

**SPOUSES REY A. BORROMEO AND AURORA R. BORROMEO,
PLAINTIFFS-APPELLANTS, VS. SPOUSES VICENTE MOLINA, JR., IN
THEIR OWN PERSONAL CAPACITY AND IN REPRESENTATION OF
ARB CONSTRUCTION ...**

Ponente: ASUNCION-VICENTE, J.

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ASUNCION-VICENTE, J.:

Subject of the present appeal is the Decision of the Regional Trial Court (RTC) of Makati City, Branch 63, dated 18 April 1997[1] in Civil Case No. 90-370, an action for damages filed by Spouses Rey and Aurora Borrromeo (hereinafter plaintiffs-appellants) against the Spouses Vicente Molina, Jr., in their own personal capacity and in representation of ARB Construction and Earth You Own Realty (hereinafter defendants-appellees Spouses Molina); Mr. Arnaldo Cuasay, Vice-President, Collection Department of the Government Service Insurance System (GSIS); Mr. Jose Castro, Senior Vice-President, Loan II of the GSIS; the Chairman and Board of Trustees of the GSIS and Two 'John Does' (hereinafter defendants-appellees). The dispositive portion of the assailed Decision reads:

The foregoing considered, the court resolves to dismiss plaintiffs' complaint.

There being no showing that plaintiffs were impelled by malice in filing this case, the counterclaims are likewise dismissed. No pronouncement as to costs.

SO ORDERED.[2]

The Antecedent Facts

On 9 February 1990, plaintiffs-appellants filed with the RTC of Makati City, Branch 63, a complaint[3] for damages with writ of preliminary injunction against herein defendants-appellees, alleging, among others, that they (Spouses Borrromeo) reside in Lot 16, Block 42, Soldiers Hill, Muntinlupa, Metro Manila (subject property), and their residence was constructed by defendants-appellees Spouses Molina as developer/contractor of the GSIS.

The subject property was allegedly purchased by plaintiffs-appellants from the original awardee of the GSIS, Donato Valderrama. In support thereof, plaintiffs-appellants presented the following documents: a special power of attorney[4] dated 29 January 1981 executed by Donato Valderrama in favor plaintiff-appellant Aurora Borrromeo, a deed of absolute sale[5] dated 11 February 1981 with the Spouses Valderrama as vendors and Aurora Borrromeo as vendee of the subject property, and a memorandum of agreement[6] also between the Spouses Valderrama and Aurora Borrromeo.

Plaintiffs-appellants alleged that in the evening of 11 October 1989, the residential house erected on the subject property was destroyed completely by typhoon “Saling”. As a consequence, plaintiffs-appellants and their family lost personal properties and personal belongings amounting to Php 200,000.00 for which they seek reimbursement from defendants-appellees.

According to plaintiffs-appellants, upon inspection of the destroyed building by engineers, carpenters and architects, it was discovered that there were defects in the construction in that there was no solid foundation and the materials used to build the housing unit was substandard and as if the same was hurriedly done to catch-up with the deadline for completion of the housing unit. The housing project in said area was financed by the GSIS.

Plaintiffs-appellants reported the matter to the GSIS in order to collect the Php 50,000.00 insurance which, according to them was assured by the GSIS. However, despite repeated follow-ups with the GSIS, the money was never released to plaintiffs-appellants. The GSIS made no effort either to restore the destroyed residential unit or to contact or make arrangements with their developer, the Spouses Molina, in that respect.

Hence the instant case for damages against defendants-appellees.

Defendants-appellees Spouses Molina filed their answer[7] to said complaint, alleging, among others, that the subject housing unit was built in accordance with the plans and specifications with which all the neighboring houses were built and the collapse of the house was due solely to a fortuitous event. Consequently, the Spouses Molina, who were not the contractors who built the house, cannot be held answerable for the damages claimed by plaintiffs-appellants.

On the other hand, defendants-appellees Arnaldo Cuasay, Jose Castro and the Chairman and Board of Trustees of the GSIS filed their answer[8] to the complaint alleging that the complaint states no cause of action against them there being no privity of contract between defendants-appellees and the Spouses Borromeo.

They averred that the alleged sale between the Spouses Valderrama and plaintiffs-appellants Spouses Borromeo is contrary to the terms and conditions stated in the Deed of Conditional Sale executed between the GSIS and the awardee Donato Valderrama; that the original awardee Donato Valderrama was in arrears in the payment of his monthly amortizations on the subject property; and that Donato Valderrama executed an Affidavit of Acceptance and Occupancy that he has inspected the housing unit and found it complete, liveable and constructed in accordance with the plans and specifications.

In their reply[9] to defendants-appellees' answer, plaintiffs-appellants alleged that as early as 26 December 1988, they had already applied for the restructuring of the outstanding obligation respecting the subject property as part of the Condonation Program of the GSIS, which belies defendants-appellees' allegation that there was no privity of contract as between plaintiffs-appellants and the GSIS.

After due trial, the lower court issued the now assailed Decision dated 18 April 1997 dismissing the complaint against defendants-appellees, ruling in this wise:

After assessing the evidence adduced by both plaintiffs and defendants, the court rules for the dismissal of the complaint. No where in the testimonies of the plaintiffs (no other witnesses were presented) does it show that they succeeded in proving the damages they claim they are entitled to. Quite the contrary, their allegations are the product of conjectures and personal estimates which the court will not admit absent the showing that they are experts in these areas.

