum equivalent to 10% of the above amount by way of counsel fees, without pronouncement as to costs. The defendant corporation may take over lot 24 and the house standing thereon upon full payment of the awards herein allowed the plaintiffs.' "

The original decision and the amended one is now before is Court, on appeal, petitioner corporation assigning, nine errors supposedly committed by the Court of Appeals, wit:

- (1) in awarding respondent spouses the market value of Lot 24 damages consequent to their rescission of the sale of Lot 24. an action of rescission on the ground of failure to deliver that is comprised in the stated area of the land sold prescribes in six months from date of delivery. In this case, respondent spouses filed their original complaint only in 1954, or eight years after delivery of the land.
- (2) in awarding damages to the respondent spouses arising out of the alleged failure of the petitioner to deliver all that is comprised in the stated area of the land sold, since the sale was a sale of a definite parcel of land for a lump sum and not a sale of land for a price per square meter.
- (3) in awarding the respondent spouses P15,600.00, which was the market value of Lot 24 in 1954 when the complaint was filed instead of the sum of P6,760.00, the purchase price paid by the respondent spouses for the lot in 1947. less the reasonable value of the use of the land by respondent spouses since December 1946.
- (4) in awarding respondent Keater Huang the "fair value of the estero lot," petitioner's promise to grant respondent the estero lot being void ab initio as the subject matter thereof was then undetermined and unsegregated and outside the commerce of men.
- (5) in awarding the respondent spouses the sum of P21,690.00. representing the market value of the estero lot in 1954 when the complaint was filed, as compensation for respondent Huang's services as mediator. \*\*\*\*\* For—
- (6) in allowing as "depreciation and the beneficial use availed of (the house built at an original cost of P26,000.00 in 1948) by plaintiffs since July, 1948," of only P8,000.00.
- (7) in failing to make findings of fact on the question of fraud or bad faith at the material and separate dates and

stages covered by the transactions.

(8) in finding petitioner guilty of fraud or bad faith in its dealings with respondent spouses, such findings being manifestly mistaken or impossible. In brief, it is without support in substantial evidence.

(9) in awarding the respondent spouses 10% of the amount due as attorney's fees. :

The first two (2) issues raised, are irrelevant in the instant case. The case at bar was never intended to be ; one of rescission, nor was there also anything to indicate that a dispute existed as to whether or not the transaction was a sale of a definite parcel of land, for a lump sum. The lower Court categorically stated that the suit was one "to recover from the defendant corporation the sum of P23,700.00, in lieu of a piece of land allegedly given to them by the defendant, together with "damages incurred by the plaintiffs in connection with a certain property bought by them from the defendant." It would be an idle gesture for Us, to discourse on said two alleged errors, because the matter which needs determination herein, is— whether or not respondents can recover the damages, actual or compensatory and otherwise, allegedly suffered by them and to what extent. Moreover, the provisions of law regarding rescission do not apply, because the parties are no longer in a position to restore the things they have received from each other, for the reasons set forth elsewhere In this opinion.

The respondent Court of Appeals had expressed the belief and consequently held, that the petitioner-appellant was guilty of fraud and bad faith in its dealings with plaintiffs-appellees. As a general rule, We are bound by the findings and conclusions of fact made by the courts, whose decisions are appealed. In view, however, of the seriousness of the charge which may render the respondent officials of the petitioner corporation subject to criminal responsibilities, and of the allegation that such findings and conclusions, are not substantiated by the evidence of record, we went over the record of the case, with painstaking solicitude, in search for the truth, and We are of the opinion that the charge of fraud and bad faith in defendant-petitioner's business dealings with the respondent spouses in that case, has not been sufficiently shown. In justice to defendant-petitioner, therefore, the portion of the decision of the respondent Court on the matter, is deleted, so as to conform with this ruling. This, however, will not exonerate the said petitioner from indemnifying the plaintiffs-respondents, for reasons which follow.

