

ENCARNACION T. BACLE, PLAINTIFF-APPELLEE, VS. MELCHOR GAIN, RAUL BAHAY, CASAR LAHOY, ELIAS ADELANTE, LANDO DIZON, RICARDO CABANOS, ALBERTO ISAGA, JUNIE SOLANIA, RENATO ABELLA, M...

Ponente: BORJA, J.

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BORJA, J.:

Before this Court is an appeal under Rule 41 of the Rules of Court assailing the Resolution[1] dated May 20, 2010 of the Regional Trial Court (RTC), Branch 5, Butuan City which ruled in favor of the plaintiff in Civil Case No. 5163 for “Recovery of Possession, Damages, and Attorney’s Fees.” The court a quo ordered defendants to “vacate and remove their respective houses or any structure constructed” on the plaintiff’s property and to pay damages.

The Facts of the Case

In a Complaint[2] filed on November 15, 2001 before the Regional Trial Court of Butuan City, plaintiff Encarnacion Bacle alleged –

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3. THAT the plaintiff is a registered owner of a parcel of land located at Capitol Avenue, Barangay Imadejas, Butuan City, consisting of Seven Hundred Seventy Seven (777) square meters and described in Transfer Certificate of Title No. RT-33072, Tax Declaration No. 96-GR-02-003-0223-R and Sketch Plan of which photocopies are hereto attached and marked as ANNEXES “A”; “B” and “C,” respectively, which all form part hereof;

4. THAT without the knowledge, consent and notice of the plaintiff, the defendants started occupying portions of the above-mentioned land and she was just surprised to see the defendants in occupation when she intended to build a house on her lot;

5. THAT in the year 1997, the plaintiff started talking to some of the defendants civilly requesting them to vacate but who requested the plaintiff to give them time as they allegedly negotiated the City Government for a relocation site;

6. THAT the plaintiff had been waiting but only in vain as the defendants refused to vacate from the land thereby prompted plaintiff to send letters demanding them to vacate through Atty. Ferdinand Ebarle in the year 1998. Photocopies of the demand letters are hereto attached and marked as ANNEX “D”; “E”; “F”; “G”; “H”; “I”; “J”; “K”; “L”; “M”; “N” and “O” which all form part hereof;

7. THAT even one of the defendants has been earning more than P4,000.00 out of the land of the plaintiff by way of renting the house for boarders and even bought another house and [rented it out];

8. THAT with the refusal of the defendants to vacate from the land of the plaintiff, the latter was deprived of its occupation, use and enjoyment to plaintiff’s prejudice and damage;

9. THAT the defendants are not builders in good faith from the start of their occupation and even if otherwise, their possession became illegal upon demand for them to vacate;

10. THAT the assessed value of the subject land is more than P20,000.00 thereby falls within the jurisdiction of this Honorable Court;

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13. THAT since the defendants have been in occupation of the land, they should be condemned to jointly and severally pay the sum of P50.00 per month beginning January 1998 until they actually vacate the plaintiff's land estimated to be P19,000.00 as of this date of filing;

14. THAT by reason of defendants' refusal to vacate the plaintiff's land, the plaintiff was then constrained to institute this present action and employed the services of the undersigned counsel by which she is contractually obligated to pay the sum of P40,000.00 as and by way of attorney's fees and P800.00 appearance fee for which the defendants should be condemned to jointly and severally pay;

15. THAT by reason of defendant's wrongful and unlawful acts of occupation and their refusal to vacate from plaintiff's land, the plaintiff suffered wounded feelings, sleepless nights and serious anxieties and mental anguish, and for which defendants should be jointly and severally condemned to pay plaintiff such amount by way of moral damages which this Honorable Court may deem just and equitable but should not be less than P100,000.00;

16. THAT in order to forestall the defendants from repeating their acts and in order to set as an example for public good, the defendants should be jointly and severally condemned to pay plaintiffs such amount by way of exemplary damages but should not be less than P20,000.00.

xxx[3]

In their answer,[4] defendants denied all the material allegations in the complaint and countered that when they entered the land, they were any not aware that anyone owned the land and so built their houses thereon in good faith.

At the pre-trial conference, defendants admitted that Bacle was the owner of the questioned property and that they were only asserting their being builders in good faith having occupied the property for a long period of time. They thus claimed entitlement to reimbursement for whatever improvements they had introduced on the land.[5]

During the trial, plaintiff testified that she purchased the subject property from Atty. Virgilio G. Pizarro who executed a deed of absolute sale dated February 25, 1997 in her favor.[6] She explained that it was a certain Atty. Tejano who acted as her agent in procuring such sale because at that time she was in the United States.[7] She presented the deed during the hearing but failed to submit the same to the court.[8] She offered as evidence the owner's duplicate copy of TCT No. RT-33072 bearing the date March 21, 1997 in her possession,[9] as well as the Tax Declaration for April 1997[10] and the Sketch Plan[11] of the property in question dated December 1997.

