

SPOUSES ERLINDA BATAL AND FRANK BATAL, PETITIONERS, VS. SPOUSES LUZ SAN PEDRO AND KENICHIRO TOMINAGA, RESPONDENTS.

G.R. NO. 164601. September 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court questioning the Decision[1] dated September 29, 2003 promulgated by the Court of Appeals (CA) in CA-G.R. CV No. 71758, which affirmed the Decision dated May 31, 2004 of the Regional Trial Court, Branch 7, Malolos, Bulacan (RTC); and the CA Resolution[2] dated July 19, 2004.

This case originated from an action for damages filed with the RTC by Spouses Luz San Pedro and Kenichiro Tominaga (respondents) against Spouses Erlinda Batal and Frank Batal (petitioners) for failure to exercise due care and diligence by the latter in the preparation of a survey which formed the basis for the construction of a perimeter fence that was later discovered to have encroached on a right of way.

The facts of the case, as found by the RTC and summarized by the CA, are as follows:

The spouses Luz San Pedro (Luz) and Kenichiro Tominaga (Kenichiro) are the owners of a parcel of land, on which their house was erected, described as Lot 1509-C-3 with an area of 700 square meters situated in Barangay Malis, Guiguinto, Bulacan. Said property was acquired by them from one Guillermo Narciso as evidenced by a "Bilihan ng Bahagi ng Lupa" dated March 18, 1992.

The spouses Luz and Kenichiro then contracted the services of Frank Batal (Frank) who represented himself as a surveyor to conduct a survey of their lot for the sum of P6,500.00. As Luz and Kenichiro wanted to enclose their property, they again procured the services of Frank for an additional fee of P1,500.00 in order to determine the exact boundaries of the same by which they will base the construction of their perimeter fence.

Consequently, Frank placed concrete monuments marked P.S. on all corners of the lot which were used as guides by Luz and Kenichiro in erecting a concrete fence measuring about eight (8) feet in height and cost them P250,000.00 to build.

Sometime in 1996, a complaint was lodged against Luz and Kenichiro before the barangay on the ground that the northern portion of their fence allegedly encroached upon a designated right-of-way known as Lot 1509-D. Upon verification with another surveyor, Luz and Kenichiro found that their wall indeed overlapped the adjoining lot. They also discovered that it was not Frank but his wife Erlinda Batal (Erlinda), who is a licensed geodetic engineer.

During their confrontations before the barangay, Frank admitted that he made a mistake and offered to share in the expenses for the demolition and reconstruction of the questioned portion of Luz and Kenichiro's fence. He however failed to deliver on his word, thus the filing of the instant suit.

In their defense, the defendants-spouses Frank and Erlinda Batal submitted that Frank never represented

himself to be a licensed geodetic engineer. It was Erlinda who supervised her husband's work [and t]hat the house and lot of plaintiffs, Luz and Kenichiro, were already fenced even before they were contracted to do a resurvey of the same and the laying out of the concrete monuments. The spouses Frank and Erlinda also refuted the spouses Luz's and Kenichiro's allegation of negligence and averred that the subject complaint was instituted to harass them.[3]

On May 31, 2001, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendants, as follows:

- Ordering the defendants [petitioners] to pay to plaintiffs [respondents] the sum of P6,500.00 as refund for their professional fees by reason of the erroneous relocation survey of the property in question;
- Ordering the defendants to pay to plaintiffs the sum of Three Hundred Thousand Pesos (P300,000.00) as actual damages;
- 3Ordering the defendants to pay to plaintiffs the sum of P50,000.00 as attorney's fees; and
- Ordering the defendants to pay to plaintiffs the costs of this suit.

SO ORDERED.[4]

Regarding the issue whether the petitioners failed to exercise due care and diligence in the conduct of the resurvey which eventually caused damage to the respondents, the RTC held:

As against the bare and self-serving denials of the [petitioners], the testimony of [respondent] Luz San Pedro that she constructed the encroaching perimeter fence in question using as guide the cyclone concrete monuments marked P.S. that were installed by [petitioner] Frank Batal and his survey team, is more credible. As testified to by [respondent] Luz San Pedro, she proceeded with the construction of the perimeter fence in question upon assurance given by [petitioner] Frank Batal that she could already do so as there were already concrete monuments placed on the boundaries of her property x x x.

x x x x

It does not matter that the location plan dated May 3, 1992 (Exhibit "B") was later approved by the DENR, as it is quite apparent that the mistake committed by [petitioner] Frank Batal pertains to the wrong locations of the concrete monuments that he placed on the subject property and which were used or relied upon by the [respondents] in putting up the fence in question. Such mistake or negligence happened because quite obviously the installation of said concrete monuments was without the needed supervision of [respondent] Erlinda Batal, the one truly qualified to supervise the same. x x x x

x x x x[5]

The RTC found that indeed the perimeter fence constructed by the respondents encroached on the right-of-way in question; that the preponderance of evidence supports the finding that the encroachment was caused by the negligence of the petitioners; that, in particular, respondents constructed the fence based on the concrete cyclone monuments that were installed by petitioner Frank Batal and after he gave his assurance that they can proceed accordingly; that the negligence in the installation of the monuments was due to the fact that petitioner Erlinda Batal, the one truly qualified, did not provide the needed supervision over the work; and, lastly, that the testimonies of the petitioners on the whole were not credible.

