

ANECO REALTY AND DEVELOPMENT CORPORATION, PETITIONER, VS. LANDEX DEVELOPMENT CORPORATION, RESPONDENT.

G.R. No. 165952. July 28, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

THIS is a simple case of a neighbor seeking to restrain the landowner from fencing his own property. The right to fence flows from the right of ownership. Absent a clear legal and enforceable right, We will not unduly restrain the landowner from exercising an inherent proprietary right.

Before Us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) affirming the Order[2] of the Regional Trial Court (RTC) dismissing the complaint for injunction filed by petitioner Aneco Realty and Development Corporation (Aneco) against respondent Landex Development Corporation (Landex).

Facts

Fernandez Hermanos Development, Inc. (FHDI) is the original owner of a tract of land in San Francisco Del Monte, Quezon City. FHDI subdivided the land into thirty-nine (39) lots.[3] It later sold twenty-two (22) lots to petitioner Aneco and the remaining seventeen (17) lots to respondent Landex.[4]

The dispute arose when Landex started the construction of a concrete wall on one of its lots. To restrain construction of the wall, Aneco filed a complaint for injunction[5] with the RTC in Quezon City. Aneco later filed two (2) supplemental complaints seeking to demolish the newly-built wall and to hold Landex liable for two million pesos in damages.[6]

Landex filed its Answer[7] alleging, among others, that Aneco was not deprived access to its lots due to the construction of the concrete wall. Landex claimed that Aneco has its own entrance to its property along Miller Street, Resthaven Street, and San Francisco del Monte Street. The Resthaven access, however, was rendered inaccessible when Aneco constructed a building on said street. Landex also claimed that FHDI sold ordinary lots, not subdivision lots, to Aneco based on the express stipulation in the deed of sale that FHDI was not interested in pursuing its own subdivision project.

RTC Disposition

On June 19, 1996, the RTC rendered a Decision[8] granting the complaint for injunction, disposing as follows:

Wherefore, premises considered, and in the light aforesaid decision of the Supreme Court judgment is hereby rendered in favor of the plaintiff and the defendant is hereby ordered:

- To stop the completion of the concrete wall and excavation of the road lot in question and if the same is already completed, to remove the same and to return the lot to its original situation;
- To pay actual and compensatory damage to the plaintiff in the total amount of P50,000.00;
- To pay attorney's fees in the amount of P20,000.00;

- To pay the cost.

SO ORDERED.[9]

Landex moved for reconsideration.[10] Records reveal that Landex failed to include a notice of hearing in its motion for reconsideration as required under Section 5, Rule 15 of the 1997 Rules of Civil Procedure. Realizing the defect, Landex later filed a motion[11] setting a hearing for its motion for reconsideration. Aneco countered with a motion for execution[12] claiming that the RTC decision is already final and executory.

Acting on the motion of Landex, the RTC set a hearing on the motion for reconsideration on August 28, 1996. Aneco failed to attend the slated hearing. The RTC gave Aneco additional time to file a comment on the motion for reconsideration.[13]

On March 13, 1997, the RTC issued an order[14] denying the motion for execution of Aneco.

On March 31, 1997, the RTC issued an order granting the motion for reconsideration of Landex and dismissing the complaint of Aneco. In granting reconsideration, the RTC stated:

In previously ruling for the plaintiff, this Court anchored its decision on the ruling of the Supreme Court in the case of "White Plains Association vs. Legaspi, 193 SCRA 765," wherein the issue involved was the ownership of a road lot, in an existing, fully developed and authorized subdivision, which after a second look, is apparently inapplicable to the instant case at bar, simply because the property in question never did exist as a subdivision. Since, the property in question never did exist as a subdivision, the limitations imposed by Section 1 of Republic Act No. 440, that no portion of a subdivision road lot shall be closed without the approval of the Court is clearly in appropriate to the case at bar.