Milagros Sumbeling, another witness for the plaintiff, testified that she had been a resident of Imadejas Subdivision, Sta. Cruz Capitol Site, Barangay 24, Butuan City, since 1984. She said that there was a prior owner of the property in question before Bacle bought it. That prior owner was not among the defendants of the case. She also testified that when Bacle bought the property, she hired a caretaker, Simeon Duterte; that when Duterte died, several people entered the property and constructed houses on the lot without permission from the owner.[12]

There were several attempts at this point by both parties to settle the matter amicably but all such efforts failed.[13] Thereupon, the court a quo ordered the defendants to present evidence. Sometime in 2009, and after

several postponements of the hearing made by both parties, counsel for the defendants manifested that his clients failed to visit him for a long time already and he needed to confer with them regarding the case. The court a quo granted a final resetting for the reception of defendants' evidence.[14]

In an Order dated February 15, 2010, the court a quo deemed the defendants to have waived their right to present evidence for their failure to appear on the scheduled hearing. It ratiocinated thus:

When this case was called this morning, xxx counsel for the defendants, Atty. Emmanuel R. Balanon, is not in court despite due notice. Atty. Torralba prayed that defendants be deemed to have waived their right to present evidence considering that they have failed to present evidence despite several warnings.

Record shows that plaintiffs have filed their written offer of exhibits way back December 2006 and was admitted by the Court in January 2007. [The Court then ordered] the defendants to present evidence. Up to the present, defendants have not presented a single witness.

IN VIEW THEREOF, and as prayed for, defendants are deemed to have waived their right to present evidence. This case is deemed submitted for decision.

xxx[15]

In a four-page Decision[16] dated May 20, 2010, the court a quo simplified the issue of the case to: whether the defendants who are claiming to be builders in good faith are entitled to reimbursement for the improvements introduced on the property. Ruling in favor of plaintiff Bacle, the court a quo based the decision mainly on the admission of the defendants during the pre-trial that Bacle was the owner of the questioned property. It did not give credence to defendants' argument that they were builders in good faith for having occupied the property for a long period of time without interruption. It further stated that defendants could not claim good faith under Articles 448 and 526 of the Civil Code, as the provisions could only apply to a builder who believed that the land on which he built was his, and not to builders who, from the very beginning, could not present "any evidence which would show their title to, or their mode of acquisition of" the property.

On June 18, 2010, defendants, through a new counsel, filed an Urgent Motion for Reconsideration with Motion to Set Aside Default Judgment/Order.[17] They alleged that their counsel failed to properly represent their interests and committed gross negligence. They were not told what to do; they were not asked to visit his law office; they were not required to be presented as witnesses nor informed of the legal consequence of having been declared in default. "[B]eing unschooled in law and ignorant of their rights, they were unable to prevent" the adverse judgment against them.[18] They thus prayed for the decision to be reconsidered and set aside.

In a Resolution dated September 23, 2010, the court a quo denied the motion, finding that it was defendants themselves who were remiss in their duties as clients. As the very persons interested in the case's outcome, they should have been more vigilant and should have not merely waited for their counsel to apprise them of the development of the case. As it is, they were bound by their counsel's actions in the conduct of the case.

Hence, this appeal. Defendants assign the following errors:

I

THE LOWER COURT ERRED IN UPHOLDING THE ORAL MOTION OF PLAINTIFF-APPELLEE'S COUNSEL DISMISSING THE CASE IN QUESTION AND WITHOUT AFFORDING THE DEFENDANTS-APPELLANTS THE CHANCE TO PRESENT THEIR EVIDENCE AND GIVING CREDENCE TO THE ALLEGATION [THAT] THE DEFENDANTS-APPELLANTS HAVE WAIVED THEIR RIGHT TO PRESENT THEIR EVIDENCE WARRANTING JUDGMENT IN PLAINTIFF-APPELLEE'S FAVOR AND IN DECLARING THEM NOT A BUILDER IN GOOD FAITH

AND GRANTING THE RELIEF PRAYED FOR BY THE PLAINTIFF-APPELLEE FOR BEING UNFOUNDED, CONTRARY TO EVIDENCE AND VIOLATIVE OF DEFENDANTS-APPELLANTS' RIGHT TO BE HEARD; AND

II

THE COURT A QUO ALSO GRIEVOUSLY ERRED IN DENYING DEFENDANTS-APPELLANTS' MOTION FOR RECONSIDERATION PRAYING TO RE-OPEN THE CASE AND ALLOW THEM TO PRESENT THEIR EVIDENCE.[19]

Essentially, the consequence of the failure of defendants to present their evidence is the focal issue in this case.