The petitioners appealed to the CA. On September 29, 2003, the CA rendered its Decision affirming the RTC decision in its entirety.[6]

In concurring with the findings of the RTC, the CA in addition held that the petitioners cannot claim that the error

of the construction of the fence was due to the unilateral act of respondents in building the same without their consent, since the former gave their word that the arrangement of the monuments of title accurately reflected the boundaries of the lot; and that, as a result, the northern portion of the fence had to be demolished and rebuilt in order to correct the error.

Hence, the instant Petition assigning the following errors:

I.

The Court of Appeals erred in ruling for the Respondents and basing its decision [o]n the following jurisprudence:

(a) "[A] party, having performed affirmative acts upon which another person based his subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. (Pureza vs. Court of Appeals, 290 SCRA 110)"; and

(b) "Findings of fact made by the trial court [are] entitled to great weight and respect. (Lopez vs. Court of Appeals, 322 SCRA 686).

II.

The Court of Appeals erred in ruling in favor of Respondents by premising its Decision on [a] misapprehension of facts amounting to grave abuse of discretion . . . which is also a ground for a Petition for Review.[7]

The petition must fail.

The petitioners insist that there had been no error in their resurvey, but rather, the error occurred in respondents' fencing; that the proximate cause of the damage had been respondents' own negligence such that the fencing was done unilaterally and solely by them without the prior approval and supervision of the petitioners. And to justify their case, the petitioners argue that the courts a quo misapprehended the facts. Accordingly, they ask this Court to review findings of fact.

A review of the factual findings of the CA and the RTC are matters not ordinarily reviewable in a petition for review on certiorari.[8] Well-established is the rule that factual findings of the trial court and the CA are entitled to great weight and respect[9] and will not be disturbed on appeal save in exceptional circumstances,[10] none of which obtains in the present case. This Court must stress that the findings of fact of the CA are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court,[11] as in this case.

The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.[12] The petitioners failed to demonstrate this point. On the contrary, the finding of the courts a quo that the damage caused to the respondents was due to petitioners' negligence is sufficiently supported by the evidence on record. For these reasons, the petitioner's contentions bear no import.

Culpa, or negligence, may be understood in two different senses: either as culpa aquiliana, which is the wrongful or negligent act or omission which creates a vinculum juris and gives rise to an obligation between two persons not formally bound by any other obligation, or as culpa contractual, which is the fault or negligence incident in the performance of an obligation which already existed, and which increases the liability from such already existing obligation.[13] Culpa aquiliana is governed by Article 2176 of the Civil Code and the immediately

following Articles; while culpa contractual is governed by Articles 1170 to 1174 of the same Code.[14]

Articles 1170 and 1173 provide:

ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

ART. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2202, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

In the present case, it is clear that the petitioners, in carrying out their contractual obligations, failed to exercise the requisite diligence in the placement of the markings for the concrete perimeter fence that was later constructed. The placement of the markings had been done solely by petitioner Frank Batal who is not a geodetic engineer. It was later discovered that it was not he but his wife, petitioner Erlinda Batal, who is the licensed geodetic engineer and who is, therefore, the one qualified to do the work. Petitioner Frank Batal's installation of the concrete cyclone monuments had been done without the adequate supervision of his wife, Erlinda. As a result, the placement of the monuments did not accurately reflect the dimensions of the lot. The respondents, upon assurance given by petitioner Frank Batal that they could proceed with the construction of the perimeter fence by relying on the purported accuracy of the placement of the monuments, erected their fence which turned out to encroach on an adjacent easement. Because of the encroachment, the respondents had to demolish and reconstruct the fence and, thus, suffered damages.

The Court affirms and adopts the findings of the CA, to wit:

Records show that the services of the [petitioners] Frank and Erlinda were initially contracted to segregate Luz and Kenichiro's property from its adjoining lots. When the [respondent] spouses Luz and Kenichiro planned to fence the segregated lot, they again commissioned [petitioners] Frank and Erlinda to conduct a resurvey in order to determine the precise boundaries of their property upon which they will base the construction of their fence. It was also shown that in the course of the resurvey, Frank caused the installation of monuments of title on the four (4) corners of Luz and Kenichiro's property and that he instructed them to just follow the same in building their fence.