Also they failed to prove that defendant Molinas were the ones who constructed the subject house. They aver the Molinas were the builders because this was what plaintiffs' neighbors said.

With respect to the GSIS defendants, plaintiffs failed to rebut the defense earlier mentioned.

The foregoing considered, the court resolves to dismiss plaintiffs' complaint.

There being no showing that plaintiffs' were impelled by malice in the filing of this case, the counterclaims are likewise dismissed. No pronouncement as to costs.

SO ORDERED.[10]

Plaintiffs-appellants, in their appeal brief[11], make the following assignment of errors:

- THAT THE DECISION OF THE HONORABLE COURT DATED 17 APRIL 1997 IS REplete WITH ANY SUPPORTING LAW AND DID NOT REFLECT ON THE TRUE FACTS AND CIRCUMSTANCES OF THE CASE AT BAR, AS REQUIRED BY THE RULES OF COURT.
- THE TRIAL COURT ERRED AND DEPARTED FROM THE USUAL NORMS OF DECIDING A CASE.

Plaintiffs-appellants argue that the assailed Decision dated 18 April 1997 is “replete with any supporting law and did not reflect the true facts and circumstances of the case”. The court's dismissal of the complaint was based on the erroneous assumption that plaintiffs-appellants had no personality to sue since the subject property was awarded to the Spouses Valderrama and the sale between the latter and plaintiffs-appellants was never authorized by GSIS. The lower court disregarded the fact that there was a condonation of the obligation by the GSIS and, therefore, there is no legal impediment on the part of plaintiffs-appellants to sue defendants-appellees for damages resulting from the poorly constructed housing unit. The lower court also failed to consider that the Spouses Molina were subcontractors of the GSIS.

The Issue

The issue for Our resolution in this case is whether or not the trial court erred in dismissing the complaint filed against defendants-appellees for failure of plaintiffs-appellants to prove that they are entitled to damages being claimed.

The Court's Ruling

We find the appeal unmeritorious.

The burden of proof rests upon plaintiffs-appellants to establish their case based on a preponderance of evidence. It is well-settled that in civil cases, the party that alleges a fact has a burden of proving it.[12] In the case at bench, plaintiffs-appellants failed to prove that they are entitled to the damages being claimed by them.

Plaintiffs-appellants' action for damages is premised mainly on the alleged wrongful act of defendants-appellees in reneging on their obligation to provide a housing unit built in accordance with plans and specifications with which the other housing units around the area were built. According to plaintiffs-appellants, his family suffered damages as a result of the collapse of the housing unit poorly built by defendants-appellees.

There is no question that plaintiffs-appellants suffered damages after the house was destroyed when typhoon Saling hit Manila. There is, however, a material distinction between damages and injury.

Injury is the illegal invasion of a legal right; damage is the loss, hurt or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases the consequences must be borne by the injured person alone, the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria*. [13]

In other words, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff – a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first

be a breach of some duty and the imposition of liability for that breach before damages may be awarded; and the breach of such duty should be the proximate cause of the injury.[14]

Plaintiffs-appellants, in this case, failed to prove that defendants-appellees had a clear duty or legal responsibility owed to them by the latter. For one, no approval was made of the alleged sale between the Spouses Valderrama and plaintiffs-appellants. Moreover, plaintiffs-appellants never made good on their obligation under the deed of absolute sale to update the Spouses Valderrama's account with the GSIS, which could have removed any doubts as to plaintiffs-appellants' claim over the subject property.

Furthermore, plaintiff-appellants failed to adduce evidence that the Spouses Molina were indeed the contractors of the housing unit they purchased from the Spouses Valderrama. In fact, as per plaintiff-appellant Rey Borromeo's testimony, he only learned from their neighbors and from defendant-appellee Cuasay of the GSIS and the insurance representative that the Spouses Molina were the contractors of their unit.[15] Other than his bare testimony, no other piece of convincing evidence was submitted by him.

Based on the foregoing, plaintiffs-appellants cannot now claim that defendants-appellees are under a legal obligation to reimburse them for the damages they incurred.

Thus, the trial court committed no error in finding that plaintiffs-appellants are not entitled to the damages claimed by them, and in consequently dismissing the complaint against defendants-appellees.

WHEREFORE, the instant appeal is hereby DISMISSED and the assailed Decision of the Regional Trial Court (RTC) of Makati City, Branch 63, dated 18 April 1997 in Civil Case No. 90-370 is hereby AFFIRMED in toto.

Sabio, Jr., (Chairman) and Villon, JJ., concur.

[1] Decision dated 18 April 1997, Records, pp. 322-323; Rollo, pp. 30-31

[2] Records, p. 323, Rollo, p. 31

[3] Records, pp. 1-7

[4] Records, p. 9

[5] Records, pp. 10-11

[6] Records, pp. 12-13

[7] Records, pp. 18-20

[8] Records, pp. 56-59

[9] Records, pp. 63-67

[10] Supra note 2

[11] Rollo, pp. 21-27

[12] Citibank, N.A. Mastercard vs. Teodoro, 411 SCRA 577, 583 (23 September 2003)

[13] Equitable Banking Corporation vs. Calderon, 446 SCRA 271, 280 (14 December 2004)

[14] Id.

[15] TSN, hearing of March 7, 1994, pp. 16-30, Records, pp. 185-199

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