The Ruling of this Court

The appeal is denied.

Defendants-appellants try to reason out that by denying their motion for reconsideration, the court a quo denied them their right to due process. It has been oft-repeated that "the essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interest in due course, there is no denial of procedural due process." [20]

Defendants-appellants had been given more than enough time to present their evidence. It was over four times from November 2006 through December 2009 before the trial court deemed the presentation of evidence for the defendants waived when they failed to appear on the scheduled dates. Their allegation that it was the failure of their former counsel to inform them of the development of their case that caused them to lose the opportunity to defend their cause is lame at best. We thus quote with affirmation the court a quo when it averred, thus:

On the contrary, the Court is inclined to believe that the defendants were the ones who were remiss in their duties as clients. It must be stressed that as clients, it is their mandate to be in touch with their counsel so as to be constantly posted about their case. This is the ruling of the Supreme Court, to quote:

xxx It is petitioner's duty as a client, to be in touch with his counsel so as to be posted about the case. It is mandated to inquire from its counsel about the status and progress from time to time and cannot expect that all it has to do is sit back, relax, and await the outcome of the case. xxx

Records of this case readily reveal that the reception of defendants' evidence was already scheduled as early as January 17, 2007. Although the Court has taken into consideration the parties' desire to settle the matter amicably, thus it allowed numerous postponements in this case, however, for several times it ordered that in the event that parties failed to arrive at a compromise agreement, the defense shall present its evidence. Despite the ample opportunity given to the defendants, they did not present any evidence in support of their claim. Such actuations are strong indicia that they are not really interested in pursuing their case, lest the same be construed that they did not have any evidence to be presented in court. If it is true that they are interested, they could have visited the office of their counsel on record or have at least keep [sic] in touch with the latter in order to have updates on the status of their case. Attention must be drawn to the Order dated 4 December 2009, when Atty. Balanon manifested in open Court the following:

Atty. Balanon manifested that he has yet to confer with his clients if they are still interested [in] their case considering that they did not appear to him anymore for a long time.

Extant from the above, it cannot be gainsaid that defendants were totally blameless and thus entitled to the liberal interpretation of the Rules. xxx[21]

Indeed, defendants cannot simply pass on the blame to their counsel when they themselves failed to lift a finger to ensure their day in court. Their non-appearance militates against their interest in defending their case. Moreover, the order of the court a quo declaring them to have waived the right to present evidence upholds the duty of the courts to ensure that trial proceeds and that the right of the parties to a speedy disposition of their case is not compromised. This is, after all, a mandate enshrined in our Constitution –

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. [22]

and elucidated further by the Supreme Court in the case of *Roquero v. The Chancellor of UP Manila, et al.*, [23] viz:

The constitutional right to a “speedy disposition of cases” is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice. [24]

Bacle brought this action in 2001 and had rested her case by presenting the evidence in her favor in 2006. Thus, the judgment rendered by the court a quo in 2010 had been long-awaited. Moreover, Bacle should also reap the harvest of having been a registrant under the Torrens System. Fundamental is the principle that the titleholder registered under the Torrens system of registration has an indefeasible and incontrovertible right to “all the attributes of ownership of the property, including possession.” [25] *Legarda v. Saleeby* [26] has been quoted on this so often. Viz:

The real purpose of the [Torrens] system is to quiet title of land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, it would seem that once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the courts, or sitting in the “mirador de su casa,” to avoid the possibility of losing his land. xxx

In addition, defendants-appellants present an age-old defense: possession of the property subject of the case since ‘time immemorial’. This has often been rebuked; mere possession, for whatever length of time, cannot prevail over a Torrens title, the validity of which is always presumed. [27]

This Court, however, finds the need to examine the ruling of the court a quo on the award of damages in favor of the plaintiff-appellee. In civil cases, it is a basic rule that the party making allegations has the burden of proof to support its claims. This is equally true even if the defendant had failed to avail of the opportunity to present his own evidence. Thus, “the extent of relief that may be granted” by the court “can only be as much as has been alleged and proved with preponderant evidence” as required by the Rules. [28]

Based on the records, this Court cannot affirm the lower court’s findings as to the amount designated as rental payments from 1998 until the defendants vacate the premises of the property in litigation. Nothing in the records or in the testimony of the plaintiff’s witness shows that the value of the property had been assessed or that the prevailing rates of rental of real estate had been alleged. Therefore, the award of P6,600.00 reckoned from 1998 until the time defendants vacate the property has in fact no factual basis.