The records show that the plaintiff's property has access to a public road as it has its own ingress and egress along Miller St.; That plaintiff's property is not isolated as it is bounded by Miller St. and Resthaven St. in San Francisco del Monte, Quezon City; that plaintiff could easily make an access to a public road within the bounds and limits of its own property; and that the defendant has not yet been indemnified whatsoever for the use of his property, as mandated by the Bill of rights. The foregoing circumstances, negates the alleged plaintiffs right of way.[15]

Aneco appealed to the CA.[16]

CA Disposition

On March 31, 2003, the CA rendered a Decision[17] affirming the RTC order, disposing as follows:

WHEREFORE, in consideration of the foregoing, the instant appeal is perforce dismissed. Accordingly, the order dated 31 March 1996 is hereby affirmed.

SO ORDERED.[18]

In affirming the RTC dismissal of the complaint for injunction, the CA held that Aneco knew at the time of the sale that the lots sold by FHDI were not subdivision units based on the express stipulation in the deed of sale that FHDI, the seller, was no longer interested in pursuing its subdivision project, thus:

The subject property ceased to be a road lot when its former owner (Fernandez Hermanos, Inc.) sold it to appellant Aneco not as subdivision lots and without the intention of pursuing the subdivision project. The law in point is Article 624 of the New Civil Code, which provides:

Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before

the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.

Viewed from the aforesaid law, there is no question that the law allows the continued use of an apparent easement should the owner alienate the property to different persons. It is noteworthy to emphasize that the lot in question was provided by the previous owner (Fernandez Hermanos, Inc.) as a road lot because of its intention to convert it into a subdivision project. The previous owner even applied for a development permit over the subject property. However, when the twenty-two (22) lots were sold to appellant Aneco, it was very clear from the seller's deed of sale that the lots sold ceased to be subdivision lots. The seller even warranted that it shall undertake to extend all the necessary assistance for the consolidation of the subdivided lots, including the execution of the requisite manifestation before the appropriate government agencies that the seller is no longer interested in pursuing the subdivision project. In fine, appellant Aneco knew from the very start that at the time of the sale, the 22 lots sold to it were not intended as subdivision units, although the titles to the different lots have yet to be consolidated. Consequently, the easement that used to exist on the subject lot ceased when appellant Aneco and the former owner agreed that the lots would be consolidated and would no longer be intended as a subdivision project.

Appellant Aneco insists that it has the intention of continuing the subdivision project earlier commenced by the former owner. It also holds on to the previous development permit granted to Fernandez Hermanos, Inc. The insistence is futile. Appellant Aneco did not acquire any right from the said previous owner since the latter itself expressly stated in their agreement that it has no more intention of continuing the subdivision project. If appellant desires to convert its property into a subdivision project, it has to apply in its own name, and must have its own provisions for a road lot.[19]

Anent the issue of compulsory easement of right of way, the CA held that Aneco failed to prove the essential requisites to avail of such right, thus:

An easement involves an abnormal restriction on the property of the servient owner and is regarded as a charge or encumbrance on the servient owner and is regarded as a charge or encumbrance on the servient estate (Cristobal v. CA, 291 SCRA 122). The essential requisites to be entitled to a compulsory easement of way are: 1) that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; 2) that proper indemnity has been paid; 3) that the isolation was not due to acts of the proprietor of the dominant estate; 4) that the right of way claimed is at a point least prejudicial to the servient estate and in so far as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (Cristobal v. Court of Appeals, 291 SCRA 122).

An in depth examination of the evidence adduced and offered by appellant Aneco, showed that it had failed to prove the existence of the aforementioned requisites, as the burden thereof lies upon the appellant Aneco.[20]

Aneco moved for reconsideration but its motion was denied.[21] Hence, the present petition or appeal by certiorari under Rule 45.

Issues

Petitioner Aneco assigns quadruple errors to the CA in the following tenor:

A.

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING PETITIONER'S APPEAL AND SUSTAINING THE TRIAL COURT'S ORDER DATED 31 MARCH 1997 GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION WHICH IS FATALY DEFECTIVE FOR LACK OF NOTICE OF HEARING.

B.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S ORDER WHICH GAVE FULL WEIGHT AND CREDIT TO THE MISLEADING AND ERRONEOUS CERTIFICATION ISSUED BY GILDA E. ESTILO WHICH SHE LATER EXPRESSLY AND CATEGORICALLY RECENTED BY WAY OF HER AFFIDAVIT.

C.

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE LIBERAL CONSTRUCTION OF THE RULES IN ORDER TO SUSTAIN THE TRIAL COURT'S ORDER DATED 31 MARCH 1997.

