

**AURORA SUNTAY TANJANGCO, PLAINTIFF AND APPELLANT, VS.
JOSE JOVELLANOS, ET AL., DEFENDANTS AND APPELLEES,
CATALINA MATA VDA. DE VILLANUEVA, INTERVENOR.**

G.R. No. 12332. June 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Direct appeal by plaintiff from a decision of the Court of First Instance of Manila, raising the sole question of whether the lower court acted properly in awarding damages and attorney's fees to defendants.

Plaintiff Aurora Suntay Tanjangco filed this action to establish an easement of right of way over defendants' land situated at P. Faura Street, Ermita, Manila. Plaintiff is the owner of Lot No. 16, Block No. 349, of the Cadastral Survey of Manila, and the residential building thereon, as per T.C.T. No. 27723 of the Registry of Deeds of Manila. Intervenor Catalina Mata Vda. de Villanueva owns Lots Nos. 15 and 17 of the same block, covered by T.C.T. Nos. 18261 and 18262. Defendants Jose Jovellanos and brothers are owners of Lot No. 8, same block, with an area of 83.93 square meters, as evidenced by T.C.T. No. 45353. The City Engineer had given defendants permission to construct thereon a three-story building. Beside defendants' lot there is an alley or "callejon", known as Lot No. 7 and owned by the City of Manila as per O.C.T. No. 6182. This alley has an entrance frontage on P. Faura of 2.05 meters (which entrance widens as one goes inwards) and is being used by plaintiff and intervenor as a passageway to their lots. Plaintiff in filing suit against defendants sought to secure an easement over .96 meters of defendants' land in order to widen said entrance to 3 meters. Upon plaintiff's posting a cash bond, the court issued a writ of preliminary injunction enjoining defendants from making any construction on the three meters which plaintiff claims as her driveway. After trial, the court dismissed plaintiff's complaint as well as the complaint in intervention; and with respect to defendants' counterclaim, it ordered plaintiff to pay defendants damages of P500.00 and attorney's fees of P500.00.

In assessing damages and attorney's fees against appellant, the lower court stated:

"... the Court has issued a writ of preliminary injunction directed against the defendants on October 12, 1956, and from that time on until the present, the construction of defendants' building had to be stopped, and in defendants' amended answer of November 20, 1956, they claim damages arising as a consequence of this writ of preliminary injunction by way of counterclaim. Under Section 9 of Rule 60, the amount of damages to be awarded to the defendants upon the plaintiff's bond shall be claimed, asserted and awarded within this case. Although there is no separate evidence adduced to prove the amount of damages suffered by the defendants as a consequence of the injunction obtained by the plaintiff against them, it is quite obvious that the stoppage of the construction work must have caused them damages from the very nature of things, and the Court hereby fixes these damages at P500.00. For the services of counsel, it is believed that the defendants should be awarded an additional amount of P500.00."

In their counterclaim, appellees alleged that by reason of appellant's complaint and the issuance of the preliminary injunction, they became liable to their building contractor in the amount P10,000.00 and were obliged to employ

the services of counsel for P2,000.00, which averments were denied by appellant in her reply. As was Stated by the lower court no evidence was submitted respecting damages. Appellees should have presented proof as to how much and in what manner they had been prejudiced. Their allegations as to damages having been squarely challenged by appellant, they had the burden of proving them by means of competent evidence (*Lagasca vs. de vera*, 79 Phil., 376). And even if appellant failed to deny the damages, appellees still must prove them (*Valencia vs. Tantoco and Tamayo*, 99 Phil., 824; 52 Off. Gaz. [15] 6563). The rule in this jurisdiction is that all judgments for damages whether arising from breach of contract or resulting from some provision of law must be based upon Satisfactory evidence of the real existence of the damages alleged to have been suffered (*Sanz vs. Lavin*, 6 Phil., 299; *Rubiso vs. Rivera*, 41 Phil., 39; *Jesswani vs. Daldas*, G. R. No. L-4651, May 12, 1952) and the amount of damages must be proven with at least some degree of certainty (*Chua Teck Hee vs. Philippine Publishing Co.*, 34 Phil., 447). In the absence of definite and satisfactory proof of the amount of damages suffered, no damages may be awarded (*Bian Hin and Co., Inc. vs. Tan Boming*, 48 Phil., 523; *Santander, et al. vs. De la Serna*, 95 Phil., 322; *Heirs of Crumb vs. Rodriguez, et al.*, 105 Phil., 391.) The lower court clearly erred in awarding damages without proof thereof. The court cannot rely on its own speculations as to the fact and amount of damages, but must depend on actual proof that damage had been suffered and of the amount.

From the facts found by the lower court, it appears that this action filed by appellant is evidently unfounded. Hence appellees are entitled to recover Attorney's fees (par. 4, Article 2208, New Civil Code).

Wherefore, the award of damages against appellant is hereby eliminated from the appealed decision, and the same is affirmed in all other respects consistent with this decision. No pronouncement as to costs;

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

Padilla, J., took no part.

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