Anent the award of attorney’s fees, the general rule is that the award of attorney’s fees and expenses of litigation cannot be recovered, except in the cases mentioned in Article 2208 of the Civil Code. [29] Thus, it is necessary for the court to make express findings of facts and law that would bring the case within the exception provided in said article to justify the grant of such award. Said the Supreme Court in the case of *Ballesteros v. Abion*, [30] thus:

Article 2208 (11) of the Civil Code allows the recovery of counsel's fees: ... where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

However, the conclusion must be borne out by findings of facts and law. The exercise of judicial discretion in the award of attorney's fees under Article 2208 (11) of the Civil Code demands a factual, legal or equitable justification. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. [Citations omitted]

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In the present case, there was no express finding by the court a quo as to the need to award attorney's fees. Well-settled is the rule that the factual, legal, or equitable basis for the award must be set forth in the text of the decision. Hence, this Court does not see the necessity for the award. Attorney's fees as part of damages, after all, are not meant to enrich the winning party at the expense of the losing litigant. In fact, they are not awarded every time a party prevails in a suit because it is not sound public policy to place a premium on the right to litigate.

There being no factual, legal, or equitable justification to warrant the award by the trial court of moral and exemplary damages, this Court deems the same as improper.

WHEREFORE, the assailed decision of the Regional Trial Court (Branch 5), Butuan City is hereby **AFFIRMED**, subject to the **MODIFICATION** that all the monetary awards are deleted.

SO ORDERED.

Francisco and Badelles, JJ., concur.

[1] Penned by Judge Augustus L. Calo; Rollo, pp. 49 – 52.

[2] Records, pp. 1 – 7.

[3] Ibid.

[4] Records, pp. 32 – 33.

[5] Pre-Trial Order; Records, pp. 83 – 84.

[6] Testimony of plaintiff, Direct Examination; 17 August 2005 TSN.

[7] Testimony of plaintiff, Cross Examination; 12 September 2006 TSN.

[8] Branch Clerk of Court's note; Index of Exhibits.

[9] Annex "A"; Records, p. 8.

[10] Annex "B"; Records, p. 9.

[11] Annex "C"; Records, p. 10.

[12] Testimony of Milagros Sumbeling; 7 November 2006 TSN.

[13] Orders dated 17 January 2007, 20 March 2007, 31 May 2007, 8 August 2007, 9 July 2008, and 14 January 2009; Records, pp. 114, 115, 116, 117, 122, and 128.

[14] Order dated 4 December 2009; Records, p. 137.

[15] Records, p. 138.

[16] Records, pp. 139 – 142.

[17] Records, pp. 145 – 150.

[18] Id. at 145 – 146.

[19] Brief for the Defendants-Appellants; Rollo, pp. 24 – 41. See 32-33.

[20] The Philippine American Life & General Insurance Company v. Enario, G.R. No. 182075, 15 September 2010; Air Philippines Corporation v. International Business Aviation Services Philippines, Inc., 481 Phil. 366, 386 (2004); Villa Rhecar Bus v. De la Cruz, 241 Phil. 14, 18 (1988); Mutuc v. Court of Appeals, 268 Phil. 37, 43 (1990).

[21] Resolution (on the defendant's Motion for Reconsideration); Rollo, pp. 53 – 55, citing GCP-Manny Transport Services, Inc. v. Hon. Abraham Y. Principe, et al., G.R. No. 14184, 11 November 2005.

[22] Sec. 16, Art. III of the 1987 Constitution.

[23] G.R. No. 181851, 9 March 2010.

[24] Citing Lopez, Jr. v. Office of the Ombudsman, 417 Phil. 39, 49 (2001).

[25] Baloloy v. Hular, 481 Phil. 398, 410 (2004).

[26] 31 Phils. 590.

[27] New Regent Sources, Inc. v. Tanjuatco, G.R. No. 168800, 16 April 2009.

[28] Spouses Ramos v. Obispo and Far East Bank and Trust Company, G.R. No. 193804, 27 February 2013, citing Heirs of Pedro de Guzman v. Perona, G.R. No. 152266, 2 July 2010.

[29] 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;
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.

[30] G.R. No. 143361, 9 February 2006.

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