[Petitioners] Frank and Erlinda cannot thus validly claim that the error in the construction of the northern portion of the fence was due to the spouses Luz and Kenichiro's act of building the same without their consent. This is considering that the former led the latter to believe the purported accuracy of the resurvey and exactness of the lot's boundaries based on the monuments of title which they installed.

It has been ruled that "[A] party, having performed affirmative acts upon which another person based his subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter." (Pureza v. Court of Appeals, 290 SCRA 110)

The foregoing clearly supports the findings of the RTC that the spouses Batal committed a mistake in the conduct of their business that led to the encroachment of plaintiffs- appellees' fence on the adjoining alley-lot. As a result, the northern portion ha[d] to be torn down and rebuilt in order to correct the error in its original construction. The defendants-appellants cannot be excused from the effects of their actions in the survey of plaintiffs-appellees' lot.

We therefore concur with the findings of the RTC holding defendants-appellants liable for damages in the case at bar. "Findings of fact made by the trial court is entitled to great weight and respect." (Lopez v. Court of

Appeals, 322 SCRA 686)[15]

Being guilty of a breach of their contract, petitioners are liable for damages suffered by the respondents in accordance with Articles 1170 and 2201 of the Civil Code,[16] which state:

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof are liable for damages

Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

Thus, the Court agrees with the CA's affirmance of the findings of the RTC on the matter of damages, to wit:

Going now to the claims for damages, Engr. Arnold Martin testified on his computation and estimate (Exhibits "G" and "G-1") that the total cost for the demolition and reconstruction of the perimeter fence in question would be in the total amount of P428,163.90, and this was not at all disputed by the defendants, whose counsel waived cross-examination. This estimate is practically double the amount of the cost of constructing said fence as testified to by plaintiff Luz San Pedro as she was told that it is much costlier to demolish and reconstruct a fence than to simply erect one because of the added expense involved in tearing it down and hauling its debris. On the other hand, said plaintiff stated that the iron decorative grills of the fence, which is re-usable, cost her P50,000.00, and it is only proper to deduct said amount from the total cost of reconstructing the fence in question. At the same time, some figures in the said estimate appear to be quite excessive, such as the estimated cost for demolition which was quoted at P25,000.00 in addition to the amount of excavation priced at P30,000.00 and the cost of hauling of scrap materials at P10,000.00. The court believes that the sum of P300,000.00 for the demolition and reconstruction of the fence in question would be reasonable considering that the original cost for its construction was only about P200,000.00, and considering further that its iron grills are re-usable.

The plaintiffs are likewise entitled to recover attorney's fees considering that they were compelled by the defendants to resort to court action in order to protect their rights and interest, as defendants, particularly defendant Frank Batal, failed and refused repeatedly to even attend the confrontation of conciliation meetings arranged between him and the plaintiffs by the barangay authorities concerned, and to honor his promise to help in shouldering the cost of reconstructing the fence in question.

On the other hand, there is no legal or factual bases for the claim of the plaintiffs for moral or exemplary damages as there was no showing at all that defendants acted with malice or in bad faith.

In a long line of cases, we have consistently ruled that in the absence of a wrongful act or omission or of fraud or bad faith, moral damages cannot be awarded. (R & B Surety Insurance Co. v. Intermediate Court of Appeals, 129 SCRA 736; Guita v. Court of Appeals, 139 SCRA 576).[17]

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the Court of Appeals are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Panganiban, C. J. (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario concur.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mercedes Gozo-Dadole (now retired) and Lucas P. Bersamin, concurring.

[2] Id.

[3] Rollo, pp. 23-24.

[4] CA rollo, pp. 37-38.

[5] Id. at 35-36.

[6] Rollo, p. 26.

[7] Id. at 12-13.

[8] Food Terminal, Inc. v. Court of Appeals, 330 Phil. 903, 906 (1996).

[9] Food Terminal, Inc. v. Court of Appeals, id. at 906; Nazareno v. Court of Appeals, 397 Phil. 707, 724-725 (2000); Liberty Construction & Development Co. v. Court of Appeals, 327 Phil. 490, 495 (1996); Philippine Airlines, Inc. v. Court of Appeals, 326 Phil. 823, 835 (1996); Tay Chun Suy v. Court of Appeals, G.R. No. 93640, January 7, 1994, 229 SCRA 151, 156.

[10] See Heirs of Dicman v. Cariño, G.R. No. 146459, June 8, 2006.

[11] Liberty Construction & Development Co. v. Court of Appeals, supra note 9, at 495; Philippine Airlines, Inc. v. Court of Appeals, id. at 835.

[12] Nazareno v. Court of Appeals, supra at 725.

[13] 5 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 592 (1992).

[14] Id. citing Rakes v. Atlantic Gulf & Pacific Co., 7 Phil. 359 (1907).

[15] Id. at 24-25.

[16] See Savellano v. Northwest Airlines, 453 Phil. 342, 355 (2003).

[17] CA rollo, p. 37.

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