D.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S ORDER THAT MADE NO PRONOUNCEMENTS AS TO COSTS, AND IN DISREGARDING THE MERIT OF THE PETITIONER'S CAUSE OF ACTION.[22]

Our Ruling

The petition is without merit.

Essentially, two (2) issues are raised in this petition. The first is the procedural issue of whether or not the RTC and the CA erred in liberally applying the rule on notice of hearing under Section 5, Rule 15 of the 1997 Rules of Civil Procedure. The second is the substantive issue of whether or not Aneco may enjoin Landex from constructing a concrete wall on its own property.

We shall discuss the twin issues sequentially.

Strict vs. Liberal Construction of Procedural Rules; Defective motion was cured when Aneco was given an opportunity to comment on the motion for reconsideration.

Section 5, Rule 15 of the 1997 Rules of Civil Procedure[23] requires a notice of hearing for a contested motion filed in court. Records disclose that the motion for reconsideration filed by Landex of the RTC decision did not contain a notice of hearing. There is no dispute that the motion for reconsideration is defective. The RTC and the CA ignored the procedural defect and ruled on the substantive issues raised by Landex in its motion for reconsideration. The issue before Us is whether or not the RTC and the CA correctly exercised its discretion in ignoring the procedural defect. Simply put, the issue is whether or not the requirement of notice of hearing should be strictly or liberally applied under the circumstances.

Aneco bats for strict construction. It cites a litany of cases which held that notice of hearing is mandatory. A motion without the required notice of hearing is a mere scrap of paper. It does not toll the running of the period to file an appeal or a motion for reconsideration. It is argued that the original RTC decision is already final and executory because of the defective motion.[24]

Landex counters for liberal construction. It similarly cites a catena of cases which held that procedural rules may be relaxed in the interest of substantial justice. Landex asserts that the procedural defect was cured when it filed a motion setting a hearing for its motion for reconsideration. It is claimed that Aneco was properly informed of the pending motion for reconsideration and it was not deprived of an opportunity to be heard.[25]

It is true that appeals are mere statutory privileges which should be exercised only in the manner required by law. Procedural rules serve a vital function in our judicial system. They promote the orderly resolution of cases. Without procedure, there will be chaos. It thus behooves upon a litigant to follow basic procedural rules. Dire consequences may flow from procedural lapses.

Nonetheless, it is also true that procedural rules are mere tools designed to facilitate the attainment of justice.

Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Public policy dictates that court cases should, as much as possible, be resolved on the merits not on mere technicalities. Substantive justice trumps procedural rules. In *Barnes v. Padilla*,^[26] this Court held:

Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final x x x.

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.^[27]

Here, We find that the RTC and the CA soundly exercised their discretion in opting for a liberal rather than a strict application of the rules on notice of hearing. It must be stressed that there are no vested right to technicalities. It is within the court's sound discretion to relax procedural rules in order to fully adjudicate the merits of a case. This Court will not interfere with the exercise of that discretion absent grave abuse or palpable error. Section 6, Rule 1 of the 1997 Rules of Civil Procedure even mandates a liberal construction of the rules to promote their objectives of securing a just, speedy, and inexpensive disposition of every action and proceeding.

To be sure, the requirement of a notice of hearing in every contested motion is part of due process of law. The notice alerts the opposing party of a pending motion in court and gives him an opportunity to oppose it. What the rule forbids is not the mere absence of a notice of hearing in a contested motion but the unfair surprise caused by the lack of notice. It is the dire consequences which flow from the procedural error which is proscribed. If the opposing party is given a sufficient opportunity to oppose a defective motion, the procedural lapse is deemed cured and the intent of the rule is substantially complied. In *E L Mercantile, Inc. v. Intermediate Appellate Court*,^[28] this Court held:

Procedural due process is not based solely on a mechanistic and literal application of a rule such that any deviation is inexorably fatal. Rules of procedure, and this includes the three (3) days notice requirement, are liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding (Section 2, Rule 1, Rules of Court). In *Case and Nantz v. Jugo* (77 Phil. 517), this Court made it clear that lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.