Alleged errors No. 4 & 5, refer to the estero lot. There seems to be no serious conflict that said lot was in payment of service rendered- Petitioner corporation, nevertheless, claims that in making the award, it thought the estero lot formed part and parcel of the property it had bought; that even the respondent Court, in its original decision, was of the opinion that the sum of P5,000.00 would be a full compensation for Keater Huang's services as a mediator, in lieu of a return of the lot's fair value; and that the other mediator was merely paid the sum of P2,000.00 for his services. It is a fact, however, that respondent Keater Huang's services were paid with the estero lot, not with cash; he accepted it; he was merely awaiting for the title thereof, when it was discovered that said lot belonged to the government and had merely an area of 73 square meters. No one should belittle the justness of the proposition that if one cannot obtain the thing agreed upon, through no fault of his, but through the fault of the obligor, it stands to reason that he should be indemnified the reasonable value of the thing. If the petitioner corporation had chosen to award to Keater Huang a estero lot, instead of money, there must have some good and useful reasons for doing so, which did not exist in the case of the other mediator. No one had ever compelled the petitioner-corporation to give the estero lot to Keater Huang. Am I it is indeed strange that the company is resorting to technicalities, on the formal requisites and validity of the alleged "donation," now that the courts are requiring it to pay its value. Aside from the fact that the transaction was not a "donation," in the strict sense of the word, the petitioner-corporation has already placed itself under the operation of the doctrine of estoppel.

Next in discussion is the property of the award of P15,600.00 which constituted the market value of lot 24 in 1954

when the complaint was presented (Error No. 3). It will be noted that lot 24 was the subject of the contract of purchase and sale, wherein petitioner undertook to deliver to respondents said lot, with an area of 52 square meters, for P6,760.00, or at P130.00 per square meter. Full payment of the purchase price was made on April 22, 1947, the only act which remained to be done, was the delivery of the title. As of that date, therefore, respondents, in law, became the owners of the lot. The Court of Appeals found that, at the representation of the plaintiffs-respondents, the market value of the lots in that vicinity in 1954, was already P300.00 per square meter; a fact which was not disputed by petitioner at all. The difference in the price, partook of the nature of a *lucro cesante* which, in this particular case, could have been realized by respondents. Indemnification for damages comprehend not only the value of the loss suffered, but also the profits which the obligee failed to obtain, had he sold it, at the time. *Lucro cesante* is usually the price which the thing could have commanded on the date that the obligation should have been fulfilled and was not (19 Scaevola, 558). Under the authority of article 2200 NNC, and jurisprudence on the matter therefore, the petitioner is liable to respondents in the amounts specified by the respondent Court, which consisted of the price of the lot at the time the complaint was presented (*Borromeo vs. Manila Electric Railroad*, 44 Phil., 165; *Algarra vs. Sandejas*, 27 Phil., 284).

Anent the house the respondents had built on the lot (Error No. 6), We find no reason for altering the findings of the respondent Court, concerning the value of its depreciation. We find that the conclusion fixing the depreciation at P8,000.00 is reasonable, taking into account the fact that at the time the decision of the trial court was rendered (Nov. 6, 1960), the price of construction materials had already gone high.

The respondent Court is correct when it disposed that "the defendant corporation may take over lot No. 21 and the house standing thereon, upon payment of the awards herein allowed the plaintiffs," because as things stand now, the plaintiff has no longer any beneficial use of the lot (No. 24), its area having been reduced by 7 square meters and its form and shape being now triangular, and the house itself which occupies a surface area of 52 square meters cannot be made to fit a lesser area, without reducing it and destroying its form, since the entire lot is now assigned to or owned by Madridejos. Under such a situation, the value of the lot and the house should be paid to plaintiffs.

The facts and circumstances obtaining in this particular case, warrant the award of attorney's fees to the respondents-appellees (pars. 2 & 11, Art. 2208, NCC). We consider the amount fixed by the respondent Court, fair and reasonable.

In view hereof, the decision appealed from is modified, in the manner heretofore indicated; and affirmed in all other respects, with costs, in both instances, against the petitioner-appellant Associated Realty Development Co., Inc.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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