

NORTH GREENHILLS ASSOCIATION, INC., PETITIONER, VS. ATTY. NARCISO MORALES, RESPONDENT.

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

Before this Court is a Petition for Review[1] under Rule 43 of the Rules of Court assailing the Decision[2] dated 17 February 2010 and Resolution[3] dated 08 August 2013 both issued by the Office of the President in O.P. Case No. 08-I-004, the respective fallo of which read:

17 February 2010 Decision:

“IN VIEW OF THE FOREGOING, the appeal is hereby DISMISSED for lack of merit and the decision appealed from (is) AFFIRMED in toto.

SO ORDERED.”

08 August 2013 Resolution

“WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.”

THE FACTS

Respondent Atty. Narciso Morales is a resident of North Greenhills, a residential village in San Juan City. His house is located alongside Club Filipino Avenue, the principal road outside the village, and McKinley Park, the open space/playground area of the aforesaid subdivision.

In June 2003, Petitioner North Greenhills Association, Inc. (NGA) constructed a common toilet in McKinley Park adjacent to Respondent's wall and side door, effectively blocking the latter. NGA claims that a pavillion/multi-purpose hall would be constructed next to the restroom.

Consequently, Respondent filed a Complaint on 23 July 2003 before the Housing and Land Use Regulatory Board (HLURB) Arbiter and prayed for the demolition of the aforesaid toilet. On 13 August 2003, Respondent amended his Complaint and additionally sought for the demolition of a pavilion or kiosk which was also then being built at McKinley Park. Pertinent portions of Amended Complaint[4] read:

“3. Plaintiff has been a resident of North Greenhills since 1970 and the primary consideration for his purchase of the lot on which his residence now stands is the immediate access of the property to both the principal road outside the subdivision and the park within the village.

4. Precisely because of the unique location of the lot, plaintiff had his house built thereon making sure that the dual access was maintained. The frontage was along the main public road, Club Filipino Ave. (formerly McKinley Street), while the right side of the residence was made to face and abut the open area of the subdivision park. Although this side of the residence is secured by plaintiff's perimeter wall, his access to the

park was through a side or exit door;

5. Since the time plaintiff set foot on his property and up to the time defendants committed the acts complained of herein, or for a period spanning thirty-three (33) years, plaintiff had an open, continuous, immediate, and unhampered access to the subdivision park through his side door, which also served as exit door in case of any eventuality;

6. Sometime the last week of June 2003, defendants, more particularly defendant Alviar, being head of the NGA, without prior notice to the plaintiff, blocked plaintiff's side door by constructing, or ordering construction of the park's common toilet or restroom, on the open area adjacent to plaintiff's wall and side door. The toilet used to be located, for a number of years, several meters away from plaintiff's residence;

7. Plaintiff immediately objected to defendant's action and sent a written protest dated June 30, 2003 addressed to defendant Alviar, furnishing copies thereof to all the directors of defendant NGA Board, but defendants completely ignored plaintiff's protestations xxx;

7.1. Not long thereafter, plaintiff likewise learned that a pavillion was also being constructed beside the toilet xxx."

Respondent Atty. Morales claimed that the construction of the aforesaid toilet in the park adjacent to his residence which blocked the side door of his house is illegal as he was purportedly deprived of his right as a resident to have access to the park. Respondent further argued that the construction of a common or public toilet right beside the wall of his house, not far from his dining area, is a nuisance per se. The acts of NGA is also allegedly a violation of the provisions of Sec. 22 of PD 957 and the Deed of Donation dated 31 August 1976 between Petitioner NGA and the subdivision's original owner and developer, Ortigas & Co., Ltd.

Petitioner NGA, in its Answer with Compulsory Counterclaim,[5] countered that it is the absolute owner of McKinley Park located in Club Filipino Avenue, North Greenhills Subdivision, San Juan City and has absolute right to fence the said property and impose reasonable conditions for the use thereof by both its members and "third parties." The construction of the public toilet is for the use and benefit of all NGA members, including the Petitioner. NGA added that Petitioner's use of a side entrance to the park for 33 years could not ripen into any right because easement of right of way could not be acquired by prescription. Finally, in its Compulsory Counterclaim, Petitioner prayed, among others, for an award of P878,778.40, corresponding to the total amount of Respondent's homeowners association annual membership dues which Respondent allegedly failed to pay since 1980.