A party cannot ignore a more than sufficient opportunity to exercise its right to be heard and once the court performs its duty and the outcome happens to be against that negligent party, suddenly interpose a procedural violation already cured, insisting that everybody should again go back to square one. Dilatory tactics cannot be the guiding principle.

The rule in *De Borja v. Tan* (93 Phil. 167), that "what the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard," is the applicable doctrine. (See also *Aguilar v. Tan*, 31 SCRA 205; *Omico v. Vallejos*, 63 SCRA 285; *Sumadchat v. Court of Appeals*, 111 SCRA 488.) x x x^[29]

We also find that the procedural lapse committed by Landex was sufficiently cured when it filed another motion setting a hearing for its defective motion for reconsideration. Records reveal that the RTC set a hearing for the motion for reconsideration but Aneco's counsel failed to appear. The RTC then gave Aneco additional time to file comment on the motion for reconsideration.^[30]

Aneco was afforded procedural due process when it was given an opportunity to oppose the motion for reconsideration. It cannot argue unfair surprise because it was afforded ample time to file a comment, as it did comment, on the motion for reconsideration. There being no substantial injury or unfair prejudice, the RTC and the CA correctly ignored the procedural defect.

The RTC and the CA did not err in dismissing the complaint for injunction; factual findings and conclusions of law of the RTC and the CA are afforded great weight and respect.

Anent the substantive issue, We agree with the RTC and the CA that the complaint for injunction against Landex should be dismissed for lack of merit. What is involved here is an undue interference on the property rights of a landowner to build a concrete wall on his own property. It is a simple case of a neighbor, petitioner Aneco, seeking to restrain a landowner, respondent Landex, from fencing his own land.

Article 430 of the Civil Code gives every owner the right to enclose or fence his land or tenement by means of walls, ditches, hedges or any other means. The right to fence flows from the right of ownership. As owner of the land, Landex may fence his property subject only to the limitations and restrictions provided by law. Absent a clear legal and enforceable right, as here, We will not interfere with the exercise of an essential attribute of ownership.

Well-settled is the rule that factual findings and conclusions of law of the trial court when affirmed by the CA are accorded great weight and respect. Here, We find no cogent reason to deviate from the factual findings and conclusion of law of the trial court and the appellate court. We have meticulously reviewed the records and agree that Aneco failed to prove any clear legal right to prevent, much less restrain, Landex from fencing its own property.

Aneco cannot rely on the road lot under the old subdivision project of FHDI because it knew at the time of the sale that it was buying ordinary lots, not subdivision lots, from FHDI. This is clear from the deed of sale between FHDI and Aneco where FHDI manifested that it was no longer interested in pursuing its own subdivision project. If Aneco wants to transform its own lots into a subdivision project, it must make its own provision for road lots. It certainly cannot piggy back on the road lot of the defunct subdivision project of FHDI to the detriment of the new owner Landex. The RTC and the CA correctly dismissed the complaint for injunction of Aneco for lack of merit.

WHEREFORE, the petition is DENIED and the appealed Decision AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Rollo, pp. 56-65. Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring.

[2] Id. at 75-76.

[3] Id. at 321.

[4] Id. at 57.

[5] Records, pp. 1-31.

[6] Rollo, p. 58.

[7] Records, pp. 51-82.

[8] Id. at 194-199. Penned by Judge Demetrio B. Macapagal, Sr.

[9] Id. at 199.

[10] Id. at 269-276.

[11] Id. at 277-278.

[12] Id. at 284-288.

[13] Rollo, p. 62.

[14] Records, p. 306.

[15] Id. at 307-308.

[16] Id. at 309.

[17] Rollo, pp. 56-65.

[18] Id. at 64.

[19] Id. at 62-64.

[20] Id. at 64.

[21] Id. at 27.

[22] Id. at 28.

[23] Rules of Civil Procedure (1997), Rule 15, Sec. 5 provides:

Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[24] Rollo, pp. 29-27.

[25] Id. at 328-331.

[26] G.R. No. 160753, June 28, 2005, 461 SCRA 533.

[27] Barnes v. Padilla, id. at 541.

[28] G.R. No. L-70262, June 25, 1986, 142 SCRA 385.

[29] E L Mercantile, Inc. v. Intermediate Appellate Court, id. at 392.

[30] Rollo, p. 62.

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