On 13 August 2003, the HLURB Arbiter conducted an ocular inspection of the disputed premises and noted the following:

"1. The complainant's property is along Club Filipino Ave. (formerly McKinley Street) identified as Lot 5 Block 1 of the above-mentioned subdivision. It is adjacent to the open space identified as Lot 4 Block 1.

2. Investigation shows that within the said open space, there is an on-going construction of permanent structures, a multi-purpose hall, right beside the complainant's property. With the said construction, it permanently blocked the gate provided by the complainant to gain access at the open space. However, the gate at the property at Lot 3 Block 1 (allegedly owned by Atty. Paulino Ejercito) remains to be open for the open space;

3. It was verified that a common toilet for the multi-purpose hall is being constructed adjacent to the perimeter wall of the complainant;

4. At the time of the inspection, the undersigned noted that there was no billboard posted indicating the building permit issued by the Building Officials of the Municipality of San Juan for the on-going construction

of multi-purpose hall.”[6]

On 16 February 2005, the HLURB Arbiter rendered a Decision,[7] the decretal portion of which reads:

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering xxx the removal of the pavilion and the relocation of the common toilet in a place where it will not be a nuisance to any resident. Respondents are further directed to remove the obstruction to the side door of complainant.

All other claims and counterclaims are hereby dismissed for lack of merit.

IT IS SO ORDERED.”

NGA appealed to the HLURB Board of Commissioners. On 22 November 2007, the HLURB Board of Commissioners modified the assailed 16 February 2005 ruling of the HLURB Arbiter by dropping Atty. Alviar as a party to the case and upholding the right of NGA to make the necessary constructions in the park, viz:

“Further, the complaint against respondent Alviar should be dropped as no acts have been particularly attributed to him in his personal activity.

WHEREFORE, premises considered, the decision of the Regional Office is hereby MODIFIED. Accordingly, respondent NGA is ordered to relocate the restroom constructed or being constructed in the McKinley Park away from the wall of any resident and where it will not block complainant's side door access to the park.

SO ORDERED,”[8]

Petitioner NGA appealed the 22 November 2007 Decision of the HLURB Board of Commissioners to the Office of the President (OP).

On 17 February 2010, the OP rendered its herein assailed Decision which affirmed in toto the aforementioned 22 November 2007 ruling of the HLURB Board of Commissioners.

Petitioner NGA seasonably filed a Motion for Reconsideration but the same was denied by the OP in its assailed 08 August 2013 Resolution.

Hence, this Petition.

GROUND

Petitioner cites the following grounds for allowance of the instant Petition for Review:

“1. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR IN ITS FACTUAL FINDING THAT THE COMFORT ROOM BUILT BY NGA AT ITS (sic) MCKINLEY PARK IS A NUISANCE TO ATTY. MORALES. AS RULED BY THE SUPREME COURT, TOILETS ARE NOT NUISANCES PER SE. NEITHER HAS ATTY. MORALES PROVEN THAT HE EXPERIENCED PHYSICAL DISCOMFORT DUE TO THE EXISTENCE OF THE TOILET ON THE OTHER SIDE OF HIS WALL.

2. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR IN ITS FACTUAL FINDING THAT NGA HAS BEEN UNDULY SELECTIVE IN BLOCKING ATTY. MORALES' ACCESS DOOR TO THE PARK. THE OFFICE OF THE PRESIDENT FAILED TO CONSIDER THE SECURITY ISSUE POSED BY THE DUAL ACCESS OF ATTY. MORALES' HOUSE BOTH TO THE MAIN STREET OUTSIDE AND THE PARK INSIDE, THEREBY MAKING IT POSSIBLE FOR CRIMINAL ELEMENTS TO ENTER THE SUBDIVISION THROUGH ATTY. MORALES' ACCESS DOOR WITHOUT HAVING TO PASS THROUGH THE GUARDS OF NGA;

3. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR OF LAW FINDING THAT ITS ORDER

FOR NGA RETURN (sic) ATTY. MORALES' PERSONAL ACCESS DOOR TO THE PARK DOES NOT CONSTITUTE AN EASEMENT OF RIGHT OF WAY ON THE LAND OF NGA;

4. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR OF LAW IN UPHOLDING HLURB'S FINDING THAT NGA'S CLAIM FOR UNPAID MEMBERSHIP DUES IS NOT A COMPULSORY COUNTERCLAIM BUT RATHER A PERMISSIVE COUNTERCLAIM WHICH REQUIRED THE PAYMENT OF DOCKET FEES;

5. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR OF LAW IN UPHOLDING HLURB'S FINDING THAT NGA'S CLAIM FOR UNPAID MEMBERSHIP DUES IS NOT YET RIPE FOR ADJUDICATION DUE TO LACK OF PRIOR WRITTEN DEMAND. SUCH LEGAL FINDING IS CONTRARY TO THE CASE OF AUTOCORP GROUP VS. INTRA STRATA ASSURANCE CORPORATION WHICH STATES THAT A CASE FILED IN COURT CONSTITUTES DEMAND TO PAY;

6. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR IN ITS FACTUAL AND LEGAL FINDING THAT ATTY. MORALES IS A MEMBER OF NGA BUT IS NOT AND THEREFORE (sic) ENTITLED TO THE USE OF THE PARK”

THIS COURT'S RULING

We resolve jointly as the issues are closely-related.

The crux of the controversy herein is whether or not the public/common toilet which Petitioner NGA caused to be constructed in McKinley Park adjacent to Respondent Atty. Narciso Morales' wall may be considered a nuisance.

Article 694 of the Civil Code defines nuisance in this manner:

“ART. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others; or
- (2) Annoys or offends the senses; or
- (3) Shocks, defies or disregards decency or morality; or
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property.”

Nuisances are of two kinds: nuisance per se and nuisance per accidens. The first is recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second is that which depends upon certain conditions and circumstances. Being a question of fact, it cannot be abated without due hearing thereon.[9]

The HLURB Board of Commissioners, in its 22 November 2007 Decision, declared the toilet which Petitioner NGA caused to be constructed in McKinley Park adjacent to Respondent Atty. Morales' wall to be a nuisance. The Board explained:

“While respondent, as the registered owner of the park in question, has the right to exercise all the attributes of ownership over the property, such right is not absolute. First, respondent association should bear in mind that it merely holds the property for the benefit of its members. Secondly, even granting it is the absolute owner of the park, its ownership rights are subject to the general limitation embodied in Article 431 of the Civil Code that the owner cannot use his property in a manner that will injure the right of a third person xxx. While it has not been established that complainant's use of the subject door as access to the park has ripened to a right, it appears that the park is spacious enough for respondent to transfer the restroom to another location away from

complainant's and other resident's wall and for respondent to construct the kiosk and restroom where they will not block complainant's exit to the park. Neither has it been shown that any restriction prohibiting such openings on the properties adjacent to the park exists."

The OP eventually affirmed the above-quoted ruling of the HLURB Board of Commissioners. In its assailed 17 February 2010 Decision, the OP held:

"(T)he disputed toilet may be considered a nuisance. Besides being unreasonable on its face and violative of the rights of Morales to use and enjoy his property, the construction of the disputed toilet adjacent to the property of Morales and in close proximity to his dining area was extremely unnecessary considering that there are other spaces within the park where it can be constructed without annoying and/or endangering the health and comfort of Morales and other residents."

This Court has stringently perused the records at hand and found no cause to overturn the similar findings of the HLURB Board of Commissioners and the OP. The toilet constructed adjacent to Respondent Atty. Morales' wall may indeed be considered a nuisance per accidens.

First, it appears that the subject structure was located near the dining area of Respondent Atty. Morales' house. This Court further notes that the intention of Petitioner NGA is to use the said structure as a public or common restroom for the use of McKinley park's visitors, among others. The said toilet, to Our mind, poses sanitary issues which could adversely affect not only the Respondent but his entire household as well. Even if there exists a perimeter wall between Respondent's house and the toilet, the odor emanating from the latter could easily find its way to the dining area, and the foul and noxious smell would make it very difficult and annoying for the residents of the house to eat. Moreover, the proximity of the toilet to Respondent's house places the people residing therein at greater risk of contracting diseases both from improperly disposed waste and human excrements, as well as from flies, mosquitoes and other insects, should Petitioner NGA fail to maintain the cleanliness in the said structure. Verily, the determining factor when the toilet is the cause of the complaint is not how much it smells or stinks but where it is located as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities.[10]

Second, records bear that the common toilet blocked the side door of Respondent's house. Prior to its construction, the side door had served as an alternative entrance and/or exit of the said Respondent to and from McKinley Park for more than three decades. Petitioner NGA argues that the obstruction of Respondent's side entrance is justified as the same raises a security concern for the subdivision. NGA points out that Respondent's house, the front portion of which borders the public road, Club Filipino Avenue, may be used as an entry point by "thie(ves), robber(s), murderer(s), or kidnapper(s)."[11] These criminals could then exit the house through the side door which leads to McKinley Park, inside the subdivision.

This Court is unconvinced.

There is nothing in the records which would indicate that the residents of North Greenhills Subdivision are placed in imminent peril from outsiders/criminals with the existence of the side door in Respondent's house. As earlier mentioned, the said door has existed for more than three decades. If there is really a danger of suspicious individuals evading the guards of the subdivision through the subject side door, then Petitioner NGA should have taken immediate action and closed Respondent's door years earlier. The fact that NGA did nothing constrains this Court to believe that such claim that Respondent's side door places the subdivision's residents in danger is a mere afterthought.

But even assuming NGA's claim to be true, We see no justification for the association to block the said access door by constructing a common toilet, of all structures, near Respondent's dining area. There are other ways to

remedy the security concerns of NGA. A wall strategically placed at the border of McKinley Park, for instance, would have provided an equally effective deterrent against would-be trespassers. The assignment of additional guards to patrol the vicinity is another possible option. Or Petitioner NGA could have simply talked to Respondent regarding the matter in order to come up with a mutually acceptable solution to the problem.

Simply put, the subject toilet is a nuisance per accidens as it not only annoys or offends the senses but likewise impairs the use of Respondent's property.

We now proceed to the issue of whether or not Petitioner NGA's demand for Respondent Atty. Morales to pay the total amount of P878,778.40 corresponding to his arrears in the annual membership dues since 1980 may be considered a compulsory counterclaim.

This Court rules in the negative.

A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party.[12]

There are two kinds of counterclaim, permissive and compulsory. A compulsory counterclaim is any claim for money or other relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of plaintiff's complaint.[13] It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive.[14]

Withal, Petitioner's counterclaim in the nature of unpaid association dues is merely permissive, the same not being necessarily connected with the subject matter of the case, which is the determination of whether or not the common toilet built adjacent to Respondent's wall is a nuisance. As correctly held by the OP, the evidence required to prove NGA's claim differ from that needed to establish Atty. Morales' demand for the transfer or removal of the obstruction to his access door. Proceeding therefrom, this Court sees no reversible error on the part of the OP when it dismissed Petitioner's permissive counterclaim on account of the association's failure to pay the corresponding docket fee.

Finally, Petitioner's claim for unpaid association dues precludes it, by reason of estoppel, from assailing Respondent's membership in the NGA.

All told, the Petition fails.

WHEREFORE, the Petition for Review is hereby DISMISSED and the Decision dated 17 February 2010 and Resolution dated 08 August 2013 both issued by the Office of the President are AFFIRMED.

SO ORDERED.

De Leon, M.M., Chairperson and Antonio-Valenzuela, N.G., JJ., concur.

[1] Rollo, pp. 18-52

[2] Id., pp. 56-63

[3] Id., pp. 64-66

[4] Id., pp. 67-72

[5] Id., pp. 90-96

[6] See HLURB NCR Fiel Office Decision dated 16 February 2005

[7] *supra*

[8] Id., pp. 149-151

[9] See *Salao v. Santos* (067 Phil 547)

[10] See *Smart Communications, Inc. v. Aldecoa* (G.R. No. 166330, 11 September 2013)

[11] See Note 1

[12] *Garcia v. Drilon* (G.R. No. 179267, 25 June 2013); Section 6, Rule 6, Rules of Court

[13] Section 7, Rule 6, 1997 Rules of Civil Procedure

[14] *Cruz-Agana v. Santiago-Lagman* (G.R. No. 139018, 11 April 2005)

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